

**Volume 38, No. 8, Pages 6510 to 7261,
July 20 – August 9, 2023**

FCC Record

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



FCC Record

Volume 38, No. 8, Pages 6510 to 7261, July 20 – August 9, 2023



FEDERAL COMMUNICATIONS COMMISSION

Jessica Rosenworcel, Chairwoman
Brendan Carr
Geoffrey Starks
Nathan Simington

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

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

Citation Form: 38 FCC Rcd 1 (2023)

Federal Communications Commission Record

Table of Contents

Volume 38

Issue 8

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

Federal Communications Commission Record

Table of Cases

Volume 38

Issue 8

Case Name	Page
Northshire Communications, Inc., Consent Decree	6510
EB Settles 911 Outage Investigation with Frontier for \$24,000	6520
International Authorizations Granted	6531
WCB Announces Lifeline Minimum Service Standards and Indexed Budget	6536
Table of Allotments, Television Broadcast Stations, Knoxville, Tennessee	6538
Glendive Broadcasting Corporation, NALF	6543
OET Seeks Comment on Liberty Holdings, Ltd. Request for Waiver	6548
FCC Reminds VPDs of Their Obligation to Make Televised Emergency Information Accessible	6552
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	6556
Domestic Section 214 Authorization Granted	6558
Hobbs Seventh-Day Adventist Church of the Texico Conf Assn, Forfeiture Order	6559
PSHSB Creates 800 MHz Regional Plan Docket	6562
FCC Announces September 7, 2023 DAC Meeting	6564
Domestic Section 214 Authorization Granted	6565
WCB Issues Monthly USF Appeals	6569
WTB Conditionally Grants Midland's GMRS Waiver Request	6583
EB Resolves AT&T's Formal Pole Attachment Complaint Against AEP	6590
FCC Certifies State and U.S. Territory TRS Programs	6621
WCB & OEA Adopts 2023 IPCS Mandatory Data Collection Order	6625
EB Requests Information on Private-Led Tracebacks by 11/13	6653
BDTF & OEA Extends Deadline for June 30, 2023 BDC Data	6656
WCB Seeks Comment on Petition Filed by Osage Nation	6658
MB Announces LPFM New Station Application Filing Window Procedures and Requirements	6660
WCB Seeks Comments on Domestic 214 Transfer of Hyak to Concept	6673
Satellite Policy Branch Information Actions Taken	6677
Domestic Section 214 Authorization Granted	6679
Crocodile Broadcasting Corp., NALF	6680
WCB Invites Comments on Section 214 Application(s)	6690
WTB Grants Order Granting Relief for GCI Communications. Corp.	6694
OMD Seeks Comment on Order Denying Motions for Extension of Time by Skywave and FlexRadio	6702
OET Grants Geophysical Survey Systems, Inc. Request for Waiver	6704
WCB Seeks Comment on Domestic 214 Transfer of Origin-Infostructure-Hunter	6708
EB Warns Providers About Robocalls From One Owl Telecom Inc.	6711
PSHSB Announces Nationwide Emergency Alerting Tests on October 4, 2023	6716
PSHSB Grants Waiver for Nationwide WEA Test	6720
International Authorizations Granted	6725
WCB & CGB Seeks Comments on Revisions to Providers' Annual Reporting & Certification Requirements	6732
Domestic Section 214 Authorization Granted	6747
WCB Releases Illustrative Results for Enhanced A-CAM	6755
Satellite Policy Branch Information Actions Taken	6756

Federal Communications Commission Record

Case Name	Page
WTB & ONAP Seeks Comments on Tribal Spectrum Access and Data	6760
CGB Seeks Comments on T-Mobile Petition for Waiver of TTY ASCII Format	6765
Oklahoma Catholic Broadcasting, Inc., Consent Decree	6768
CGB Announces Dates for Video Conferencing Proceeding	6778
Grand Forks Bible Study Group et al., New NCE (FM), Dismissal Letter	6780
Central Florida Educational Foundation, Inc., WCYZ(FM), Change Request Letter	6786
Central Florida Educational Foundation, Inc., WHGV(FM), Change Request Letter	6790
WCB Approves Aureon's Refund Plan and Concludes Tariff Investigation	6795
WTB Issues Order Denying Request for Extension of Time	6805
WCB & CGB Announces Comment Dates for Proposed IPCS Annual Reports and Certifications	6808
Elijah Radio et al., New NCE (FM), Grant Petition Letter	6810
WTB Validates SES Americom Phase II Certification of Accelerated Relocation Order	6816
Westel, Inc., NALF	6823
FCC Bolsters Tribal Libraries Access to E-Rate Program Funding	6842
FCC Adopts Rules to Promote Reliable Access to 988 Lifeline	6917
FCC Preserves Local Radio Programming From Channel 6 LPTV Stations	6975
Q Link Wireless LLC & Hello Mobile Telecom LLC, NALF	7022
FCC Adopts Plan to Bring Reliable Broadband to Rural Communities	7040
FCC Proposes to Modify Technical Rules for Digital FM Stations	7158
FCC Acts to Provide Subsidy for Consumers in Certain High-Cost Areas	7186
FCC Launches Technical Inquiry Into Spectrum Usage Data	7216
FCC Assesses Nearly \$300M Forfeiture for Unlawful Robocalls	7235

Federal Communications Commission Record

Table of FCC and Delegated Authority Numbers

Volume 38

Issue 8

DA/FCC Number	Page	DA/FCC Number	Page
DA 23-605	6510	DA 23-665	6778
DA 23-613	6520	DA 23-666	6780
DA 23-620	6531	DA 23-667	6786
DA 23-621	6536	DA 23-668	6790
DA 23-622	6538	DA 23-670	6795
DA 23-623	6543	DA 23-671	6805
DA 23-624	6548	DA 23-672	6808
DA 23-625	6552	DA 23-673	6810
DA 23-626	6556	DA 23-674	6816
DA 23-627	6558	FCC 23-55	6823
DA 23-628	6559	FCC 23-56	6842
DA 23-629	6562	FCC 23-57	6917
DA 23-630	6564	FCC 23-58	6975
DA 23-631	6565	FCC 23-59	7022
DA 23-632	6569	FCC 23-60	7040
DA 23-633	6583	FCC 23-61	7158
DA 23-635	6590	FCC 23-62	7186
DA 23-637	6621	FCC 23-63	7216
DA 23-638	6625	FCC 23-64	7235
DA 23-639	6653		
DA 23-640	6656		
DA 23-641	6658		
DA 23-642	6660		
DA 23-643	6673		
DA 23-644	6677		
DA 23-645	6679		
DA 23-646	6680		
DA 23-647	6690		
DA 23-648	6694		
DA 23-649	6702		
DA 23-650	6704		
DA 23-651	6708		
DA 23-652	6711		
DA 23-653	6716		
DA 23-654	6720		
DA 23-655	6725		
DA 23-656	6732		
DA 23-657	6747		
DA 23-658	6755		
DA 23-659	6756		
DA 23-660	6760		
DA 23-662	6765		
DA 23-663	6768		

Federal Communications Commission Record

Table of Docket Numbers

Volume 38

Issue 8

Docket Number	Page	Docket Number	Page
11-42	6536		
23-244	6538		
23-245	6548		
12-107	6552		
23-160	6558		
23-237	6562		
23-84	6565		
10-90	6569		
21-388	6583		
22-357	6590		
03-123	6621		
12-375	6625		
20-195	6653		
11-10	6656		
09-197	6658		
23-222	6673		
23-175	6679		
23-253	6690		
16-271	6694		
22-458	6704		
23-251	6708		
15-94	6716		
15-94	6720		
12-375	6732		
23-29	6747		
10-90	6755		
23-265	6760		
03-123	6765		
23-61	6778		
18-60	6795		
22-352	6805		
12-375	6808		
23-97	6816		
96-45	6842		
23-5	6917		
03-185	6975		
10-90	7040		
22-405	7158		
21-450	7186		
23-232	7216		

Federal Communications Commission Record

Table of Rulemaking Numbers

Volume 38

Issue 8

Rulemaking Number	Page	Rulemaking Number	Page
RM-11955	6538		
RM-11953	6702		
RM-11931	6765		
RM-11868	7040		

Federal Communications Commission Record

Table of Localities

Volume 38

Issue 8

City/State
Knoxville, TN

Page
6538

City/State

Page

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

In re Application of	)	
	)	
Northshire Communications, Inc.	)	NAL/Acct. No. MB-202341410014
	)	FRN: 0003795564
for Approval of Transfer of Control of	)	Facility ID No. 49706
WEQX(FM), Manchester, Vermont	)	
	)	
from	)	
	)	
A. Brooks Brown (Deceased) (Transferor) to	)	Application File No. 0000190505
Estate of A. Brooks Brown (Transferee)	)	
	)	
and	)	
	)	
Estate of A. Brooks Brown (Transferor) to	)	Application File No. 0000171467
Melinda Brown (Transferee)	)	

ORDER

Adopted: July 19, 2023

Released: July 20, 2023

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Northshire Communications, Inc. (NCI or Licensee), licensee of station WEQX(FM), Manchester, Vermont (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned applications for Commission consent to the involuntary transfer of control (Involuntary Transfer Application)¹ of the Licensee from the A. Brooks Brown, deceased, to the Estate of A. Brooks Brown (Estate) and the voluntary transfer of control (Voluntary Transfer Application)² of the Licensee from the Estate to Melinda Brown (Mrs. Brown).³

2. In the course of processing the Applications, the Bureau staff found that Mrs. Brown acquired negative control (i.e., 50% of the voting stock) of NCI without prior Commission authorization.⁴ The Bureau staff also found that the Licensee subsequently failed to notify the Commission promptly of the death of Mr. Brown, who retained the remainder of NCI's voting shares until his death, and failed to file the Involuntary Transfer Application within 30 days of his death as required by the Commission's

¹ Application File No. 0000190505. See *Broadcast Applications*, Public Notice, Report No. PN-1-220513-01, at 2 (MB May 13, 2022).

² Application File No. 0000171467. See *Broadcast Applications*, Public Notice, Report No. PN-1-211129-01, at 19 (MB Nov. 29, 2021).

³ Collectively, the Involuntary Transfer Application and the Voluntary Transfer Application will be referred to as the Applications.

⁴ See 47 U.S.C. § 310(d) ("No construction permit or station license . . . 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 . . ."); 47 CFR § 73.3540 ("Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control.").

rules (Rules).⁵ The Consent Decree resolves the Bureau's investigation of the Licensee's compliance with section 310(d) of the Communications Act of 1934, as amended (the Act), and sections 73.3540 and 73.3541 of the Rules.

3. Pursuant to the terms of the Consent Decree, Licensee and Mrs. Brown stipulate that they violated section 310(d) of the Act⁶ and sections 73.3540 and 73.3541 of the Rules.⁷ The Consent Decree requires, among other things, that NCI make a five thousand dollar (\$5,000) civil penalty payment to the United States Treasury and undertake a three-year compliance plan to prevent future, similar violations. A copy of the Consent Decree is attached hereto and incorporated by reference.

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Rules and the Act in connection with the Applications

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 NCI possesses the basic qualifications to continue to be a Commission licensee.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,⁸ and by the authority delegated by sections 0.61 and 0.283 of the Rules,⁹ 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 email, to Northshire Communications, Inc. and Melinda Brown, c/o of their counsel David D. Oxenford, Esq., Wilkinson, Barker, Knauer, LLP, 1800 M Street, NW, Suite 800N, Washington, DC 20036.

9. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,¹⁰ 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

⁵ See 47 U.S.C. § 310(d); 47 CFR § 73.3541 (stating that FCC "shall be notified in writing promptly of the death . . . of . . . a person directly or indirectly in control of a corporation which is a permittee or licensee" and that "[w]ithin 30 days after the occurrence of such death . . . , an application on FCC Form 316 shall be filed requesting consent . . . for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved").

⁶ 47 U.S.C. § 310(d).

⁷ 47 CFR §§ 73.3540, 73.3541.

⁸ 47 U.S.C. § 4(i).

⁹ 47 CFR §§ 0.61, 0.283.

¹⁰ *Id.* § 73.3526(e)(10).

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

In re Application of	)	
	)	
Northshire Communications, Inc.	)	NAL/Acct. No. MB-202341410014
	)	FRN: 0003795564
for Approval of Transfer of Control of	)	Facility ID No. 49706
WEQX(FM), Manchester, Vermont	)	
	)	
from	)	
	)	
A. Brooks Brown (Deceased) (Transferor) to	)	Application File No. 0000190505
Estate of A. Brooks Brown (Transferee)	)	
	)	
and	)	
	)	
Estate of A. Brooks Brown (Transferor) to	)	Application File No. 0000171467
Melinda Brown (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 Northshire Communications, Inc. (NCI), licensee of station WEQX(FM), Manchester, Vermont, for the purpose of terminating the Bureau's investigation of NCI's compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d) and sections 73.3540 and 73.3541 of the Commission's rules, 47 CFR §§ 73.3540 and 73.3541.

II. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et. seq.*;
 - (b) "Adopting Order" means the order of the Bureau adopting this Consent Decree;
 - (c) "Bureau" means the Media Bureau of the Federal Communications Commission;
 - (d) "Civil Penalty" means the payment Licensee has agreed to pay to the United States Treasury;
 - (e) "Commission" or "FCC" means the Federal Communications Commission and all of its bureaus and offices;
 - (f) "Effective Date" means the date on which the Bureau releases the Adopting Order;
 - (g) "Estate" means the Estate of A. Brooks Brown;
 - (h) "Investigation" means the Bureau's investigation of information contained in the Involuntary Transfer Application and Voluntary Transfer Application, as detailed herein;

- (i) “Involuntary Transfer Application” means the FCC Form 2100, Schedule 316, application for consent to the involuntary transfer of control of NCI from Mr. Brown, deceased, to the Estate, application file no. 0000190505;
- (j) “Involuntary Transfer of Control Rule” means 47 CFR § 73.3541;
- (k) “License” refers to the license authorization for station WEQX(FM), Manchester, Vermont (Fac. ID No. 49706);
- (l) “Licensee” means NCI and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;
- (m) “Mr. Brown” means A. Brooks Brown;
- (n) “Mrs. Brown” means Melinda Brown;
- (o) “NCI” means Northshire Communications, Inc., the licensee of WEXQ(FM), Manchester, Vermont;
- (p) “Parties” means NCI, Mrs. Brown, 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 Involuntary Transfer of Control Rule, the Voluntary Transfer of Control Rule, and section 310(d) of the Act;
- (s) “Voluntary Transfer Application” means the FCC Form 2100, Schedule 315, application for consent to the voluntary transfer of control of NCI from the Estate to Mrs. Brown, application file no. 0000171467; and
- (t) “Voluntary Transfer of Control Rule” means 47 CFR § 73.3540.

III. BACKGROUND

3. *Unauthorized Transfers 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

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.²

4. The Voluntary and Involuntary Transfer of Control Rules implement section 310(d) of the Act.³ The Voluntary Transfer of Control Rule states, in pertinent part, that “[p]rior consent of the

¹ 47 U.S.C. § 310(d).

² 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).

³ 47 CFR §§ 73.3540, 73.3541.

FCC must be obtained for a voluntary assignment or transfer of control.”⁴ In addition, the Involuntary Transfer of Control Rule stipulates that:

The FCC shall be notified in writing promptly of the death or legal disability of an individual permittee or licensee, a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee.

Within 30 days after the occurrence of such death or legal disability, an application on FCC Form 316 shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.⁵

5. Mr. Brown was NCI’s sole shareholder.⁶ As a tenth anniversary gift, Mr. Brown transferred 50% of his voting stock in NCI to Mrs. Brown without prior Commission consent.⁷ Following this transfer, Mr. Brown and Mrs. Brown each held 50% of NCI’s voting stock and therefore negative control of NCI.⁸ After Mr. Brown died,⁹ the Licensee did not notify the Commission within 10 days of his death or file an application for the involuntary transfer of control to his Estate within 30 days. Licensee states that until recently, it did not have regular communications counsel and did not realize that there was an obligation to obtain Commission approval prior to Mrs. Brown’s acquisition of negative control of NCI and to file an FCC Form 2100, Schedule 316, application for the involuntary transfer to the Estate within 30 days of Mr. Brown’s passing. Based on the foregoing, the Bureau commenced the Investigation and suspended processing of the Involuntary and Voluntary Transfer Applications.

6. 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

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

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

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

⁴ *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).

⁵ 47 CFR § 73.3541. See also *Broadcast Assignment and Transfer of Control Applications Available in LMS*, Public Notice, 35 FCC Rcd 12719 (MB 2020) (announcing the transition of FCC Form 316 from the Consolidated Database System to the Licensing and Management System as FCC Form 2100, Schedule 316).

⁶ See “Amendment to Assignment Application” at 1, attach. to Voluntary Transfer Application (rec. Apr. 20, 2022).

⁷ *Id.* at n.7.

⁸ See *id.* at 2; “Certificate of Death,” attach. A to Involuntary Transfer Application.

⁹ See “Certificate of Death,” attach. A to Involuntary Transfer Application.

agrees that it is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. Any violation of the Adopting Order or the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to enforcement of a Commission order.

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

11. 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 its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its material 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.

12. **Admission of Liability.** Licensee, and Mrs. Brown for purposes of this Consent Decree, stipulate that their actions described in paragraph 5 of this Consent Decree violated section 310(d) of the Act and sections 73.3540 and 73.3541 of the Rules.

13. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of five thousand dollars (\$5,000), 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 1996.¹⁰

14. **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),¹¹ 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:¹²

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹³ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the

¹⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹¹ Payments made using CORES do not require the submission of an FCC Form 159.

¹² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

¹³ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

15. **Compliance Officer.** Within 30 calendar days after the Effective Date, Licensee shall designate a Compliance Officer who will administer the Compliance Plan, supervise Licensee’s compliance with the Act and the Rules, and serve as the point of contact on behalf Licensee for all FCC-related compliance matters.

16. **Compliance Plan.** Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop, implement, and maintain for a period of three (3) years a Compliance Plan designed to ensure future compliance with the Act and the Rules. 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 employees and others who perform duties for the Licensee that triggers or may trigger compliance-related responsibilities. The Compliance Manual shall include: (1) an overview of the Commission’s requirements with respect to applications for assignment or transfer of control of FCC licenses, including the need for prior approval for license assignments and transfers of control as set forth in the Rules; and (2) a description of the regulatory requirements applicable to the accurate reporting of information in assignment and transfer of control applications as set forth in the Rules. Licensee shall update the Compliance Manual from time to time to reflect changes to relevant sections of the Act, Rules, and Commission orders, and as otherwise needed.
- b. **Compliance Training Program.** Within 90 days of the Effective Date, Licensee shall begin administering a Compliance Training Program for employees and others who perform duties for the Licensee related to assignment and transfer of control applications. This Compliance Training Program shall be completed for all such employees within one hundred and twenty (120) days of the Effective Date. This Compliance Training Program shall also be presented to new employees who are engaged in such activities, within the first sixty (60) calendar days of employment. This Compliance Training Program shall track the Compliance Manual, focusing on proper implementation of the Compliance Manual.
- c. **Compliance Reports.** Licensee shall submit a Compliance Report to the Commission 90 days after the Effective Date and annually thereafter on the anniversary of the Effective

Date for a period of three (3) years. Each Compliance Report will include a certification by the Compliance Officer, as an agent of and on behalf of Licensee, attesting to personal knowledge that: (1) Licensee has complied with subsections (a) and (b) of this Paragraph; and (2) Licensee is not aware of any instances of non-compliance with the Consent Decree, section 310(d) of the Act, or sections 73.3540 and 73.3541 of the Rules. The certification must 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. If the Compliance Officer cannot provide the requisite certification, then the Compliance Officer shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Act or Rules, and (ii) the steps that Licensee has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. A copy will be served on Christopher Clark, Assistant Chief, Audio Division, FCC Media Bureau, at Christopher.Clark@fcc.gov.

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 Involuntary and Voluntary Transfer Applications after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment referenced in paragraph 15 of this Consent 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 and the Involuntary 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 Act¹⁴ 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

¹⁴ 5 U.S.C. § 504; 47 CFR §§ 1.1501-1530.

constitute a final settlement between the Parties with respect to the Investigation.

24. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate 60 days after the filing of the final Compliance Report referenced above, *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations the terms of the Consent Decree. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with the terms of the Consent Decree, 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.

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

26. **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.

27. **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.

28. **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: 7/19/2023

Northshire Communications, Inc.

By: _____
Melinda Brown, President

Date: _____

constitute a final settlement between the Parties with respect to the Investigation.

24. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate 60 days after the filing of the final Compliance Report referenced above, *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations the terms of the Consent Decree. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with the terms of the Consent Decree, 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.

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

26. **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.

27. **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.

28. **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: _____

Northshire Communications, Inc.

By: Melinda Brown
Melinda Brown, President

Date: 7/19/23

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

In the Matter of

Frontier Communications Parent, Inc.

)
)
)
)
)
)
)

File No.: EB-SED-22-00033956
CD Acct. No.: 202332100009
FRN: 0029626009

ORDER

Adopted: July 21, 2023**Released: July 21, 2023**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Frontier Communications Parent, Inc. failed to deliver 911 calls through its wireline network in Arizona on June 11, 2022. As Congress and the Commission have found, robust and reliable 911 service is a critical national priority, as those calling first responders must be able to rely on their calls being completed. It is therefore incumbent upon the Commission to ensure that reliable 911 service is available at all times. To settle this matter, Frontier agrees to pay a \$24,000 civil penalty and to implement a three-year compliance plan to ensure future compliance.

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 Frontier's compliance with the Commission's 911 rules, including section 9.4 of the Commission's rules.¹

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Frontier's basic qualifications to hold or obtain any Commission license or authorization.²

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act³ and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,⁴ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Robert Kirk and Suzanne Tetreault, Wilkinson Barker Knauer LLP, Counsel for Frontier Communications Corp., 1800 M Street NW, Suite

¹ 47 CFR § 9.4.

² See 47 CFR § 1.93(b).

³ 47 U.S.C. § 154(i).

⁴ 47 CFR §§ 0.111, 0.311.

800 N, Washington, DC 20036 and to Allison M. Ellis, Senior Vice President, Regulatory and Government Affairs, Frontier Communications, 401 Merritt 7, Norwalk, CT 06851.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Frontier Communications Parent, Inc.	)	File No.: EB-SED-22-00033956
	)	CD Acct. No.: 202332100009
	)	FRN: 0029626009
	)	
	)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Frontier, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Frontier violated section 9.4 of the Commission's rules in connection with the failure to transmit 911 calls following vandalism to Frontier's wireline network in Arizona on June 11, 2022. To resolve this matter, Frontier agrees to pay a \$24,000 civil penalty and implement a three-year compliance plan to ensure future compliance.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "911 Rules" means section 9.4 of the Rules and other Communications laws governing the provision of 911 services.
 - (b) "911 Outages" means outages satisfying the criteria set forth in section 4.5(e) of the Commission's rules.
 - (c) "Act" means the Communications Act of 1934, as amended.⁵
 - (d) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (e) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (f) "CD Acct No." means account number 202332100009, associated with payment obligations described in paragraph 18 of this Consent Decree.
 - (g) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (h) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Frontier is subject by virtue of its business activities, including but not limited to the 911 Rules.
 - (i) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
 - (j) "Covered Employees" means all employees and agents of Frontier who perform, supervise, oversee, or manage the performance of, duties that relate to Frontier's responsibilities under the 911 Rules.

⁵ 47 U.S.C. § 151 *et seq.*

- (k) “Effective Date” means the date by which both the Bureau and Frontier have signed the Consent Decree and the Bureau has released an Adopting Order.
- (l) “Frontier” or “Company” means Frontier Communications Parent, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (m) “Investigation” means the investigation commenced by the Bureau in File No. EB-SED-22-00033956 regarding whether Frontier violated the 911 Rules.
- (n) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Frontier to implement the Compliance Plan.
- (o) “Parties” means Frontier and the Bureau, each of which is a “Party.”
- (p) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 9.4 of the Commission’s rules states, “All telecommunications carriers shall transmit all 911 calls to a PSAP [Public Safety Answering Point], to a designated statewide default answering point, or to an appropriate local emergency authority”⁶

4. At the time of the outage, Frontier served communities in Eastern Arizona as an originating wireline service provider for its subscribers, a covered 911 service provider,⁷ and an Internet backhaul provider for other service providers.⁸ In its capacity as an originating service provider, Frontier was required to deliver the 911 calls of its local subscribers to PSAPs (or 911 emergency call centers). On the afternoon of June 11, 2022, Frontier’s optical fiber network near Snowflake, Arizona, was vandalized by gunshots in multiple locations.⁹ The gunshots damaged fibers that carried backhaul traffic for other communications providers, resulting in certain providers experiencing a service outage, but the vandalism did not damage the fiber strands that carried Frontier’s voice traffic, including its 911 traffic.¹⁰ However, in order to restore the impacted services on the damaged fiber, it was necessary for Frontier to remove and replace sections of fiber, which necessarily took down Frontier’s voice traffic.¹¹ Frontier coordinated with the impacted PSAPs regarding a temporary reroute of 911 traffic and successfully tested the telephone numbers provided by the PSAPs to ensure they would work for rerouting 911 traffic during the repair. However, when the repair commenced, 911 traffic did not reroute successfully. Frontier investigated and realized that the telephone numbers provided for the reroute were impacted by the repair. Frontier then worked with PSAPs to reroute 911 traffic to telephone numbers provided by the PSAPs that were not impacted by the repair but, for more than one hour, was unable to transmit its subscribers’ 911 calls to PSAPs.¹²

⁶ 47 CFR § 9.4.

⁷ In June 2022, Arizona was in the process of establishing a statewide NG911 network with a different covered 911 service provider. While Frontier served as the covered 911 service provider for certain Arizona PSAPs at the time of the outage, currently, Frontier no longer serves as the covered 911 service provider for these PSAPs; Frontier continues to provide covered 911 services elsewhere.

⁸ Response to Letter of Inquiry, from Frontier Communications Corp., to Spectrum Enforcement Division, FCC Enforcement Bureau, at 1 (Jul. 29, 2022) (on file in EB-SED-22-00033956) (LOI Response).

⁹ LOI Response at 12-13, Response to Inquiry 17(a).

¹⁰ *Id.* at 8, Response to Inquiry 12.

¹¹ *Id.*

¹² *Id.* at 10, Response to Inquiry 13.

5. On June 23, 2022, the Bureau issued a Letter of Inquiry (LOI) to the Company directing it to submit a sworn written response to a series of questions relating to the Outage.¹³ Frontier timely responded to the LOI on July 29, 2022.¹⁴ Frontier subsequently met with Bureau representatives and responded to a supplemental inquiry from the Bureau.¹⁵

6. Frontier and the Bureau subsequently engaged in settlement negotiations. To settle this matter, the Company and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

8. **Jurisdiction.** Frontier 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.

9. **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.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Frontier 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 Frontier concerning the matters that were the subject of the Investigation, or to set for hearing the question of Frontier'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.¹⁶

11. **Admission.** Frontier admits that the facts set forth in paragraphs 4 and 5 of this Consent Decree contain a true and accurate description of the facts underlying the Investigation.

12. **Compliance Officer.** By August 31, 2023, Frontier 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 Frontier 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 911 Rules prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Frontier agrees that it shall, within the dates set out below, develop and implement a Compliance Plan designed to ensure

¹³ Letter of Inquiry from Spectrum Enforcement Division, FCC Enforcement Bureau, to Frontier Communications Corp. (June 23, 2022) (on file in EB-SED-21-00033956).

¹⁴ LOI Response.

¹⁵ Email from Spectrum Enforcement Division, FCC Enforcement Bureau, to Frontier Communications Corp. (Oct. 4, 2022, 16:11 EDT) (on file in EB-SED-22-00033956) (Supplemental LOI); Response email from Frontier Communications Corp., to Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 25, 2022, 16:58 EDT) (on file in EB-SED-22-00033956).

¹⁶ See 47 CFR § 1.93(b).

future compliance with the 911 Rules and the terms and conditions of this Consent Decree. With respect to the 911 Rules, Frontier will implement, at a minimum, the following procedures:

- (a) **Operating Procedures**. By September 30, 2023, Frontier shall establish Operating Procedures that all Covered Employees in supervisory and management roles must follow to help ensure that Frontier complies with the 911 Rules. The Operating Procedures shall include, but are not limited to, the following:
 - i. **Develop and Improve Upon 911 Processes**. Frontier shall develop and implement, or, where processes already exist, improve upon, processes in the evolving 911 environment to (1) *Identify* risks that could result in 911 Outages; (2) *Protect* against such risks; (3) *Detect* 911 Outages when they occur; (4) *Respond* to such 911 Outages with remedial actions; and (5) *Recover* from such 911 Outages as soon as practicable.
 - ii. **Develop Compliance Checklist**. Frontier shall develop a compliance checklist that describes the steps for Frontier to follow to comply with the 911 Rules.
 - iii. **Develop Procedures Relating to Continuity of 911 Service During Network Maintenance or Repairs**. Frontier shall establish and implement Operating Procedures (including, as necessary, reviewing and revising existing procedures) to minimize 911 Outages during unplanned or “break-fix” maintenance or other repairs that implicate reroutes to PSAP administrative lines without unreasonably delaying or interfering with Frontier’s ability to efficiently and expeditiously complete necessary 911 service repairs. These procedures will include a process for timely communicating and coordinating with impacted PSAPs to re-route 911 traffic during “break-fix” and other repairs.
 - iv. **Develop Procedures to Identify Impact of Network Maintenance or Repairs on 911 Service**. Frontier shall establish and implement Operating Procedures (including, as necessary, reviewing and revising any existing procedures and systems) to 1) assist Frontier in recognizing the effects that fiber repair or replacement may have upon 911 services, including 911 call processing functions for its end user customers, and 2) enable communication of identified effects during break-fix events to internal teams and to the potentially impacted PSAPs.
 - v. **Implement Procedures Relating to Testing 911 Call Completion During Outages**. Frontier shall establish and implement Operating Procedures (including, as necessary, reviewing and revising any existing procedures) to minimize disruption of 911 traffic and associated call data to the PSAP, designated statewide answering point or appropriate local emergency authority, in accordance with 47 CFR § 9.4, whenever Frontier has indicia that a repair is expected to cause a 911 Outage. Such procedures shall include the use of multiple sets of test calls to alternative contact telephone numbers designated by a PSAP, throughout network maintenance and repair and upon the restoration of service relating to an outage.
 - vi. **Review and Implement New or Revised Best Practices**. Within ninety (90) calendar days of the release by CSRIC of any new and applicable best practices relating to 911 service, Frontier shall evaluate and incorporate, where appropriate, such new best practices into the Operating Procedures and shall establish a timeline for their implementation.
- (b) **Compliance Manual**. By September 30, 2023, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The

Compliance Manual shall explain the 911 Rules and set forth Operating Procedures to help ensure Frontier's compliance with the 911 Rules and this Consent Decree. Frontier shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Frontier shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (c) **Compliance Training Program.** Frontier shall establish and implement a Compliance Training Program on compliance with the 911 Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees in supervisory and management roles shall be advised of Frontier's obligation to report any noncompliance with the 911 Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees in supervisory and management roles shall be trained pursuant to the Compliance Training Program by December 31, 2023, except that any person who becomes a Covered Employee subject to this obligation 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 in a supervisory or management role. Frontier 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.

14. **Reporting Noncompliance.** Frontier shall report any material noncompliance with the 911 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 material noncompliance; (ii) the steps that Frontier 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 Frontier has taken or will take to prevent the recurrence of any such noncompliance. All reports of material noncompliance shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission via EB-SED-Response@fcc.gov.

15. **Compliance Reports.** Frontier 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 Frontier's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the 911 Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Frontier, stating that the Compliance Officer has personal knowledge that Frontier: (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 14 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

¹⁷ 47 CFR § 1.16.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Frontier, 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 Frontier 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 Frontier 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 electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission via EB-SED-Response@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **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 Act¹⁸ against Frontier 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 Frontier with the Communications Laws.

18. **Civil Penalty.** Frontier will pay a civil penalty to the United States Treasury in the amount of twenty-four thousand dollars (\$24,000) within thirty (30) calendar days of the Effective Date. Frontier 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. Frontier shall send electronic notification of payment to EB-SED-Response@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/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected: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 159²¹ or printed CORES form²² 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

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 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/core/userLogin.do>.

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).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 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 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 the Commission’s Registration System (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.** Frontier agrees that an Event of Default shall occur upon the failure by Frontier 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 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 Frontier.

21. **Waivers.** As of the Effective Date, Frontier 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. Frontier 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 Frontier nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Frontier shall waive any statutory right to a trial *de novo*. Frontier hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁴ relating to the matters addressed in this Consent Decree.

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; see also 47 CFR §§ 1.1501–1.1530.

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

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

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

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

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

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

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

Loyaan A. Egal
Chief
Enforcement Bureau

Date

Mark Nielsen
Chief Legal & Regulatory Officer
Frontier Communications Parent, 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. 23-620

Report No. TEL-02292

Thursday July 20, 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).

Petition for Declaratory Ruling

Grant of Authority

Date of Action: 07/17/2023

On December 30, 2022, DOCOMO Pacific, Inc. (DPAC or the Petitioner) filed a letter notifying the Commission that DPAC was no longer in compliance with its current foreign ownership ruling pursuant to section 1.5004(f) of the Commission's rules. 47 CFR § 1.5004(f). On January 23, 2023, the Petitioner filed a petition for a new declaratory ruling (Petition) pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the "Act"), and section 1.5000(a)(1) of the Commission's rules, asking the Commission to find that the public interest would not be served by prohibiting the foreign ownership of DPAC's controlling U.S. parent, DOCOMO Guam Holdings, Inc. (DGH), above the 25% benchmarks in section 310(b)(4) of the Act. 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000(a)(1). On May 17, 2023, the Petitioner filed a revised and restated petition for a new declaratory ruling (Restated Petition) pursuant to section 310(b)(4) of the Act. We received no comments on this request.

According to the Restated Petition, DPAC, a corporation organized under the laws of Guam, is a provider of voice and Internet service in Guam and the Commonwealth of Northern Mariana Islands. DPAC holds the following types of radio authorizations to which section 310(b) is applicable: AWS-3, AWS-1, Cellular, Paging, Common Carrier Fixed Point to Point Microwave, PCS Broadband, 700 MHz Lower Band, and Wireless Communications Service. DPAC is wholly owned by DGH, a Guam corporation, which is a wholly owned subsidiary of NTT DOCOMO, INC. (NTT DOCOMO), a Japanese corporation. NTT DOCOMO itself is wholly owned by Nippon Telephone and Telegraph (NTT), a Japanese corporation publicly traded on the Tokyo Stock Exchange.

In 2021, the Commission issued a foreign ownership ruling to DPAC, finding that the public interest would not be served by prohibiting 100% aggregate foreign ownership of DPAC's controlling U.S. parent, DGH. International Authorizations Granted, Section 214 Applications (47 CFR §§ 63.18, 63.24); Section 310(b) Petitions (47 CFR § 1.5000), Public Notice, ISP-PDR-20210128-00002, 36 FCC Rcd 16821, 16822 (IB 2021) (2021 Ruling). The 2021 Ruling specifically approved direct and indirect foreign equity and/or voting interests in DGH as follows: (1) NTT DOCOMO to hold up to and including 100% equity and voting interests; (2) NTT to hold up to and including 100% equity and voting interests; and (3) the Japan Ministry of Finance, a Japanese government entity, to hold up to and including a 33.93% interest, with advance approval to acquire up to a non-controlling 49.99% indirect equity and/or voting interest in DGH and DPAC.

Subsequent to the 2021 Ruling, the Master Trust Bank of Japan, Ltd. (MTB) increased the shares of NTT that it holds on behalf of its clients on the open market and now holds a 11.24% interest in NTT. Consequently, DPAC seeks a new declaratory ruling for specific and advance approval of MTB's voting and equity interests in NTT. In its Restated Petition, DPAC explains that MTB is a Japanese trust bank that administers investment accounts for its clients. DPAC further notes that all beneficial interest in and to the shares is held by MTB's multiple account holders, and MTB's role with respect to the shares is that of an administrative agent, with voting rights distributed among multiple account holders. DPAC seeks specific approval for MTB's 11.24% equity and voting interests in NTT, with advance approval up to a non-controlling 49.99% equity and/or voting interests.

We find that the public interest would not be served by prohibiting foreign ownership of DPAC in excess of the 25% benchmarks in section 310(b)(4) of the Act. We, therefore, grant the Restated Petition subject to the conditions set out herein.

This ruling authorizes 100% aggregate foreign ownership equity and voting interest in DGH, as the controlling U.S. parent of DPAC, subject to the terms and conditions set out herein and those set forth in section 1.5004 of the Commission's rules, including the requirement to obtain prior Commission approval before indirect foreign ownership of DPAC exceeds the terms and conditions of this ruling. 47 CFR § 1.5004.

Pursuant to section 1.5001(i) of the Commission's rules, we grant the Petitioner's request to permit the following foreign-organized entities to hold, directly and/or indirectly, equity and/or voting interests in DPAC's controlling U.S. parent, DGH, as follows:

NTT DOCOMO, Inc. (100% equity and voting) (Japan);

Nippon Telephone and Telegraph Corporation (100% equity and voting) (Japan);
Japan Ministry of Finance (33.86% equity and voting) (Japan); and
Master Trust Bank of Japan, Ltd. (11.24% equity and voting) (Japan).

Pursuant to section 1.5001(k) of the Commission's rules, 47 CFR § 1.5001(k), this ruling also grants advance approval for Master Trust Bank of Japan, Ltd. and the Japan Ministry of Finance to acquire up to a non-controlling 49.99% indirect equity and/or voting interest in DGH. 47 CFR § 1.5001(k).

Grant of the 2021 Ruling was conditioned on compliance by DPAC with the commitments and undertakings set forth in the October 20, 2021, Letter of Agreement from James W. Hofman, II, Chief Legal Officer, Docomo Pacific, Inc., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, Department of Justice (2021 LOA). See 36 FCC Rcd at 16822. DPAC states that as part of the 2021 Ruling, the relevant Executive Branch agencies (Agencies) reviewed DPAC's foreign ownership including the then 5.52% ownership interest in NTT by MTB and that based on that review, DPAC entered into the 2021 LOA. DPAC acknowledges that it is still subject to the 2021 LOA, confirms that it remains in compliance with its terms, and requests that the Commission's grant of the Restated Petition be conditioned on continued compliance with the 2021 LOA.

The Commission has discretion whether to refer section 310(b) petitions for declaratory ruling 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 petitioners. See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket 16-155, Report and Order, 35 FCC 10927, 10935-36, para. 24 (2020) (Executive Branch Review Order); 47 CFR § 1.40001. We exercised our discretion and did not formally refer the Restated Petition to the Agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Petitioner because the Agencies were aware of the MTB ownership when they reviewed DPAC's ownership for the 2021 Ruling, and DPAC stated that it remains in compliance with its terms and requests that the Commission's grant of the Restated Petition be conditioned on continued compliance with the 2021 LOA. While we did not formally refer the Restated Petition, we did provide a courtesy copy of the Public Notice to the Agencies. Executive Branch Review Order, 35 FCC Rcd at 10939, para 30, n.81.

We condition our grant of the Restated Petition on DPAC's continued compliance with the commitments and undertakings set forth in the 2021 LOA.

DPAC has an affirmative duty to monitor its foreign equity and voting interests, calculate these interests consistent with the principles enunciated by the Commission, including the standards and criteria set forth in sections 1.5002 through 1.5003 of the Commission's rules and otherwise ensure continuing compliance with the provisions of section 310(b) of the Act. 47 CFR §§ 1.5002-1.5003; 47 CFR § 1.5004, Note to paragraph (a). A failure to comply and/or remain in compliance with any of these requirements shall constitute a failure to meet a condition of this ruling and the underlying licenses and thus grounds for declaring them terminated without further action on the part of the Commission. Failure to meet a condition of this ruling may also result in monetary sanctions or other enforcement action by the Commission.

Grant of this declaratory ruling is without prejudice to the Commission's action on any other related pending application(s).

ITC-214-20230509-00057 E Ameraconnect Telecom 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: 07/14/2023

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

Ameraconnect, a Kansas limited liability company, is 100% owned by Ronald LaRoe, a U.S. citizen.

ITC-214-20230517-00063 E Ozark Fiber, LLC
International Telecommunications Certificate
Service(s): Global or Limited Global Resale Service
Grant of Authority Date of Action: 07/14/2023

Ozark Fiber, LLC (Ozark Fiber) filed an application for authority to provide resale service in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(2). On June 20, 2023, Ozark Fiber filed a Supplement to its application.

Ozark Fiber is a Missouri limited liability company. ABD Opportunity Zone Fund, LLC (ABDOZ), a Delaware entity, holds a 89.95% direct interest in Ozark Fiber. ABDOZ, in turn, is held as follows: (1) The Andrew B. Davis Irrevocable Trust dated March 22, 2019 (ABD Trust), an Illinois entity (92.3% interest) and (2) The Katherine J. Davis Irrevocable Trust dated March 22, 2019 (KJD Trust), an Illinois entity (7.7% interest). Katherine J. Davis is the Trustee of the ABD Trust, and its beneficiaries are the descendants of Andrew and Katherine Davis, both U.S. citizens. Andrew B. Davis is the Trustee of the KJD Trust, and its beneficiaries are the descendants of Andrew and Katherine Davis. Andrew B. Davis also holds a 0.05% direct interest in Ozark Fiber. Jason L. Ross, a U.S. citizen, holds a 2% direct interest in Ozark Fiber and an 8% profits interest that will convert to direct ownership of Ozark Fiber over the next four years in 2% annual increments.

SURRENDER

ITC-214-20000504-00275 BroadRiver Communication Corporation

By letter dated July 14, 2023, BroadRiver Communication Corporation notified the Commission that it surrendered its international section 214 authorization effective July 13, 2023.

ITC-214-20110506-00124 Appia Communications, Inc.

By letter dated July 14, 2023, Appia Communications, Inc. notified the Commission that it surrendered its international section 214 authorization effective July 13, 2023.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

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

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

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

(15) Each carrier shall notify the Commission of any change in its contact information. Such notification shall be filed in the file number(s) for the international section 214 authorization(s) through the International Communications Filing System (ICFS).

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-621

Released: July 21, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES UPDATED LIFELINE MINIMUM SERVICE STANDARDS AND INDEXED BUDGET AMOUNT

WC Docket No. 11-42

By this Public Notice, the Wireline Competition Bureau (Bureau) announces updated minimum service standards for Lifeline-supported services as required by the *2016 Lifeline Order*.¹ The *2016 Lifeline Order* established minimum service standards for certain Lifeline-supported services and established annual increases in those standards either in the Commission's rules or pursuant to calculations set out in the Order and the Commission's rules.² Accordingly, we announce the newly calculated minimum service standard for fixed broadband data usage allowance, which is the same as the current standard. This standard will continue until December 1, 2024. Additionally, we announce that the budget for federal universal service support for the Lifeline program for calendar year 2024 will be \$2,778,691,284.³

Mobile broadband minimum service standard. On July 7, 2023, the Bureau extended for an additional year the waiver pausing the increase in the Lifeline minimum service standards for mobile broadband data capacity.⁴ As such, the standard will continue to be 4.5 GB per month until at least December 1, 2024.

Fixed broadband minimum service standard for data usage allowance. Pursuant to the *2016 Lifeline Order*, beginning December 1, 2023, the Lifeline minimum service standard for fixed broadband data usage will be 1280 GB per month, as calculated from the 2023 Urban Rate Survey data.⁵

Mobile voice telephony minimum service standard. The *2016 Lifeline Order* established an automatic update to the Lifeline minimum service standard for mobile voice service through November 30, 2018.⁶ Accordingly, pursuant to the *2016 Lifeline Order*, on December 1, 2023, the Lifeline minimum service standard for mobile voice service will remain unchanged, at 1000 minutes per month.⁷

¹ *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, 3989-3997, paras. 73-98 (2016) (*2016 Lifeline Order*); 47 CFR § 54.408.

² *2016 Lifeline Order*, 31 FCC Rcd at 3988-4000, paras. 69-106; 47 CFR § 54.408(b)-(c).

³ See *2016 Lifeline Order*, 31 FCC Rcd at 4110, para. 403.

⁴ See *Lifeline and Link Up Reform and Modernization et al.*, Docket No. 11-42, Order, DA 23-589, paras. 1-2, 10, 17 (WCB 2023).

⁵ See 47 CFR § 54.408(c)(1)(ii); *2016 Lifeline Order*, 31 FCC Rcd at 3994, para. 90; FCC, *Urban Rate Survey Data & Resources*, <https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources> (last visited July 21, 2023).

⁶ See 47 CFR § 54.408(b)(3); *2016 Lifeline Order*, 31 FCC Rcd at 3998-99, paras. 100-102.

Annual budget. The *2016 Lifeline Order* adopted an initial budget of \$2.25 billion for the calendar year beginning January 1, 2017.⁸ The *2016 Order* also stated that the budget amount will be indexed to inflation in accordance with the Consumer Price Index for all items from the Department of Labor, Bureau of Labor Statistics.⁹ To perform this calculation, the Bureau used the annual percent change factor for the preceding year (here, 2022) to the year in which the calculation is being performed.¹⁰ Based on this calculation, the indexed budget for federal universal service support for the Lifeline program for the calendar year beginning January 1, 2023 was \$2,572,862,300,¹¹ and the indexed budget for the calendar year beginning January 1, 2024 will be \$2,778,691,284.

For further information, please contact Sam Lewis, Telecommunications Access Policy Division, Wireline Competition Bureau, at samuel.lewis@fcc.gov.

- FCC -

(Continued from previous page) _____

⁷ See 47 CFR § 54.408(b)(3)(iii) (“On and after December 1, 2018, the minimum standard will be 1000 minutes.”); *2016 Lifeline Order*, 31 FCC Rcd at 3999, para. 102.

⁸ 47 CFR § 54.423(a)(1); *2016 Lifeline Order*, 31 FCC Rcd at 4110, paras. 400-402.

⁹ 47 CFR § 54.423(a)(3); *2016 Lifeline Order*, 31 FCC Rcd at 4110, para. 403.

¹⁰ See United States Department of Labor, Bureau of Labor Statistics, *Consumer Price-Index All Urban Consumer U.S. City Average, Not Seasonally Adjusted, Series CUUR0000SA0* (last visited July 21, 2023), https://data.bls.gov/timeseries/CUUR0000SA0?output_view=pct_12mths (annual average 12-month percent change for 2022 was 8 %).

¹¹ *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards & Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, DA 22-800 (WCB 2022).

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j), Table of	)	MB Docket No. 23-244
Allotments, Television Broadcast Stations	)	RM-11955
(Knoxville, Tennessee)	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 20, 2023

Released: July 20, 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 Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division, Media Bureau (Bureau), has before it a petition for rulemaking filed on February 7, 2023, and amended on March 2, 2023, by Tennessee TV, LLC (Petitioner), the licensee of WKNX-TV, channel 7, Knoxville, Tennessee (WKNX-TV or Station).¹ The Petitioner requests the substitution of channel 21 for channel 7 at Knoxville, Tennessee, in the Table of TV Allotments.

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that WKNX-TV's proposed channel substitution would serve the public interest by resolving current reception challenges within the Station's existing service area.² According to the Petitioner, viewers within the Station's currently authorized channel 7 service area have experienced difficulty receiving the Station's signal, particularly since the June 12, 2009 digital transition.³ The Petitioner further states that the Commission has recognized that VHF channels pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances and large variability in the performance of indoor antennas available to viewers, with most antennas performing very poorly on high VHF channels.⁴

3. In its amended Petition, the Petitioner provides a comparison of the population within the Station's current protected contour and its proposed protected contour. The supplementary engineering exhibit indicates that 50,322 persons are currently located along the eastern, southern, and western fringes

¹ Petition of Tennessee TV, LLC for Rulemaking (filed Feb. 7, 2023 and amended Mar. 2, 2023, to provide a substitute loss area analysis based on discussions with the staff), on file at LMS File No. 0000200505 (Petition and Supplement, respectively).

² Petition at 2.

³ *Id.*

⁴ *Id.* at 2, citing *Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, ET Docket No. 10-235, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16511, paras. 42, 44 (2010). Petitioner also claims that the proposed channel substitution will greatly improve the Station's ability to provide ATSC 3.0 service to homes, vehicles, and portable devices. *Id.* at 2-3 and n.7. We do not, however, give any weight to the Petitioner's arguments concerning ATSC 3.0 reception given the early stages of deployment and limited availability of consumer devices.

of the Station's protected contour, which would not be within the proposed protected contour.⁵ It also indicates that the entire loss area is within the noise limited service area of at least five other full power or Class A television stations,⁶ and in most cases, significantly more than five other television stations.⁷ Included in that count are four other Knoxville television stations which serve the entire loss area.⁸

III. DISCUSSION

4. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel 21 can be substituted for channel 7 at Knoxville, Tennessee, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's Rules (rules),⁹ at coordinates 36° 00' 36.0" N and 083° 55' 57.0" W. While a number of persons who are currently within the noise limited service contour of WKNX-TV will no longer be so if the Station moves to channel 21 as requested, all of those viewers will continue to be well served. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.¹⁰

5. We propose to substitute channel 21 for channel 7 for WKNX-TV with the following specifications:

<u>City and State</u>	<u>DTV Channel</u>	<u>DTV Power (kW)</u>	<u>Antenna HAAT (m)</u>
Knoxville, Tennessee	21	1000	382

6. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹¹ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Knoxville, Tennessee	7, 10, 15, 26, *29, 34	10, 15, 21, 26, *29, 34

IV. PROCEDURAL MATTERS

7. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). The Petitioner or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The Petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.¹² Failure to file may lead to denial of the request. Any

⁵ Supplement at 2.

⁶ See Petition at 3 and n.10, citing *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd. 9478, 9493, para. 38 (2007) ("The Commission is generally most concerned ... where the loss area results in an area becoming less than well-served, i.e., served by fewer than five full-power over-the-air signals.").

⁷ Feb. 28, 2023 Loss Area Analysis at Exhibits B through E-4.

⁸ These stations include: WBIR-TV, WATE-TV, and WVLT-TV, all licensed to Knoxville, Tennessee, and WPXK-TV, Jellico, Tennessee. Supplement at Exhibit A.

⁹ 47 CFR § 73.625(a).

¹⁰ 47 CFR §§ 73.616, 73.623.

¹¹ 47 CFR § 73.622(j).

¹² See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-729, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

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.¹³

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

- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.¹⁴
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁵

9. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,¹⁶ 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).¹⁷

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Any paper filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington D.C. 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁸
 - 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.

¹³ 47 CFR § 1.420(j).

¹⁴ 47 CFR § 1.420(d).

¹⁵ 47 CFR § 1.420(g)(2).

¹⁶ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁸ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

10. *Service.* Pursuant to section 1.420 of the rules,¹⁹ 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.²⁰ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Coe W. Ramsey, Esq.
Brooks, Pierce, McLendon,
Humphrey & Leonard, L.L.P.
Wells Fargo Capitol Center, Suite 1700
Raleigh, N.C. 27601

11. *Ex Parte Notices– Restricted.* The proceeding this Notice initiates shall be treated as a “restricted” proceeding in accordance with the Commission’s *ex parte* rules.²¹ 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.²² 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.²³ 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.²⁴ Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

12. *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.

13. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁵ do not apply to a rulemaking proceeding to amend the DTV Table of Allotments, section 73.622(i) of the rules.²⁶ This document does not contain proposed information collection requirements subject to the Paperwork

¹⁹ 47 CFR § 1.420.

²⁰ See 47 CFR § 1.420(a), (b) and (c).

²¹ 47 CFR §§ 1.1200 *et seq.*

²² 47 CFR § 1.1208.

²³ 47 CFR § 1.1204(a)(10).

²⁴ 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).

²⁵ 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).

²⁶ 47 CFR § 73.622(i).

Reduction Act of 1995.²⁷ 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 2002.²⁸

14. *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).

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

V. ORDERING CLAUSES

16. **IT IS ORDERED** that, pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS PROPOSED TO AMEND** the Table of TV Allotments, section 73.622(j) of the rules, 47 CFR § 73.622(j), as set forth in this *NPRM*, and this *NPRM* **IS ADOPTED**.

17. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments, including counterproposals, on the *NPRM* in MB Docket No. 23-244 and RM-11955 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty five (45) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁷ See 44 U.S.C. §§ 3501-3520.

²⁸ See 44 U.S.C. § 3506(c)(4).

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

In the Matter of	)	
	)	
Glendive Broadcasting Corporation	)	Facility ID No.: 24289
	)	NAL/Acct. No.: 202341420024
Licensee of Station K13IG-D, Sidney-Fairview,	)	FRN: 0003749892
Montana	)	LMS File No. 0000180320

**MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: July 20, 2023**Released: July 20, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Glendive Broadcasting Corporation (Licensee), for renewal of its license for Station K13IG-D, Sidney-Fairview, Montana (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 December 1, 2021, the first day of the fourth full calendar month prior to the Station's license expiration date of April 1, 2022.⁴ However, the Licensee did not file the Application until January 19, 2022. The Licensee did not provide an explanation for the late filing.

III. DISCUSSION

3. 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.⁵ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate

¹ Application of Glendive Broadcasting Corporation for Renewal of License, LMS File No. 0000180320 (filed Jan. 19, 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).

⁵ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

commission or omission of [any] act, irrespective of any intent to violate” the law.⁶ 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,⁷ and the Commission has so interpreted the term in the section 503(b) context.⁸ 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.”⁹

4. *Apparent Violation.* 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 December 1, 2021, as required by section 73.3539(a) of the Rules.¹⁰ The Application was filed on January 19, 2021, over thirty days late.

5. *Proposed Forfeiture.* The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form or information.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²

6. In this case, the Licensee failed to timely file a license renewal application, as required by section 73.3539(a) of the Rules.¹³ The Licensee did not provide an explanation for the late filing. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁴ we will reduce the forfeiture from the base amount to \$1,500 for the failure to file a timely renewal application, because, as a digital television translator, the Station is providing a secondary service.¹⁵ Furthermore, as a translator, the Station is not originating programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals.

⁶ 47 U.S.C. § 312(f)(1).

⁷ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

⁸ 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).

⁹ 47 U.S.C. § 312(f)(2).

¹⁰ 47 CFR § 73.3539(a).

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 1.

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 translator, and television booster stations Stations in the low power television service are authorized with ‘secondary’ frequency use status.”).

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.¹⁶ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁸

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules¹⁹ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²⁰ Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²¹ and sections 1.80 and 0.283(d) of the Commission's Rules,²² that Glendive Broadcasting Corporation 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*, Glendive Broadcasting Corporation **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

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.

²⁵ Payments made using CORES do not require the submission of an FCC Form 159.

is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/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 to sections 1.16 and 1.80(g)(3) of the Rules.²⁹ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No.

²⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁷ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³⁰

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.³¹

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Glendive Broadcasting Corporation 210 South Douglas St. Glendive, Montana 59330. A copy shall also be sent to Station's counsel, David Oxenford, esq., by electronic mail to doxenford@wbklaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery 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).



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 23-624
Released: July 20, 2023

**OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON LIBERTY
HOLDINGS, LTD. REQUEST FOR WAIVER OF SECTIONS 15.31(C), 15.35(B), AND
15.205(A) OF THE COMMISSION'S RULES
ET Docket No. 23-245**

Comment Date: August 21, 2023
Reply Comment Date: September 20, 2023

On April 10, 2023, Liberty Defense Holdings, LTD (Liberty) filed a request for waiver of three Part 15 Commission rules so it can obtain FCC equipment authorization to upgrade the current generation of full-body screening scanners deployed in U.S. airports (legacy system) by the Transportation Security Administration (TSA).¹ The current legacy system operates pursuant to a waiver granted by the Office of Engineering and Technology (OET) in 2006.² The new High-Definition Advanced Imaging Technology (HD-AIT) by Liberty will be deployed via upgrade kits to these legacy systems and is designed to transmit across spectrum bands ranging from 10 – 40 GHz.³ Liberty states that this upgrade will improve transportation security by enhancing threat detection capability and improving the speed at which airline passengers are screened.⁴ Liberty suggests that because this waiver request is so substantially similar to two previous waiver requests granted by OET, it merits approval.⁵ Because of these design features, Liberty seeks a waiver of Sections 15.31(c), 15.35(b), and 15.205(a) of the Commission's rules.⁶

Liberty requests a waiver of Section 15.31(c) of Commission rules to allow radiated measurements to be performed with the device's frequency sweep active during testing.⁷ Section 15.31(c) requires that swept frequency devices be tested with the swept frequency stopped at the frequencies

¹ Liberty Defense Holdings, Ltd d/b/a Liberty Defense Technologies Request for Waiver of Sections 15.31(c), 15.35(b), and 15.205(a) of the Commission's Rule, filed Apr 10, 2023 (Liberty Waiver Request).

² *SafeView, Inc.; Request for Waiver of Sections 15.31 and 15.35 of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 24.25-30 GHz Range*, ET Docket No. 04-373, Order, 21 FCC Rcd 8814 (OET 2006); *aff'd*, Memorandum Opinion and Order, 25 FCC Rcd 592 (2010) (2006 Legacy Waiver Order).

³ Liberty Waiver Request at 1-3.

⁴ *Id.* at 2.

⁵ Liberty Waiver Request at 2 (referencing the 2006 Legacy Waiver Order and *L-3 Communications Security and Detection Systems, Inc.; Request for Waiver of Sections 15.31(c), 15.35(b) and 15.205(a) of the Commission's Rules to Permit the Deployment of Security Screening Portal Devices that Operate in the 20-40 GHz Range*, ET Docket No. 16-45, Order, 31 FCC Rcd 12310 (OET 2016) (2016 Waiver Order)).

⁶ *Id.* at 1-3.

⁷ *Id.* at 10-11.

chosen for measurement.⁸ Multiple other systems, including the legacy system, operate subject to a waiver of this rule.⁹ Liberty comments that because its HD-AIT scanner will sweep over the entire authorized frequency range of operations in a similar manner as the existing legacy system, a waiver of 15.31(c) is required.¹⁰

Liberty also requests a waiver of Section 15.35(b) of the Commission's rules consistent with the other waivers we have granted.¹¹ Section 15.35(b) requires that when average radiated emissions limits are specified for a device, the peak emission level may not exceed the average emission limit by more than 20 dB.¹² Liberty states that the higher peak power limit it seeks to employ will enable HD-AIT scanners to adequately resolve very low levels of reflections from the scanned subject, and will improve detection accuracy.¹³ The legacy system also operates subject to a waiver of this rule section.¹⁴ Additionally, Liberty notes that in 2016 OET granted a waiver section 15.35(b) to permit a similar scanning system to operate, and seeks to have that same limit allowed in that order applied now.¹⁵ Thus, the HD-AIT operations would exceed the requirements of Section 15.35(b) similar to those that OET permits subject to the 2006 and 2016 waivers, Liberty seeks a waiver for this upgraded scanning system.¹⁶

The frequency range over which Liberty's HD-AIT system intends to operate would cause it to transmit in the restricted bands between 10 – 40 GHz.¹⁷ Section 15.205(a) of the Commission's rules only permits spurious emissions in those restricted bands.¹⁸ As Liberty notes, while Part 15 devices typically are not permitted to intentionally transmit radio frequency energy within these bands, OET has granted a waiver to a similar screening system to operate in the 20 – 40 GHz range, and is not aware of any cases of reported interference.¹⁹ Liberty asserts that since its HD-AIT technology would operate in a similar manner, OET should grant it a waiver to operate in the restricted bands in the 20 – 40 GHz band with similar conditions imposed.²⁰ The primary difference between Liberty's waiver request and the two security screening system waivers previously granted by the Commission is that the Liberty's HD-AIT system operates over a wider operating bandwidth (10 – 40 GHz) than either the legacy system (24.25 – 30 GHz) or the L-3 system (20 – 40 GHz).²¹ Consequently, Liberty requests the instant waiver further extend this allowance to include operations in the 10 – 20 GHz frequency range as well.²² Liberty states

⁸ 47 C.F.R. § 15.31(c).

⁹ See Liberty Waiver Request at n.15 (citing previously granted waivers of Section 15.31(c)).

¹⁰ *Id.* at 10-11.

¹¹ *Id.* at 11-12. See 2006 Legacy Waiver Order and 2016 Waiver Order.

¹² 47 C.F.R. § 15.35(b).

¹³ Liberty Waiver Request at 11-12.

¹⁴ See 2006 Legacy Waiver Order.

¹⁵ Liberty Waiver Request at 11-12 (referencing 2016 Waiver Order).

¹⁶ *Id.* at 11-12.

¹⁷ *Id.* at 2-3, 8, and Liberty Waiver Request Appendix A at 3.

¹⁸ 47 C.F.R. § 15.205(a). (Restricted bands in the 10–20 GHz range are: 10.6–12.7 GHz, 13.25–13.4 GHz, 14.47–14.5 GHz, 15.35–16.2 GHz, and 17.7–21.4 GHz).

¹⁹ Liberty Waiver at 12, Liberty Waiver Request Appendix A at 5.

²⁰ Liberty Waiver at 13.

²¹ *Id.* at 2-3.

²² *Id.* at 12–13.

that its operation in the 10 – 40 GHz range will not cause harmful interference to systems operating in the 10 – 20 GHz band.²³

We seek comment on Liberty’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). Liberty filed its petition electronically as a non-docketed proceeding in the Commission’s Electronic Comment Filing System.²⁴ We have opened a new docket, **ET Docket 23-245** to facilitate consideration of this request and have moved Liberty’s submission into this docket. Parties should file all comments and reply comments in **ET Docket 23-245**

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.

- 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-19.²⁵
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.

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

²³ *Id.* at 13; see also Liberty Waiver Request Appendix A at 7-15 (discussing technical parameters of Liberty’s planned system meant to minimize the potential for harmful interference to sensitive services operating in restricted bands (e.g., deployment in limited, indoor locations; using spectrum that does not easily penetrate building walls and rooftops; emissions not directed upwards; and the imposition of waiver conditions requiring coordination if the device is deployed in certain geographic areas)).

²⁴ Liberty filed in INBOX-PART15 (Petition for Waiver of Part 15), which is our preferred intake for waivers of the Part 15 rules. See <https://www.fcc.gov/ecfs/document/104102607228186/1>

²⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020).

Parties should also send a copy of their filings to Syed S. Hasan, Office of Engineering and Technology, Federal Communications Commission, 45 L Street, NE, Washington DC 20554, or by e-mail to syed.hasan@fcc.gov.

Documents associated with this docket will be available for public inspection through the Commission's ECFS.

By the Chief, Office of Engineering and Technology

-FCC-



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-325

Released: July 21, 2023

REMINDER THAT TELEVISED EMERGENCY INFORMATION MUST BE ACCESSIBLE TO VIEWERS WITH DISABILITIES

MB Docket No. 12-107

The Federal Communications Commission (FCC or Commission) issues this Public Notice to remind video programming distributors (VPDs)—including broadcasters, cable operators, satellite television services, and “any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission”¹—of their obligation under section 79.2 of the Commission’s rules to make televised emergency information accessible to persons with disabilities.² This Public Notice also provides information for consumers on how to file complaints for noncompliance with this obligation.³

Background. Under section 79.2, emergency information is defined as “[i]nformation, about a current emergency, that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency.”⁴ Examples of the types of emergencies covered by the rule include pandemics, tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.⁵ Critical details include, but are not limited to, “specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one’s home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.”⁶

¹ 47 CFR § 79.1(a)(11) (defining “video programming distributor”).

² See 47 CFR § 79.2. Because of the importance of this issue, we have released similar Public Notices in the past. See, e.g., *Reminder Regarding Obligations to Make Televised Emergency Information Accessible to Viewers with Disabilities*, Public Notice, DA 22-839 (CGB Aug. 9, 2022). Unlike the closed captioning obligations contained in section 79.1 of the rules, there are no exemptions to these televised emergency information accessibility requirements. Additionally, VPDs may have a separate obligation to meet accessibility requirements when transmitting Emergency Alert System (EAS) messages on television. See 47 CFR § 11.51(d), (g)(3), (h)(4), (j)(2); see also Public Safety and Homeland Security Bureau, Federal Communications Commission, *EAS FAQ Accessibility* (July 13, 2021), <https://www.fcc.gov/eas-faq-accessibility>.

³ See 47 CFR § 79.2(c).

⁴ 47 CFR § 79.2(a)(2).

⁵ See *id.*; see also Consumer and Governmental Affairs Bureau, Federal Communications Commission, *Access to Emergency Information on Television* (Jan. 27, 2021), <https://www.fcc.gov/consumers/guides/accessibility-emergency-information-television>.

⁶ Note to 47 CFR § 79.2(a)(2).

While the rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring, it also may apply to emergency information provided during programming that is distributed to an area outside the area immediately affected by an emergency. This is especially likely to happen when a large-scale disaster primarily affects one region but has an impact on outlying areas.⁷ Furthermore, details about an ongoing emergency must continue to be accessible to individuals with disabilities in the aftermath of an emergency to ensure that people living in the affected communities have up-to-date information, when needed, to effectively respond to the event in a manner that can protect their life, health, safety, and property.

Individuals who are Blind or Visually Impaired. To ensure access to emergency information by persons who are blind or visually impaired, emergency information provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming must be made accessible by aurally describing the emergency information in the main audio portion of the programming.⁸ When emergency information is conveyed visually during programming other than newscasts (e.g., through “crawling” or “scrolling” text during regular programming), an aural tone on the main audio stream must accompany the visual information.⁹ Additionally, such visual emergency information must be conveyed aurally in full at least twice through a secondary audio stream, preceded by an aural tone on that stream.¹⁰ Aural emergency information must supersede all other programming on the secondary audio stream, including video description, foreign language translation, or duplication of the main audio stream.¹¹ Finally, multichannel video programming distributors (MVPDs) must ensure that any application or plug-in that they provide to consumers to access linear programming on second screen devices (e.g., tablets, smartphones, laptops, and similar devices) over their networks as part of their MVPD services is capable of passing through an aural representation of emergency information (including the aural tone) on a secondary audio stream.¹²

Individuals who are Deaf or Hard of Hearing. Emergency information provided in the audio portion of programming also must be accessible to persons who are deaf or hard of hearing through closed captioning or other methods of visual presentation, including open captioning, crawls or scrolls that appear on the screen.¹³ Visual presentation of emergency information may not block any closed captioning, and closed captioning may not block any emergency information provided by crawls, scrolls, or other visual means.¹⁴

⁷ For example, the wildfires in Eastern Canada have prompted air quality alerts in the Midwest and Eastern parts of the United States. See Bill Chappell, *A big swath of the U.S. is under red and purple air quality alerts from Canada’s smoke*, NPR (June 29, 2023), <https://www.npr.org/2023/06/29/1184989815/air-quality-midwest-red-purple-alert-canada-wildfires-smoke>; Nouran Salahieh et al., *More than a third of the US population, from the Midwest to the East Coast, under air quality alerts from Canadian wildfire smoke*, CNN (June 28, 2023), <https://www.cnn.com/2023/06/27/us/canada-wildfire-smoke-great-lakes/index.html>.

⁸ 47 CFR § 79.2(b)(2)(i).

⁹ See 47 CFR § 79.2(b)(2)(ii).

¹⁰ *Id.*

¹¹ 47 CFR § 79.2(b)(5).

¹² 47 CFR § 79.2(b)(6). See *Consumer & Governmental Affairs Bureau Reminds MVPDs of July 10, 2017 Deadline to Pass Through Audible Emergency Information During Linear Programming on Second Screen Devices*, MB Docket No. 12-107, Public Notice, 32 FCC Rcd 4773 (CGB 2017).

¹³ 47 CFR § 79.2(b)(1).

¹⁴ See 47 CFR § 79.2(b)(4). We note that some state and local government officials provide American Sign Language (ASL) interpreter services during their televised emergency announcements and press conferences. To the extent this service is provided, we encourage VPDs and video programmers to ensure that the interpreter is
(continued....)

VPDs that are not permitted to rely on the electronic newsroom technique (ENT) to caption live programming must provide closed captioning for emergency information presented during regularly scheduled newscasts and newscasts that interrupt regular programming.¹⁵ VPDs should take steps to establish internal protocols to obtain closed captioning resources quickly in the event of an emergency.¹⁶ We also emphasize that, when closed captioning services are not provided, VPDs must make emergency information accessible by some other visual presentation method.¹⁷ Likewise, VPDs that are permitted to use the ENT method to create captions for their live programming are reminded that, because the ENT method does not automatically caption non-scripted news, they must make the emergency information accessible by some other form of visual presentation.¹⁸

Individuals with Cognitive Disabilities. While not required by the Commission's rules, VPDs and video programmers are encouraged to make emergency information accessible to people with cognitive disabilities, such as through using plain language and pictorial information.¹⁹

Consumer Complaints and Enforcement

The Commission will continue to monitor complaints alleging violations of the emergency information rules and will review them for possible enforcement action. Consumers with a complaint or request for assistance regarding the inaccessibility of emergency information may reach the FCC using the following methods:

- Online Complaint Form: www.fcc.gov/accessibilitycomplaints

visible on the television screen at all times in order to benefit viewers who use ASL. See, e.g., National Council on Disability, *Effective Communications for People with Disabilities: Before, During, and After Emergencies*, (May 27, 2014), <https://ncd.gov/publications/2014/05272014/>; National Association of the Deaf, *Position Statement on Accessible Emergency Management for Deaf and Hard of Hearing People*, <https://www.nad.org/about-us/position-statements/position-statement-on-accessible-emergency-management-for-deaf-and-hard-of-hearing-people/> (last visited July 17, 2023); Dylan Goforth, The Frontier, *American Sign Language Interpreters Shine During COVID-19 Press Conferences*, (April 1, 2020), <https://www.readfrontier.org/stories/american-sign-language-interpreters-shine-during-covid-19-press-conferences/> (discussing the importance of the sign language interpreter at COVID-19 briefings).

¹⁵ ENT is a technique that converts the dialogue included on a teleprompter script into captions. For purposes of determining compliance with section 79.1, the Commission's rules permit live programming to be captioned using ENT, with the exception of live programming exhibited by the major national broadcast television networks (i.e., ABC, CBS, Fox, and NBC), affiliates of these networks in the top 25 television markets, and national non-broadcast networks serving at least 50% of all homes subscribing to multichannel video programming services. See 47 CFR § 79.1(e)(3).

¹⁶ See, e.g., *Obligation of Video Programming Distributors to Make Emergency Information Accessible to Persons with Hearing Disabilities Using Closed Captioning*, Public Notice, 21 FCC Rcd 15084, 15084-85 (CGB 2006) (suggesting steps that include contracting with services that can generate closed captions on very short notice, posting notices in the newsroom reminding staff to contact the designated closed captioning service at the onset of an emergency, and labeling speed-dial buttons on newsroom telephones to connect to the captioning service).

¹⁷ *Id.* at 15085-86; see also 47 CFR § 79.2(b)(1).

¹⁸ See 47 CFR § 79.2(b)(1); *Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; Accessibility of Emergency Programming*, MM Docket No. 95-176, Second Report and Order, 15 FCC Rcd 6615, 6623-24, para. 16 (2000).

¹⁹ See *Reminder Regarding Obligations to Make Televised Emergency Information Accessible to Viewers Who Are Deaf, Hard of Hearing, Blind, or Visually Impaired and Recommendations to Improve Access for Viewers with Cognitive Disabilities*, Public Notice, 31 FCC Rcd 10906, 10909-10 (CGB 2016); see also Consumer and Governmental Affairs Bureau, Federal Communications Commission, *Individuals with Cognitive Disabilities: Barriers to and Solutions for Accessible Information and Communication Technologies* (2016), <https://docs.fcc.gov/public/attachments/DOC-341628A1.pdf> (FCC White Paper containing best practices for making communications accessible to people with cognitive disabilities).

- Phone: 1-202-418-2517 (voice); 1-844-432-2275 (videophone for ASL users)
- E-Mail: dro@fcc.gov
- U.S. Mail:
Federal Communications Commission,
Consumer and Governmental Affairs Bureau
Disability Rights Office
45 L Street, NE
Washington, DC 20554

To request this Public Notice or any other 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 Bureau at 202-418-0530 (voice).

General information about access to televised emergency information is available online at: <https://www.fcc.gov/general/access-emergency-information-television>. To view this information via an ASL video: www.fcc.gov/TVEmergencyAccessASL. For specific questions, contact: Bill Wallace, Attorney Advisor, Disability Rights Office, 202-418-2716, William.Wallace@fcc.gov.

-FCC-



PUBLIC NOTICE

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

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

DA No. 23-626

Friday July 21, 2023

Report No. SAT-01744

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-RPL-20230328-00066	E S3164	Intelsat License LLC	
Replacement Satellite Application (no new frequency)			
Grant of Authority			Effective Date: 07/19/2023

Nature of Service: Fixed Satellite Service

On July 19, 2023, the Satellite Programs and Policy Division granted, with conditions, authority to Intelsat License LLC to deploy and operate Galaxy 37 as a replacement satellite for Galaxy 13 (S2386) at the 127.0° W.L. orbital location. Galaxy 37 will provide fixed-satellite service in the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) frequency bands. Intelsat is authorized to conduct telemetry, tracking, and command operations using center frequencies within the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands.

SAT-STA-20230628-00152	E S2253	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 07/18/2023

On July 18, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority for a period of 30 days for operations of the Galaxy 11 space station. Specifically, the Division granted special temporary authority for Intelsat to conduct telemetry, tracking and command (TT&C) operations necessary to drift Galaxy 11 from the 93.1° W.L. orbital location to the 166.3° E.L. orbital location using the following TT&C center frequencies: 11701.0 MHz, 11702.0 MHz (space-to-Earth), 14000.5 MHz, and 14498.5 MHz (Earth-to-space).

SAT-STA-20230705-00159	E S2381	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 07/19/2023

On July 19, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority for an additional period of 30 days to Intelsat License LLC in order for Galaxy 3C to provide fixed-satellite service at the 94.85° W.L. orbital location using the 3700-4200 MHz, 11.45-12.2 GHz (space-to-Earth), and 5925-6425 MHz and 13.75-14.5 GHz (Earth-to-space) frequency bands. 3700-4200 MHz, 11.45-12.2 GHz (space-to-Earth), and 5925-6425 MHz and 13.75-14.5 GHz (Earth-to-space) frequency bands.

SAT-STA-20230706-00160 E
Special Temporary Authority
Grant of Authority

Intelsat License LLC

Effective Date: 07/19/2023

On July 19, 2023, the Satellite Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for an additional period of 60 days, to operate Intelsat 5 at the 166.15° E.L. orbital location. Intelsat 5 operates in the 3700-4200 MHz, 10.70-10.95 GHz, 11.2-11.7 GHz, (space-to-Earth), 5925-6425 MHz, 12.75-13.25 GHz, and 14.0-14.25 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 5 using the following frequencies: 11.451 GHz, 11.452 GHz, 11.454 GHz (space-to-Earth), 13.999 GHz and 14.498 GHz (Earth-to-space).

SAT-STA-20230717-00174 E
Special Temporary Authority
Withdrawn

Intelsat License LLC

Effective Date: 07/18/2023

CORRECTIONS

SAT-STA-20230613-00139

Iridium Constellation LLC

The Satellite Licensing Division and Satellite Programs and Policy Division Information, Actions Taken, Public Notice SAT-01742, DA No. 23-602 (July 14, 2023) regarding the above-captioned file number is corrected to reflect that the Division authorized Iridium Constellation LLC to maintain certain in-orbit spare satellites at altitudes between 615 km and 778 km.

INFORMATIVE

SAT-PPL-20210510-00062

S3086

HISPAMAR SATELITES, S.A.

The Satellite Programs and Policy Division has determined that Hispamar Satélites has met the launch and begin operations milestone associated with its grant of U.S. market access for a geostationary orbit space station, Amazonas Nexus, at 61° W.L. (Call Sign S3086) and may release the bond associated with this grant. See 47 CFR §§ 25.164(a),(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 St., N.E.
Washington, D.C. 20554

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

DA 23-627
Released: July 21, 2023

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-160

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 Acquisition of Certain Assets of AccessPlus Communications, Inc. by RingSquared APC LLC, WC Docket No. 23-160, Public Notice, DA 23-526 (WCB 2023).

Effective Grant Date: July 21, 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).

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

In re Application of	)	
	)	
Hobbs Seventh–Day Adventist Church of the	)	Facility ID No. 181386
Texico Conf Assn	)	NAL/Acct. No. 202341420006
	)	FRN: 0017040080
For Renewal of License for	)	File No. 0000195194
Station K34KZ-D	)	
Hobbs, New Mexico	)	

FORFEITURE ORDER

Adopted: July 21, 2023

Released: July 21, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to Hobbs Seventh–Day Adventist Church of the Texico Conf Assn (Licensee), licensee of K34KZ-D, Hobbs, New Mexico (Station). We find that the Licensee willfully violated section 73.3539 of the Commission’s rules (Rules) by failing to timely file a license renewal application for the Station (Application).¹

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.”² An application for renewal of the Station’s license should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Station’s license expiration date of October 1, 2022.³ The application was not filed until July 18, 2022. The Licensee provided no explanation for its untimely filing of the application.

3. On March 1, 2023, we issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of one thousand five hundred dollars (\$1,500).⁴ The *NAL* gave the Licensee thirty days to pay the full amount of the proposed forfeiture, or file a written statement seeking reduction or cancellation of the proposed forfeiture.⁵ To date, the Licensee has neither paid the proposed forfeiture nor filed a written statement in response to the *NAL*.⁶

¹ See 47 CFR § 73.3539; LMS File No. 0000195194.

² *Id.* § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

⁴ *Hobbs Seventh–Day Adventist Church of the Texico Conf Assn*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-161 (Vid. Div. Mar. 1, 2023) (*NAL*).

⁵ *Id.* at para. 9.

⁶ Licensee acknowledged receipt of the *NAL*.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (the Act),⁷ section 1.80 of the Rules,⁸ and the Commission's Forfeiture Policy Statement.⁹ In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁰

5. The Licensee was afforded an opportunity to respond to the *NAL* pursuant to section 1.80 of the Rules¹¹, but has failed to either pay the proposed forfeiture or seek reduction or cancellation of it within the time period set forth in the *NAL*. Accordingly, we conclude that the Licensee willfully violated section 73.3539 of the Rules and we issue a forfeiture in the amount of \$1,500 as proposed in the *NAL*.¹²

IV. ORDERING CLAUSES

6. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's Rules, that Hobbs Seventh-Day Adventist Church of the Texico Conf Assn, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$1,500 for its apparent willful violation of section 73.3539 of the Commission's rules.

7. 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),¹³ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. 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:¹⁴

- 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).¹⁵ For

⁷ 47 U.S.C. § 503(b).

⁸ 47 CFR § 1.80.

⁹ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ 47 CFR § 1.80(g)(3).

¹² We reaffirm our prior statements in the *NAL* relating to the Station's Application, *NAL* at para. 8, and will proceed with grant by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this Forfeiture Order that would preclude grant of the Application.

¹³ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

¹⁴ 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.

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

- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

8. Requests for full payment of the forfeiture proposed in this *Order* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.¹⁶ 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.

9. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Hobbs Seventh-Day Adventist Church of the Texico Conf Assn, c/o P.O. Box 1469, Hobbs, NM 88241 and by electronic mail to lennywagner@aol.com. A copy shall also be sent to its counsel, Don Martin, Esq. by electronic mail to DEMPC@PRODIGY.NET.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

(Continued from previous page)

¹⁵ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁶ See 47 CFR § 1.1914.



PUBLIC NOTICE

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

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

DA 23-629

Released: July 21, 2023

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU CREATES
CONSOLIDATED DOCKET FOR FILINGS RELATED TO REGIONAL PLANS
IN THE 806-809/851-854 MHZ BAND**

PS Docket No. 23-237

By this Public Notice, the Public Safety and Homeland Security Bureau announces the establishment of PS Docket No. 23-237, captioned “800 MHz Regional Plans of the 55 Regional Planning Committees,” for the exclusive use for filings related to the Bureau’s review and approval of regional plans or plan amendments thereto regarding the spectrum in the 806-809/851-854 MHz band (800 MHz National Public Safety Planning Advisory Committee (NPSPAC) band) designated for public safety use. We are establishing this single docket as an administrative convenience to replace the previous 55 individual dockets established on a region-by region basis. Some of the regional dockets have closed and we will close the remaining individual dockets at a later date. All active filings from the regional dockets will be transferred into the new docket.

By way of background, in 1987, the Commission set aside six megahertz of spectrum in the 800 MHz band for exclusive use by local, regional, and state public safety agencies under guidelines developed by NPSPAC. The 800 MHz NPSPAC spectrum is administered on a regional basis by 55 Regional Planning Committees (RPCs).¹ The RPCs must develop and update their regional plans as needed to conform them to changes in the nationwide NPSPAC band plan, and to reflect other changes in the disposition of NPSPAC channels within the region, technical requirements, or procedures for assigning channels.²

Submission of Regional Plan Amendments in PS Docket 23-237. Effective immediately, all NPSPAC plan amendments must be submitted with a cover letter, signed by the regional chairperson, and must reference PS Docket 23-237 and the Region number (Example: PS Docket No. 23-237, Region xx – 800 MHz Regional Plan). RPCs may file their amendments electronically using the Commission's Electronic Comment Filing System (ECFS).³ To expedite the amendment process, a region may electronically poll its RPC membership for review and approval of a proposed amendment. RPCs may also hold online meetings if they so choose. In addition, the RPC Chairman should send a copy of the submission via e-mail to Kim Anderson, Kim.anderson@fcc.gov of the Policy and Licensing Division, Public Safety and Homeland Security Bureau.

¹See 47 C.F.R. § 90.16 (no assignments will be made in spectrum designated for the Public Safety National Plan until a regional plan for the area has been accepted by the Commission). See also *Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821-824/866-869 MHz Bands by the Public Safety Services*, Report and Order, Gen. Docket 87-112, 3 FCC Rcd 905 (1987) (National Plan Report and Order).

² See National Plan Report and Order, 3 FCC Rcd at 911 ¶57.

³ <https://www.fcc.gov/ecfs/filings/standard>

Notice and Comment. The Public Safety and Homeland Security Bureau will initially review any regional plan amendment and accept it or reject it with an explanation. The Bureau will place accepted plan amendments on public notice for comment before taking final action on any proposed regional plan amendment. All regional plans and amendments are available for viewing electronically by accessing the Commission’s ECFS and initiating a search of the records for **PR Docket No. 23-237**.⁴

Ex Parte Rules. Presentations in PS Docket 23-237 are subject to “permit-but-disclose” *ex parte* rules. See 47 CFR §§ 1.1206, 1.1200(a). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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). Information on the 800 MHz Regional Planning process and RPC activities is available at <https://www.fcc.gov/general/800-mhz-spectrum>. For further information, contact Kim Anderson, of the Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-7604, or via email at Kim.Anderson@fcc.gov of the Policy and Licensing Division, Public Safety and Homeland Security Bureau.

Action by Chief, Public Safety and Homeland Security Bureau.

– FCC –

⁴ <https://www.fcc.gov/ecfs/search/search-filings>



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 23-630

Released: July 21, 2023

FCC ANNOUNCES SEPTEMBER 7, 2023 MEETING OF THE DISABILITY ADVISORY COMMITTEE

By this Public Notice, consistent with the Federal Advisory Committee Act,¹ the Federal Communications Commission (FCC or Commission) announces the next meeting of the Disability Advisory Committee (DAC or Committee) to be held on Thursday, September 7, 2023, at 9:00 a.m. until approximately 12 p.m. EST. The DAC meeting will be held in the Commission Meeting Room at FCC Headquarters, located at 45 L Street, NE, Washington, DC 20554.

At this meeting, DAC members are expected to discuss or receive updates on (i) a working group report and recommendation on the transmittal of audio description files to Internet Protocol programming; (ii) a working group report and recommendation on Direct Video Calling best practices and outreach; and (iii) any other topics relevant to the DAC's work. The meeting agenda will be available at <https://www.fcc.gov/news-events/events/2023/09/disability-advisory-committee-meeting> and may be modified at the discretion of the DAC Co-Chairs and Designated Federal Officer (DFO).

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

Open captioning and ASL sign language interpreting 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 and how the requester can be contacted. Please provide at least five business days' advance notice of accommodation requests; last-minute requests will be accepted but may not be possible to accommodate.

To obtain further information about the Committee, contact: Joshua Mendelsohn, DFO, (202) 559-7304 or DAC@fcc.gov. The DAC website address is: www.fcc.gov/dac.

– FCC –

¹ 5 U.S.C. § 1001 *et seq.*



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 23-631
Released: July 24, 2023

**DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE ASSIGNMENT OF
DOMESTIC SECTION 214 AUTHORIZATION FROM WINN TELEPHONE COMPANY D/B/A
WINN TELECOM TO PENINSULA FIBER NETWORK, LLC**

WC Docket No. 23-84

By this Public Notice, the Wireline Competition Bureau grants 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 Telecom's domestic section 214 authorization to PFN.²

On June 14, 2023, the Bureau released a public notice seeking comment on the Application.³ We did not receive comments or petitions in opposition to the Application.

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.⁴ Winn Telecom provides voice, data, and Internet services and 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 cost-based high-cost universal service support of approximately \$14,419 a month in Connect America Fund Broadband Loop support and approximately \$2,532 in High-Cost Loop support.⁵ Winn Telecom is

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 *Domestic Section 214 Application Filed for the Transfer of Control of Winn Telephone Co. d/b/a Winn Telecom to Peninsula Fiber Network, LLC*, WC Docket No. 23-84, Public Notice, DA 23-515 (WCB 2023) (*Initial Public Notice*).

⁴ 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.

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, and other services 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, LLC (PFN Next Gen), 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, and other services 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 ETC receiving model-based high-cost universal service support through the Rural Digital Opportunity Fund Phase I Auction (Auction 904) and Alternative Connect America Model (ACAM) II support mechanisms.¹⁶ HCI, a holding company also receives model-based

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.

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 forbore from the application of section 214, this requirement applies to all

high-cost universal service support through its ETC subsidiary telephone companies of approximately \$837,630 in A-CAM 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 telecommunications provider 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 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 Telecom²⁵ will continue to exist and operate as separate entities from PFN and 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.²⁶

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]lthough 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.

²³ *Id.*

²⁴ *Id.*

²⁵ Winn Telecom 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 *Id.* at 7; May Supplement at 2, 4. In the *Hargray/ComSouth Order*, the Commission found that “the combination of two companies that receive high-cost universal service support under different mechanisms, one fixed and one cost-based, could result in potential harm to the Commission’s goal of ensuring that limited universal service resources are distributed efficiently and effectively” as a result of the companies having an incentive to shift costs from the model-based support company to the cost-based support company. *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of*

We find that grant of the Application will serve the public interest, convenience, and necessity. Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Megan Danner, Wireline Competition Bureau, Competition Policy Division, (202) 418-1151.

-FCC-

ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934, WC Docket No. 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018) (*Hargray/ComSouth Order*). Although the 214 authorization holder, Winn Telecom (cost-based high-cost support), will ultimately be owned and controlled by PFN's parent entities, Baraga and HCI (model-based high-cost support), Applicants state that Baraga and HCI will not have the ability to engage in improper cost shifting as a result of its affiliates receiving universal service support under different mechanisms. May Supplement at 4-5. They affirm that post-transaction Winn Telecom and HCI and Baraga will not have common control, shared or common costs, or consolidation of corporate books. *Id.*; see also *Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc.*, WC Docket No. 20-389, Order on Reconsideration, 36 FCC Rcd 8859, 8864, para. 14 (2021) (*Dobson Order on Reconsideration*) (stating that the Bureau should continue to apply the *Hargray/ComSouth* condition to remedy a potential public interest harm caused by a mixed support transaction, including in transactions in which post-merger affiliates have common control, common costs, cost sharing, or consolidation of corporate books). Specifically, Winn Telecom is removed from the control of the model-based support entities because it will be owned by PFN, not Baraga or HCI—"Baraga and HCI have different control structures, different collections of investors, and (with the exception of PFN) different subsidiary companies," and "Baraga, HCI, and PFN maintain distinct financial and operational records." May Supplement at 4 (noting "[b]ecause HCI and Baraga share equal ownership of PFN, there is no majority shareholder that could singlehandedly control PFN"). Additionally, post-transaction, Winn Telecom and HCI and Baraga will continue to operate independently, i.e., they will have separate board members and officers and will have "(i) entirely separate management teams to control and oversee their respective day-to-day operations; (ii) separate personnel; (iii) separate telecommunications networks; and (iv) separate financial resources. *Id.* at 5. In addition, as discussed above there is no overlap between the service territories of Winn Telecom and the other subsidiaries of HCI and Baraga. *Id.* In light of the separate operations of Winn Telecom and HCI and Baraga as demonstrated on this record, we do not find a potential public interest harm associated with a mixed support transaction that we need to address, and therefore exercise our authority to exclude the specific affiliates here from the *Hargray/ComSouth* condition. See *Dobson Order on Reconsideration*, 36 FCC Rcd at 8886, para. 14. We therefore grant the Application without applying the mixed support condition.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-632

Released: July 31, 2023

STREAMLINED RESOLUTION OF REQUESTS RELATED TO ACTIONS BY THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY

CC Docket No. 02-6
WC Docket No. 21-93
WC Docket No. 02-60
WC Docket No. 10-90
WC Docket No. 06-122

Pursuant to our procedure for resolving requests for review, requests for waiver, and petitions for reconsideration of decisions related to actions taken by the Universal Service Administrative Company (USAC) that are consistent with precedent (collectively, Requests), the Wireline Competition Bureau (Bureau) grants, dismisses, or denies the following Requests.¹ The deadline for filing petitions for reconsideration or applications for review concerning the disposition of any of these Requests is 30 days from the release date of this Public Notice.²

Schools and Libraries (E-Rate) **CC Docket No. 02-6**

Dismiss to Allow Appeal to be Filed with USAC³

Des Plaines Public Library, FL, Application No. 211014460, Request for Review, CC Docket No. 02-6 (filed July 7, 2023)

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

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

³ See *Petitions for Reconsideration by Little Falls Township School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, DA 23-110, para. 10 (WCB Feb. 8, 2023) (*Little Falls Township Order*) (dismissing without prejudice appeals that are filed with the Commission before being reviewed at USAC and waiving the 60-day appeal filing deadline to allow the party to refile its appeal with USAC).

Dismissed for Failure to Comply with the Commission's Basic Filing Requirements⁴

Bright Hope Center, NY, Application Nos. 231038974, 231038975, CC Docket No. 02-6 (filed June 9, 2023)

Palm Coast Community School, Inc., FL, Application No. 191040391, CC Docket No. 02-6 (filed Dec. 19, 2022)

Redbank Valley School District, PA, Application No. 231037264, CC Docket No. 02-6 (filed June 19, 2023)

Dismissed on Reconsideration⁵

Argosy Collegiate Charter School, MA, Application No. 181037442, CC Docket No. 02-6 (filed Nov. 25, 2020)

Beecher-Dunbar-Pembine Schools, WI, Application No. 231039271, Petition for Reconsideration, CC Docket No. 02-6 (filed June 7, 2023)

Community Unit School District 16, IL, Application No. 231039315, Petition for Reconsideration, CC Docket No. 02-6 (filed June 21, 2023)

Hawaii Academy Of Arts and Science, HI, Application Nos. 231039245, 231039243, Petition for Reconsideration, CC Docket No. 02-6 (filed June 9, 2023)

Henrico County School District, VA, Application No. 191019903, Petition for Reconsideration, CC Docket No. 02-6 (filed June 30, 2023)

Islamic Academy of Alabama, AL, Application No. 231039270, Petition for Reconsideration, CC Docket No. 02-6 (filed June 9, 2023)

Life Changers Christian Academy, FL, Application Nos. 231039237, 231039236, Petition for Reconsideration, CC Docket No. 02-6 (filed June 9, 2023)

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

⁵ *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).

Russell Public Library, CT, Application No. 231039420, Petition for Reconsideration, CC Docket No. 02-6 (filed June 8, 2023)

Granted⁶

*Eligible Entities*⁷

Academia Adventista de Vieques, PR, Application Nos. 221022143, 221022147, Request for Review and/or Waiver, CC Docket No. 02-6 (filed July 3, 2023)

*Granting on Reconsideration – Late-Filed FCC Form 471*⁸

Lamoille North Modified Union School District, VT, Application No. 231039424, Petition for Reconsideration, CC Docket No. 02-6 (filed July 7, 2023)

*Granting Additional Time to Respond to USAC with Information During Invoicing*⁹

Community Action Organization of Erie County, NY, Application No. 181036166, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2023)

⁶ We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also waive sections 54.507(d) and 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. *See* 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); 47 CFR § 54.514(a) (codifying the invoice filing deadline).

⁷ *See Requests for Review of Decisions of the Universal Service Administrator by Bootheel Consortium et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8747, 8750-51, paras. 7-8 (2007) (finding that applicants had provided sufficient documentation to show that they might be eligible for E-Rate support, justifying further review by USAC to reach a definitive determination). Consistent with precedent, we remand this application to USAC for consideration of its eligibility given the additional documentation it submitted. *Id.*

⁸ *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 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). Lamoille North Modified Union School District 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. 231039424 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. 231039424 as timely filed.

⁹ *See Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 23-48, para. 14 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (granting requests for review of applicants that had been denied funding during invoicing because they failed to respond to USAC's request for information within the USAC-specified time frame).

Honolulu Community Action Program, Inc. Oahu Head Start, HI, Application No. 191006823, Request for Waiver, CC Docket No. 02-6 (filed Dec. 20, 2022)

Seeds of Health, PA, Application No. 181017483, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2021)

*Incorrect Service Start Date on FCC Form 486*¹⁰

San Mateo Foster City Elementary School District, CA, Application No. 191029594, Request for Waiver, CC Docket No. 02-6 (filed May 24, 2023)

*Ineligible Service*¹¹

Erie 1 BOCES, NY, Application No. 191003543, Request for Review, CC Docket No. 02-6 (filed Apr. 11, 2023)

*Late-Filed FCC Form 471 Applications – Filed Within 14 Days of the Close of the Window*¹²

Southeastern Massachusetts Educational Collaborative, MA, Application No. 231039143, Request for Waiver, CC Docket No. 02-6 (filed June 10, 2023)

*Ministerial and/or Clerical Errors*¹³

Manson Northwest Webster Community Schools, IA, Application No. 231039563, Request for Waiver, CC Docket No. 02-6 (filed May 25, 2023, supplemented June 14, 2023)

¹⁰ 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*).

¹¹ See, e.g., *Request for Review by Terral School District 3, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Dockets No. 96-45, 97-21, Order, 15 FCC Rcd 17969 (CCB 2000) (remanding where USAC has failed to provide an explanation for its determination of ineligibility).

¹² See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 8 (2010) (*Academy of Math and Science Order*) (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).

¹³ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools*, CC Docket No. 02-6, Order, 25 FCC Rcd at 17319, 17319-20, nn. 5, 10 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant omitted entities included on its source list or mischaracterized the purchase and installation of equipment as a recurring service; *Archer Public Library Order*, 23 FCC Rcd at 15521 n.19 (permitting applicant to correct a pre-discount price and service on its FCC Form 471 application to conform to the price and service on the source document)).

(continued....)

Norfolk Public Schools, MA, Application No. 211036865, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2023)

North Cedar Community School, IA, Application No. 231037233, Request for Waiver, CC Docket No. 02-6 (filed June 27, 2023)

West Islip Public Schools, NY, Application No. 221007451, Request for Waiver, CC Docket No. 02-6 (filed Feb. 17, 2023)

*Permissible Service Implementation Delay*¹⁴

GST Boces, NY, Application Nos. 191041845, 201043827, 201041887, 201041721, Request for Waiver, CC Docket No. 02-6 (filed May 13, 2022)

*Technology Plan Requirements*¹⁵

Achievement First, CT, Application Nos. 531932, 531990, 532040, 532147, Request for Waiver, CC Docket No. 02-6 (filed July 6, 2010)

*USAC Decision Issued After Invoice Deadline*¹⁶

Cheyenne County School District, CO, Application No. 211017854, Request for Waiver, CC Docket No. 02-6 (filed May 15, 2023)

Vega Collegiate Academy Consortium, CO, Application No. 201041473, Request for Waiver, CC Docket No. 02-6 (filed Nov. 11, 2022)

Manson Northwest Webster Community Schools did not realize its funding request was omitted until the FY 2023 application filing window had closed. The school then filed FCC Form 471 Application No. 231039563 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. 231039563 as timely filed.

¹⁴ See, e.g., *Request for Review/Waiver of the Decision of the Universal Service Administrator by Accelerated Charter et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 13652, 13652-3, para. 2 (WCB 2014) (*Accelerated Charter Order*) (granting late-filed extensions of the service implementation deadline when applicants demonstrated they were unable to complete implementation on time for reasons beyond the service providers' control and made significant efforts to secure the necessary extensions in a timely manner).

¹⁵ See, e.g., *Requests for Review or Waiver of the Decisions of the Universal Service Administrator by Brownsville Independent School District, et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 6045 (2007) (waiving technology plan rules for petitioners that missed deadlines for developing or obtaining approval of their technology plans). For Funding Request Number 1468950, we also find that Achievement First's method of determining its discount was acceptable under Commission rules. See, e.g., *Requests for Review of the Decision of the Universal Service Administrator by Academia Claret et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 10703, 10708, para. 13 (WCB 2006) (*Academia Claret Order*) (remanding applications for further processing when it appears that the applicant fully complied with USAC's procedures).

¹⁶ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 35 FCC Rcd 14426, 14431, para. 15 (2020) (authorizing the Bureau to grant a waiver in instances where a program participant was unable to timely submit an invoice because they were awaiting a post-commitment decision from USAC, or received a decision approving a post-commitment request or granting an appeal of a previously denied or reduced funding request after the invoice filing deadline had passed).

*Waiver of Special Construction Service Delivery Deadline*¹⁷

Te-Moak Tribe of Western Shoshone Library System, NV, Application No. 211034486, Request for Waiver, CC Docket No. 02-6 (filed June 16, 2022)

Denied*Late-Filed FCC Form 471 Applications*¹⁸

Acanc Consortium, Ascent Classical Academy Douco Consortium, Aspen Community School Consortium, Carbondale Community School Consortium, Rocky Mountain Classic Academy, Talmudical Academy-Baltimore, Texas Torah Institute, University Preparatory School, University Prep Steele Street Inc., Application Nos. 231039229, 231039414, 231039411, 231039413, 231039224, 231039225, 231039226, 231039231, 231039230, 231039227, 231039228, Request for Waiver, CC Docket No. 02-6 (filed June 12, 2023)

Banner School District 31, OK, Application No. 231039457, Request for Waiver, CC Docket No. 02-6 (filed June 12, 2023)

Berwyn Public Library, IL, Application No. 231038603, Request for Waiver, CC Docket No. 02-6 (filed June 20, 2023)

Bryson Independent School District, TX, Application No. 231039623, Request for Waiver, CC Docket No. 02-6 (filed June 20, 2023)

Carthage Elementary School District #317, IL, Application No. 231039630, Request for Waiver, CC Docket No. 02-6 (filed June 21, 2023)

Cobb County School District, GA, Application No. 231039586, Request for Waiver, CC Docket No. 02-6 (filed June 8, 2023)

Ephesus Adventist Academy, FL, Application Nos. 231039389, 231039390, Request for Waiver, CC Docket No. 02-6 (filed June 19, 2023)

Everly Public Library, IA, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed June 23, 2023)

¹⁷ See, e.g., *Requests for Waiver of the Decisions of the Universal Service Administrator by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10051, para. 8 (WCB 2018) (waiving the special construction service delivery deadline because the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures).

We find that the petitioner was unable to complete implementation for reasons beyond its and its service provider's 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 applicant until June 30, 2024 to complete its special construction project.

For this petitioner, 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.

¹⁸ 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).

Gesher Jewish Day School, VA, Application No. 231039381, Request for Waiver, CC Docket No. 02-6 (filed June 23, 2023)

Hampton Public School District, NE, Application No. 231039596, Request for Waiver, CC Docket No. 02-6 (filed June 12, 2023)

Hernando County School District, FL, Application No. 231039633, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2023)

Immaculate Conception Church, NY, Application No. 231010785, Request for Waiver, CC Docket No. 02-6 (filed June 8, 2023)

Kootasca Head Start, MN, Application No. 231039527, Request for Waiver, CC Docket No. 02-6 (filed June 9, 2023)

Leelanau Montessori Public School Academy District, MI, Application No. 231039629, Request for Waiver, CC Docket No. 02-6 (filed June 21, 2023)

Lincoln Way Area Special Education JA District 843, IL, Application No. 231039423, Request for Waiver, CC Docket No. 02-6 (filed June 25, 2023)

McIntosh Area School, FL, Application No. 231033325, Request for Waiver, CC Docket No. 02-6 (filed June 9, 2023)

Memphis Main Public Library, TN, Application No. 231039593, Request for Waiver, CC Docket No. 02-6 (filed June 9, 2023)

Mt. Olivet Jr. Academy, FL, Application No. 231039321, Request for Waiver, CC Docket No. 02-6 (filed June 19, 2023)

Murl Windsor Academy, FL, Application No. 231039398, Request for Waiver, CC Docket No. 02-6 (filed June 19, 2023)

New Hope SDA School, FL, Application No. 231039436, Request for Waiver, CC Docket No. 02-6 (filed June 19, 2023)

Northfield School District 659, MN, Application No. 231039602, Request for Waiver, CC Docket No. 02-6 (filed June 13, 2023)

Panhandle Public Library Cooperative System, FL, Application No. 231039476, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Quest Charter Academy-Peoria, IL, Application No. 231039634, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2023)

Redding Christian Schools, CA, Application No. 231039549, Request for Waiver, CC Docket No. 02-6 (filed June 12, 2023)

Robert J. Kleberg Public Library, TX, Application No. 231039640, Request for Waiver, CC Docket No. 02-6 (filed June 23, 2023)

Saint Joseph Regional High School, NJ, Application No. 231039480, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2023)

St. Timothy School, AZ, Application No. 231039606, Request for Waiver, CC Docket No. 02-6 (filed June 13, 2023)

Warren Public School District 1, AR, Application No. 231039590, Request for Waiver, CC Docket No. 02-6 (filed June 8, 2023)

Weslaco Independent School District, TX, Application Nos. 231036464, 231036051, Request for Waiver, CC Docket No. 02-6 (filed June 15, 2023)

Wright County Community Action, MN, Application No. 231039594, Request for Waiver, CC Docket No. 02-6 (filed June 13, 2023)

*Late-Filed Invoice or Invoice Deadline Extension*¹⁹

Detel Computer Solutions, LLC (Red River Parish School District), LA, Application No. 211032697, Request for Waiver, CC Docket No. 02-6 (filed July 12, 2023)

Fletcher Academy, NC, Application No. 201031188, Request for Waiver, CC Docket No. 02-6 (filed Nov. 11, 2021)

Las Cruces Public Schools Consortium, NM, Application No. 191031473, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2023)

MCC Network Services, LLC (Hoopeston Public Library), IL, Application No. 201018648, Request for Waiver, CC Docket No. 02-6 (filed June 27, 2023)

Rio Rancho Public Library System, NM, Application No. 191040627, Request for Waiver, CC Docket No. 02-6 (filed June 28, 2023)

*Ministerial and/or Clerical Errors*²⁰

Pequenos Giants Academy Child Care Center., IL, Application No. 221034943, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Jan. 9, 2023)

¹⁹ 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).

²⁰ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by CCRC Community Link et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 5326, para. 1 (WCB 2012) (denying support to entities that failed to show that they were eligible for E-Rate support); *Request for Review by Beginning With Children Charter School and Yeshiva Karlin-Stolin, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 936, 940, para. 11 (CCB 2003) (finding that the ultimate burden of proof remains on the applicant).

*Untimely Filed Appeals or Waiver Requests*²¹

DeKalb Brilliance Academy, GA, Application No. 221036910, Request for Waiver, CC Docket No. 02-6 (filed Jan. 31, 2023)

Palmer Independent School District, TX, Application No. 221027306, Request for Waiver, CC Docket No. 02-6 (filed July 11, 2023)

Plymouth Public Schools, MA, Application No. 201021656, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2023)

Tahoma School District, WA, Application No. 231032210, Request for Waiver, CC Docket No. 02-6 (filed July 15, 2023)

Emergency Connectivity Fund
WC Docket No. 21-93Granted²²*Early Delivery*²³

Sedalia School District 200, MO, Application No. ECF202102918, Request for Waiver, WC Docket No. 21-93 (filed July 11, 2023)

*Ministerial and/or Clerical Errors*²⁴

Liberty-Perry Community School Corporation, IN, Application No. ECF202101592, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Nov. 10, 2022)

²¹ 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).

²² See *supra* note 6.

²³ 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).

²⁴ See, e.g., *Ann Arbor Public Schools Order*, 25 FCC Rcd at 17320-21, para. 2, n.23 (granting a waiver when applicant mistakenly provided the wrong documentation concerning a purchase). 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 these petitions for waiver of the Emergency Connectivity Fund program rules.

*Payment Verification*²⁵

Atlantic Shores Christian Schools, VA, Application No. ECF202111498, Request for Review and/or Waiver, WC Docket No. 21-93 (filed July 25, 2023)

*Timely-Filed Appeals*²⁶

Quality Education & Development LLC, NY, Application Nos. ECF202104913, ECF202106881, ECF202106885, ECF222120792, ECF202106887, ECF202106908, ECF202106910, ECF202113927, ECF202114320, ECF202107609, ECF202106919, ECF202112105, ECF202106953, ECF202107497, ECF202107506, ECF202112049, WC Docket No. 21-93 (filed July 4, 2023)

*Waiver of ECF Special Construction Service Delivery Date*²⁷

A+ Partners in Education, WV, Application No. ECF222116734, Request for Waiver, WC Docket No. 21-93 (filed July 25, 2023)

²⁵ 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.

²⁶ See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Sundale Elementary School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 4124 (WCB 2014) (remanding an appeal to USAC that was timely filed). 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.

²⁷ See, e.g., *Requests for Waiver of the Decisions of the Universal Service Administrator by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10051, para. 8 (WCB 2018) (waiving the special construction service delivery deadline because the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures). We 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. 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.

*Waiver of Service Delivery Date*²⁸

La Pryor Independent School District, TX, Application No. ECF202113129, Request for Waiver, WC Docket No. 21-93 (filed June 26, 2023)

Rural Health Care Program
WC Docket No. 02-60

Granted

*Waiver of the Invoice Filing Deadline*²⁹

Bytes Network & Network Solutions, Inc., NE, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21151171 (filed Apr. 14, 2023; supplemented May 22, 2023)

*Waiver of the 60-Day Appeal Deadline*³⁰

Adventist Health, CA, Request for Waiver, Docket No. 02-60, Request No. 21966541 (filed Apr. 6, 2023)

²⁸ See, e.g., *Accelerated Charter Order*, 29 FCC Rcd at 13652-53, para. 2 (allowing extensions of the deadline for service implementation when applicants demonstrated they were unable to complete implementation on time for reasons beyond the service providers' control and made significant efforts to secure the necessary extensions). Consistent with the six-month extension granted to some applicants on May 12, 2023, we waive the service delivery deadline and direct USAC to set a new service delivery deadline of December 27, 2023, and adjust any associated administrative or procedural deadlines, including the invoice deadline, that might be necessary to effectuate our ruling. *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405 (WCB May 12, 2023) (extending the deadline of equipment funding requests from the first and second application filing window by 180 days). We also waive any associated administrative or procedural deadlines that might be necessary to effectuate our ruling. See *supra* note 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.

²⁹ See *Requests for Waiver or Review of Decision of the Universal Service Administrator by Indiana Telehealth Network*, WC Docket No. 02-60, Order, 33 FCC Rcd 12341, 12342, para. 4 (WCB 2018) (*Indiana Telehealth Network*) (granting a waiver of the invoice filing deadline when the petitioner missed the deadline due to technical issues outside of its control). We find that a waiver is justified because the petitioner was unable to submit a timely invoice due to technical issues with a federal information technology platform. We waive the petitioner's invoice filing deadline and allow it 120 days from the later of the release of this Public Notice or the issuance of a Funding Commitment Letter to file invoices with USAC.

³⁰ See, e.g., *ABC Unified School District Order*, 26 FCC Rcd at 11019, para. (granting waivers of filing deadline for appeals because the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision, or the reasons were due "the result of clerical, ministerial, or procedural errors, or were due to circumstances beyond their control"). In this instance, the petitioner did not receive notice of USAC's funding decision. We direct USAC to re-issue the denial decision to the petitioner.

*Competitive Bidding – Exemption for Evergreen Contracts*³¹

GCI Communications Corp. (Fairbanks Memorial Hospital), AK, Request for Review and Waiver, WC Docket No. 02-60, Funding Request No. 20796111 (filed Nov. 28, 2021)

Denied*Competitive Bidding*³²

Ascension Health, WI, Request for Review and/or Waiver, WC Docket No. 02-60, Funding Request No. 19645321 (filed Jan. 5, 2021)

*Denial of Waiver Request of the Invoice Filing Deadline*³³

Dimmit County Memorial Hospital, TX, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21990951 (filed Apr. 13, 2023)

³¹ See *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket Nos. 02-6, 02-60, 06-122, Public Notice, DA-1008, at 10 (granting appeal from the Southern Ohio Health Care Network after finding that a competitive bidding exemption applied). See also 47 CFR § 54.622(i)(3)(iii) (permitting voluntary extensions of evergreen contracts so long as extensions not exceed five years in the aggregate); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2922, 2924-25, paras. 7-8 (2020) (allowing health care providers grappling with the COVID-19 pandemic to extend their expiring evergreen contracts through funding year 2020 even if the five-year extension limit under section 54.622(i)(3) of the Commission's rules had been reached if the extension was memorialized and relevant documentation was retained). In this case, the petitioner's evergreen extension was properly executed because an email stating that the contract had been extended properly memorialized the extension.

³² *Franciscan Skemp Waukon Clinic, Waukon, Iowa, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 29 FCC Rcd 11714, 11717-18, para. 9 (WCB 2014) (*Waukon Order*) (denying request for review where applicant signed a multi-year contract for the services at issue before the expiration of the 28-day waiting period). Ascension Health entered into a contract with its selected service provider on November 16, 2018, several months before the March 30, 2019, expiration date of the 28-day waiting period established when USAC posted Ascension Health's request for services on its website on March 1, 2019. Ascension Health maintains that the service contract "was filed for 36 [months] with USAC contract ID 1165866 and had requested evergreen status." See Request for Review and/or Waiver of Ascension Health, WC Docket No. 02-60, at 1 (filed Jan. 5, 2021) (Ascension Health Request). The mere request for evergreen status, however, does not relieve an applicant from the requirements to competitively bid for services and then wait at least 28 days from the date its request for service was posted before selecting and committing to a service provider. See 47 CFR § 54.642(a), (g) (2018). Only a contract previously designated as evergreen by USAC permits an applicant to avoid having to re-bid during the contract's term. 47 CFR § 54.642(h)(4)(i) (2018). The contract entered into by Ascension Health on November 16, 2018, likewise cannot serve as a standing bid to circumvent the 28-day waiting period requirement. An applicant can use a contract entered into prior to expiration of the 28-day waiting period as a standing bid only if it is "choosing to continue service under an existing contract." *Waukon Order*, 29 FCC Rcd at 11715, para. 3. The services that Ascension Health contracted for in November 2018 were for new services that commenced after it entered into the service contract. See Ascension Health Request at 1 (stating that the contracted services were "not yet installed" at the time evergreen status was requested and that the "anticipated start date of circuits [was] July 2019").

³³ See *Indiana Telehealth Network Order*, 33 FCC Rcd at 12342, para. 4 (denying a waiver of the invoice filing deadline when the petitioner missed the deadline due to personnel issues).

High-Cost Program (Connect America Fund)**WC Docket No. 10-90****Granted***HUBB Milestone Certification Reporting*³⁴

F&B Communications, Inc. Waiver Request – Allow USAC to open HUBB for Milestone Certification, WC Docket No. 10-90 (filed Apr. 20, 2023).

Atlas Telephone Company, Inc Request for Waiver of Section 54.316, WC Docket No. 10-90 (filed June 7, 2023).

Citizens Telephone Cooperative's Petition for Waiver Regarding Broadband Milestone Certification for 2022, WC Docket No. 10-90 (filed June 19, 2023).

*HUBB Location Certification*³⁵

Union Telephone Company Petition for Waiver, WC Docket No. 10-90 (filed May 22, 2023).

Contribution Methodology**WC Docket No. 06-122****Denied***Request for Waiver of Form 499-A Revision Deadline*³⁶

³⁴ F&B Communications, Inc., Atlas Telephone Company, Inc., and Citizens Telephone Cooperative all timely uploaded and certified enough locations by March 1, 2023 to meet their respective interim milestones but did not timely make the separate certification that they met the milestones. *See Connect America Fund, et al.*, WC Docket Nos. 10-90 et al., Order, 36 FCC Rcd 13976, paras. 9-10 (*NNTC Certification Waiver Order*) (granting waiver to allow the carrier to report locations after the deadline for the reporting year when locations were timely uploaded to the HUBB portal but due to an inadvertent administrative oversight were not timely certified); *see also Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 10-90, 02-60 and 06-122, Public Notice, DA 23-333, n.38 (WCB Apr. 28, 2023) (granting waiver to allow the carrier to certify meeting its milestone obligation after the deadline for the reporting year when locations were timely uploaded and certified to the High Cost Universal Broadband (HUBB) portal but due to an inadvertent administrative oversight, the milestone obligation was not timely certified).

³⁵ Union Telephone Company timely uploaded and certified all locations to meet its 2022 milestone obligations but did not re-certify locations after a bulk modification of its already certified locations. *See NNTC Certification Waiver Order*, 36 FCC Rcd at 13976, paras. 9-10.

³⁶ *See, e.g., Universal Service Contribution Methodology; Petition for Waiver of Universal Service Fund Rules by Outfitter Satellite, Inc.*, WC Docket No. 06-122, Order, 28 FCC Rcd 13358 (WCB 2013) (finding that alleged mistakes by Outfitter's accounting firm and internal accounting staff were not adequate grounds for waiver); *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator by IP Telecom Group, Inc.*, WC Docket No. 06-122, Order, 26 FCC Rcd 11213 (WCB 2011); *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc., et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (WCB 2010) (denying requests for deadline waivers where claims of good cause amounted to no more than simple negligence, errors by the petitioner, or circumstances squarely within the petitioner's control).

Vocal IP Networx Ltd., Letter of Appeal, WC Docket No. 06-122 (filed July 5, 2023)

For additional information concerning this Public Notice, please contact James Bachtell in the Telecommunications Access Policy Division, Wireline Competition Bureau, at james.bachtell@fcc.gov or (202) 418-2694.

- FCC -

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

In the Matter of)
)
Midland Radio Corporation Petition for Waiver of) WT Docket No. 21-388
Certain FCC's Rules to Authorize a Radio System)
to Improve Safety for Off-Road GMRS Users)
)

ORDER

Adopted: July 24, 2023

Released: July 24, 2023

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Midland Radio Corporation (Midland) has requested a waiver of four subsections of the Commission's Part 95¹ rules governing General Mobile Radio Service (GMRS) in the 462 MHz band, in order to permit non-handheld radios that utilize a non-integrated antenna to automatically transmit digital data more than once within a 30-second period, and to operate at 50 watts.² For the reasons articulated below we grant Midland's Waiver Request, subject to the conditions described herein.

II. BACKGROUND

2. The Personal Radio Services governed by Part 95 include various short-range low-power services, generally for public use over shared spectrum with operation authorized by rule rather than by individual licenses.³ GMRS is a mobile two-way voice communication service with limited data applications that facilitates activities of individual licensees and their family members, including but not limited to, voluntary provision of assistance to the public during emergencies and national disasters.⁴

3. *Midland's Waiver Request.* Midland manufactures and sells personal communications devices, including GMRS radios, Citizens Band (CB) radios, and other two-way radios for use in areas where there is little to no cellular coverage. On July 16, 2021, Midland requested that the Commission waive certain sections of its Part 95 rules to extend data privileges currently limited to handheld GMRS

¹ 47 CFR Part 95, subpart E.

² Midland Radio Corporation Petition for Waiver, WT Docket No. 21-388 (filed July 16, 2021), <https://www.fcc.gov/ecfs/file/download/Midland%20-%20Petition%20for%20Waiver%20of%20Integrated%20Antenna%20Rule.pdf?folder=1071680655068> (Waiver Request); *id.* at 4-6.

³ 47 CFR Part 95; *Review of the Commission's Part 95 Radio Services Rules*, Report and Order, 32 FCC Rcd 4292, 4294-95, paras. 4-5 (2017) (*2017 Report and Order*). The Personal Radio Services consist of eleven different services. *Id.* at 4294, para. 4. While Part 95 originally applied mainly to mobile voice communication for individuals and radio control devices used by hobbyists for control of model devices, the scope has expanded over time to include, for example, devices used to locate lost persons, retrieve data from implanted medical devices, and increase highway safety. *Id.* at 4293, para. 3.

⁴ *2017 Report and Order*, 32 FCC Rcd at 4294-95, paras. 4-5.

devices to non-handheld mobile units.⁵ On November 12, 2021, Midland submitted an Amendment to its Waiver Request.⁶

4. Specifically, Midland requests waivers of:

- Section 95.1731(d), to allow digital transmission from *non-handheld* radios.⁷ Midland asserts that this is necessary because the off-road radios would be vehicle-mounted units, which would increase the power for such data uses from 5 watts to 50 watts.⁸
- Section 95.1787(a)(3), to allow the automatic transmission of digital data *more than once* within a thirty-second period.⁹ Midland argues that allowing the more frequent transmission of GPS data will ensure users' safety because the users will be continuously monitored by other users.¹⁰
- Section 95.1787(a)(4),¹¹ to allow the antennas to be a *non-integrated* part of the GMRS unit. Midland plans to provide greater range through the use of a separate antenna that utilizes higher gains and ensures a constant source of power since it is drawing from the vehicle's power supply.¹²
- Section 95.1767(a), to allow the devices sending digital data to operate at 50 watts instead of the current 5 watt limit.¹³ In its Waiver Amendment, Midland argues that operating at higher powers will better serve the safety needs of and real-life use by off-road users.¹⁴ Midland also states that GMRS device users will be better served by data transmissions, as opposed to voice messages, because data transmission are more reliable and more accurate.¹⁵ Further, it claims that allowing

⁵ Midland states that it intends to transmit digital data only on the 462 MHz main and interstitial frequencies, and will not transmit on the 467 MHz frequencies. Waiver Request at 3-4; Amendment to Petition for Waiver and Comments of Midland Radio Corporation, WT Docket No. 21-388, at 7 (filed Nov. 12, 2021), <https://www.fcc.gov/ecfs/document/1112223494752/1> (Waiver Amendment).

⁶ Waiver Amendment.

⁷ 47 CFR § 95.1731(d) ("GMRS hand-held portable units may transmit digital data containing location information, or requesting location information from one or more other GMRS or FRS units, or containing a brief text message to another specific GMRS or FRS unit"); Waiver Request at 4.

⁸ Waiver Request at 4.

⁹ 47 CFR § 95.1787(a)(3) ("Digital data transmissions must not be sent more frequently than one digital data transmission within a thirty-second period, except that a GMRS unit may automatically respond to more than one interrogation request received within a thirty-second period"); Waiver Request at 5.

¹⁰ Waiver Request at 5; Waiver Amendment at 3-4.

¹¹ 47 CFR § 95.1787(a)(4) ("The antenna must be a non-removable integral part of the GMRS unit"); Waiver Request at 5.

¹² Waiver Request at 2.

¹³ 47 CFR § 95.1767(a) ("The limits in this paragraph apply to stations transmitting on any of the 462 MHz main channels or any of the 467 MHz main channels. Each GMRS transmitter type must be capable of operating within the allowable power range. GMRS licensees are responsible for ensuring that their GMRS stations operate in compliance with these limits."); *id.* § 95.1767(a)(1) ("The transmitter output power of mobile, repeater and base stations must not exceed 50 Watts.").

¹⁴ Waiver Amendment at 4-5.

¹⁵ Waiver Request at 2.

a 50 watt power limit would enable a data transmission range of roughly 5-6 miles, as opposed to .5-1 miles for 5 watts, which would better serve the needs of users.¹⁶

5. Midland contends that waiver of these rules would enable off-road/off-grid enthusiasts to communicate by voice and to transmit text messages and GPS location information through digital transmissions on GMRS frequencies. Midland has stated that it intends to develop a smart device application for off-road enthusiasts that connects via Bluetooth to a GMRS mobile radio to allow voice/text communications and the transmission of GPS data, enabling groups to track the location of individual members during offroad travels.¹⁷ Midland states that GPS transmissions will only be transmitted once a “Group” of two or more persons is created, riders are linked, and a “Trip” has been initiated in the application.¹⁸ Once the Trip has begun, riders will have a visual display that monitors the exact GPS location of all group members.¹⁹ The Trip will automatically cease after: (1) a Trip is completed; (2) the riders are unlinked; (3) a Group is disbanded; or (4) twelve hours—whichever comes first.²⁰

6. Midland argues that a waiver is necessary to protect and ensure safety of life of those who travel in remote off-road areas, or who travel in areas that have poor cellular coverage, by enabling continuous communication.²¹ Midland further explains that it intends to implement certain protective features to minimize interference with other GMRS users if its limited Waiver Request is granted, including (1) programming the radios with a “busy channel lockout” that will disallow GPS data from transmitting while the channel is being used, and (2) only allowing the transmission of data when two or more users are actively grouped together in the application.²²

7. On October 12, 2021, the Bureau sought comment on Midland’s Waiver Request.²³ Eleven parties—a mix of off-road enthusiasts and GMRS licensees—submitted comments in support of Midland’s Waiver Request; no party opposed the Waiver Request or raised concerns.²⁴ As noted above, on November 12, 2021, Midland submitted an Amendment to its Waiver Request and also responded to the questions posed by the Commission in the Public Notice.²⁵

¹⁶ Waiver Amendment at 6.

¹⁷ Waiver Request at 3-4, 8.

¹⁸ Waiver Request at 3-4, 8.

¹⁹ Waiver Request at 3-4, 8; Letter from Tony S. Lee, Counsel for Midland Radio Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 21-388, at 4, 8 (filed Mar. 25, 2022) (Midland March 25th *Ex Parte*).

²⁰ Waiver Request at 3-4, 8.

²¹ Waiver Request at 5.

²² Waiver Request at 7-9.

²³ See *Wireless Telecommunications Bureau Seeks Comment on Request by Midland Radio Corporation for Waiver of Certain General Mobile Radio Service Rules*, WT Docket No. 21-388, Public Notice, DA 21-1269 (Oct. 12, 2021) (Public Notice).

²⁴ Comments of James Edwin Whedbee (filed Oct. 18, 2021); Comments of Larry Jones (filed Oct. 21, 2021); Comments of William Deans Shirley (filed Oct. 26, 2021); Comments of Steve Hayes (filed Oct. 26, 2021); Comments of Matt Oesterlei (filed Oct. 26, 2021); Comments of Chris Holloway (filed Oct. 26, 2021); Comments of Josh Carter (filed Oct. 29, 2021); Comments of Jason Specht (filed Nov. 1, 2021); Comments of Cullen Powers (filed Nov. 1, 2021); Comments of Josh Roelle (filed Nov. 3, 2021); Comments of Sean P. Holman (filed Nov. 11, 2021). On March 28, 2023, Garmin International, Inc. (Garmin), expressed support for Midland’s Waiver Request. See Letter from M. Anne Swanson, Counsel for Garmin International, Inc., Marlene H. Dortch, Secretary, FCC, WT Docket No. 21-388 (filed Mar. 28, 2023) (Garmin *Ex Parte*).

²⁵ Waiver Amendment; Midland March 25th *Ex Parte*; see also Public Notice at 2. In its Amendment, Midland removed its waiver request of section 95.1787(a)(1) to allow the automatic transmission of digital data because of
(continued....)

III. DISCUSSION

8. *Waiver Standard.* Waiver of a rule is appropriate where either (1) the “[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest,” or (2) “[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”²⁶ An applicant seeking a waiver faces a high hurdle, and must plead with particularity the facts and circumstances that warrant a waiver.²⁷

9. The Division grants Midland’s Waiver Request subject to the conditions described below. We find that Midland has shown that a waiver is warranted because, based on the unique circumstances, application of several GMRS provisions to this particular software application would not serve the public interest. By granting a waiver, we allow increased functionality and safety for the off-road community, in support of the public interest. We agree with Midland that grant of its waiver request would serve the public interest by ensuring that critical communications and location information are available in dangerous remote locations where traditional communications infrastructure is lacking. We also find that, due to the conditions we adopt below, the underlying purpose of the rules will not be frustrated by grant of Midland’s Waiver Request. Rather, to mitigate the possibility that Midland’s application may cause congestion in the band or unnecessary audio interference to other GMRS users, we adopt several conditions, based in part on Midland’s proposed protective features.²⁸

10. *Waiver of Handheld Radios and Integrated Antennas.* Midland seeks waiver of section 95.1731(d) to allow digital transmissions from non-handheld radios, and section 95.1787(a)(4) to allow the antennas to be a non-integrated part of the GMRS unit.²⁹ Midland states that off-road GMRS users typically use CB-style vehicle mounted GMRS radios, rather than hand-held units, because the vehicle mounted radios are more reliable, provide greater range, and have a constant source of power since the radios draw on a vehicle’s power supply.³⁰ We agree with Midland that off-road GMRS users need to be able to reliably transmit data between mobile radios to keep track of individuals in their group, and we waive sections 95.1731(d) and 95.1787(a)(4), subject to the conditions below. We find that allowing the transmission of digital data from non-handheld and non-integrated antennas will help users communicate and locate one another regardless of their off-road location, which furthers the public interest given the inherent dangers associated with off-road activities.³¹ Waiver of these sections is conditioned upon

the Commission’s recently released *GMRS Order*, which adopted rules to allow for automatic data transmissions in the GMRS service. *See Review of the Commission’s Part 95 Personal Radio Services Rules, Petition for Rulemaking of Garmin International, Inc., Petition for Rulemaking of Omnitronics, L.L.C.*, WT Docket No. 10-119, Memorandum Opinion and Order on Reconsideration, 36 FCC Rcd 12824, 12829, paras. 11-12 (2021) (*GMRS Order*). The rules adopted in the *GMRS Order* became effective on October 28, 2021. *See Review of the Commission’s Personal Radio Services Rules*, 86 Fed. Reg. 53563-01 (Sept. 21, 2021).

²⁶ 47 CFR § 1.925(b)(3).

²⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415, para. 6 (2003).

²⁸ Waiver Request at 7-10; Waiver Amendment at 7-8.

²⁹ Waiver Request at 4, 6.

³⁰ Waiver Request at 2 (stating that the hand-held units use small portable batteries that degrade over time and adversely affect signal strength).

³¹ Waiver Request at 2. While we declined, in the *2017 Report and Order*, to allow detachable antennas for GMRS devices based on a concern that it could cause harmful interference on the 467 MHz interstitial frequencies, we find that this concern does not apply here because Midland will only be transmitting on the 462 MHz main and

(continued....)

Midland meeting various requirements discussed below, which will aid in avoiding band congestion and mitigate possible audio interference to adjacent users.³²

11. *Waiver of Duty Cycle.* Midland also requests a waiver of section 95.1787(a)(3) to allow the automatic transmission of digital data more than once within a 30-second period, arguing that allowing transmissions every 5 to 10 seconds will ensure that GMRS users have the ability to better guard against serious or catastrophic accidents in remote areas.³³ Midland states that the more frequent data transmission would provide a vital lifeline enabling a more rapid coordination and provision of aid in certain situations, such as in areas with little-to-no cellular signal coverage where it could be difficult for emergency personnel to quickly be contacted and dispatched to the emergency location.³⁴ We find a waiver of section 95.1787(a)(3) is warranted in the instant case, because it is in the public interest to allow close to real time tracking in the unique circumstances surrounding the use of off-road GMRS units and the additional public safety features afforded by more frequent data transmissions.³⁵ We agree with Midland that the safety of radio users in remote, outdoor locations will be increased by having more frequent location information available, especially in an emergency situation where time is of the essence.³⁶ We believe that the conditions described below will aid in ensuring that the digital data transmissions do not unduly congest the band or cause audio interference to the detriment of other GMRS users, and we thus grant Midland's request for waiver of section 95.1787(a)(3), so long as Midland complies with these conditions.

12. *Waiver of Power Limit.* Midland further asserts that waiver of section 95.1767(a) to allow devices sending digital data to operate at 50 watts instead of the 5 watt limit will better serve the safety needs and real-life uses of off-road users.³⁷ We agree with Midland that increasing the power limit will better serve the public interest, especially in emergency situations, because doing so will increase the range of the devices from about 0.5-1 miles to 5-6 miles, improving the area in which users can find others in the group in a potential life threatening situation.³⁸ The conditions we adopt below aid in minimizing potential undue congestion or audio interference to other GMRS users that could be caused by these higher powered, more frequent data transmissions. Because waiver of section 95.1767(a) for the 462 MHz main channels in this instance will further the public interest by allowing more reliable and accurate communication amongst off-road users and with emergency first-responders, and the conditions below will protect other GMRS users from band congestion and audio interference, we grant waiver of this rule.

interstitial frequencies. *2017 Report and Order*, 32 FCC Rcd at 4307, para. 38; *see also* Waiver Request at 7; Waiver Amendment at 2.

³² Waiver Request at 7-10; Waiver Amendment at 7-8.

³³ Waiver Request at 5, n.8. Midland states that it will transmit 50 ms of data approximately once every 5-10 seconds, which equates to a maximum duty cycle of 300-600 ms per minute. *See id.* at 5; Waiver Amendment at 4. In its *ex parte*, Garmin expressed support for Midland's request for waiver of section 95.1787(a)(3) noting that "[s]uch short digital transmissions will not create excessive congestion or cause harmful interference to other GMRS or FRS operations." Garmin *Ex Parte* at 1-2.

³⁴ Waiver Request at 6-7.

³⁵ *Id.*

³⁶ *See GMRS Order*, 36 FCC Rcd at 12828, paras. 10-11 (stating that allowing more frequent data transmissions could enhance search and rescue operations). We note that while we previously declined to depart from the duty cycle limitations when we issued the *GMRS Order*, we find that, based on the unique circumstances here, the public interest is better served by the more frequent data transmissions. *Id.* at 12828-29, para. 12.

³⁷ Waiver Amendment at 4-7.

³⁸ *Id.* at 6 (stating "range estimates are based on worst-case scenarios involving high foliage, rough terrain areas where tree coverage and landscape morphology would more adversely affect signal propagation").

IV. CONCLUSION

13. Taking into account the unique circumstances surrounding radio use by off-road GMRS users, discussed in detail above, we find that the grant of Midland's Waiver Request, subject to the conditions below, is in the public interest. Waiver will enable Midland to manufacture and market a beneficial GMRS device that will enhance the public safety of off-road GMRS users, particularly in remote and hard-to-reach areas.

14. *Conditions.* This waiver grant is conditioned on the following, which largely reflect elements that Midland agreed to in the record:³⁹

- 1) Transmitters operating under this waiver must not be capable of modification by end users to adjust the frequencies of operation.
- 2) Operation under this waiver is restricted to the 462 MHz main and interstitial channels.
- 3) Operation at up to 50 watts is restricted to the 462 MHz main channels (not including the interstitial channels).
- 4) Digital data transmissions may not be sent more than once every 10 seconds, and each transmission must be no more than 50 ms in duration.
- 5) Digital data transmissions may only be made when two or more users are actively linked together through a smartphone application.
- 6) Digital data transmission may only occur when the channel is clear. Midland must:
 - A. Ensure that its radios are able to detect when a channel is being used, and must not transmit data while the channel is being used; and
 - B. Provide the Bureau, in advance of equipment authorization, with a description of how Midland will ensure that it only transmits data when the channel is not being used.
- 7) While Midland must comply with the duty cycle as required by section 95.1787(a)(3) of the Commission's rules, it may transmit up to 50 ms of data every 10 seconds where it can confirm at the beginning of each session of use that the transmitter is in a rural area as evidenced by the following method, or via an alternate method deemed equivalent by the Bureau:
 - A. The transmitting unit must use real time GPS data to confirm that the device is in a rural county or census tract i.e., with a population density of 100 or fewer persons per square mile.
- 8) Midland must file a Petition for Rulemaking within 60 days from release of this Order seeking rule changes that would permit more flexible use of the band. The rulemaking petition should, at a minimum, request any and all rule changes that may be necessary for Midland's services to be provided over this spectrum.

V. ORDERING CLAUSES

15. 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

³⁹ Waiver Request at 9-10; Waiver Amendment at 7-8.; *see also* Garmin *Ex Parte* at 2 (supporting Midland's proposed conditions); Letter from Tony S. Lee, Counsel for Midland Radio Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 21-388 (filed July 18, 2023) (Midland July 18th *Ex Parte*).

Midland Radio Corporation Request for Waiver of sections 95.1731(d), 95.1787(a)(3)-(4), and 95.1767(a), is GRANTED, subject to the conditions described herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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

In the Matter of	)	
	)	
Southwestern Bell Telephone Company	)	Proceeding No. 22-357
d/b/a AT&T Texas,	)	Bureau ID No. EB-22-MD-004
	)	
Complainant,	)	
	)	
v.	)	
	)	
AEP Texas, Inc.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 26, 2023

Released: July 26, 2023

By the Chief, Enforcement Bureau:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND.....	2
A. Legal Framework	2
B. The Parties’ Joint Use Agreement	5
C. The Complaint	8
III. DISCUSSION	10
A. The JUA was “Newly-Renewed” on January 1st of Every Year Since 2011 and Is Thus Subject to Rules Adopted in the <i>2018 Order</i> for the Period Beginning January 1, 2020	11
B. AT&T Is Entitled to Relief Under Section 1.1413(b) As Revised in the <i>2018 Order</i>	12
C. AT&T Is Not Entitled to Relief Under the <i>2011 Order</i>	22
D. Calculating the Old Telecom Rate	27
E. AT&T’s Refund Request is Governed by a Four-Year Statute of Limitations.....	41
IV. ORDERING CLAUSES.....	50

I. INTRODUCTION

1. In recent years, the Federal Communications Commission (FCC or Commission) has acted to ensure that the rates, terms, and conditions under which incumbent local exchange carriers (LECs) attach their facilities to electric utility poles are “just and reasonable” under section 224 of the Communications Act of 1934, as amended (Act).¹ In this case, we grant in part a formal complaint filed

¹ See 47 U.S.C. § 224(b)(1); *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240 (2011), *aff’d*, *Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013) (*2011 Pole Attachment Order* or *2011 Order*); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Development*, WC Docket No. 17-84, Third Report and Order and Declaratory (continued....)

by Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T), an incumbent LEC, against AEP Texas, Inc. (AEP), an electric utility, in which AT&T alleges that the rates it pays to use AEP's poles are unjust and unreasonable under section 224 and the Commission's rules and orders.² After careful consideration of the record, we resolve several issues disputed by the parties to assist them in negotiating a just and reasonable pole attachment rate and calculating any refund that may be due consistent with this Order.³

II. BACKGROUND

A. Legal Framework

2. Section 224(b)(1) requires the Commission to “regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable.”⁴ Section 224(e) requires the Commission to establish a methodology to calculate the pole attachment rates to be paid by telecommunications carriers when parties fail to resolve rate disputes and specifies that such regulations ensure that the rates a utility charges are “just, reasonable, and nondiscriminatory.”⁵

(Continued from previous page)

Ruling, 33 FCC Rcd 7705 (2018) (*2018 Pole Attachment Order* or *2018 Order*), petition for review denied, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020); see also *Verizon Maryland LLC v. The Potomac Edison Co.*, Proceeding No. 19-355, Memorandum Opinion and Order, 35 FCC Rcd 13607 (2020) (*Verizon Maryland*); *Verizon Maryland LLC v. The Potomac Edison Co.*, Proceeding No. 19-355, Order on Reconsideration, FCC 22-26, 2022 WL 990572 (2022) (*Verizon Maryland Recon Order*); *BellSouth Telecomms., LLC v. Florida Power & Light Co.*, Proceeding No. 19-187, Memorandum Opinion and Order, 35 FCC Rcd 5321 (EB 2020) (*AT&T v. FPL I*); *BellSouth Telecomms., LLC v. Florida Power & Light Co.*, Proceeding No. 19-187, Memorandum Opinion and Order, 36 FCC Rcd 253 (EB 2021) (*AT&T v. FPL II*); *BellSouth Telecomms., LLC v. Florida Power & Light Co.*, Proceeding No. 19-187, Order on Review, FCC 22-45, 2022 WL 2104259 (2022) (*AT&T v. FPL Order on Review*); *BellSouth Telecomms., LLC v. Duke Energy Progress, LLC*, Proceeding No. 20-293, Memorandum Opinion and Order, 36 FCC Rcd 13684 (EB 2021) (*AT&T v. DEP*); *BellSouth Telecomms., LLC v. Duke Energy Progress, LLC*, Proceeding No. 20-293, Order on Reconsideration and Review, FCC 22-90, 2022 WL 17100973 (2022) (*AT&T v. DEP Recon Order*); *BellSouth Telecomms., LLC v. Duke Energy Florida, LLC*, Proceeding No. 20-276, Memorandum Opinion and Order, 36 FCC Rcd 18252 (EB 2021) (*AT&T v. DEF*).

² Pole Attachment Complaint of Southwestern Bell Telephone Company d/b/a AT&T Texas, Proceeding No. 22-357 (filed Oct. 4, 2022) (Complaint); see also AEP Texas Inc.'s Answer and Affirmative Defenses to AT&T's Pole Attachment Complaint, Proceeding No. 22-357 (filed Dec. 2, 2022) (Answer); AT&T's Reply to AEP Texas Inc.'s Answer, Proceeding No. 22-357 (filed Jan. 13, 2023) (Reply); AT&T's Reply Legal Analysis in Support of Pole Attachment Complaint, Proceeding No. 22-357 (filed Jan. 13, 2023) (Reply Legal Analysis); Joint Statement, Proceeding No. 22-357 (filed Jan. 31, 2023) (Joint Statement); Supplement to Joint Statement, Proceeding No. 22-357 (filed March 10, 2023) (Suppl. Joint Statement); AT&T Initial Supplemental Brief, Proceeding No. 22-357 (filed Mar. 31, 2023) (AT&T Initial Brief); AEP Texas Inc.'s Initial Supplemental Brief, Proceeding No. 22-357 (filed March 31, 2023) (AEP Initial Brief); AT&T Reply Supplemental Brief, Proceeding No. 22-357 (filed Apr. 7, 2023) (AT&T Reply Brief); AEP Texas Inc.'s Reply to AT&T's Initial Supplemental Brief, Proceeding No. 22-357 (filed Apr. 7, 2023) (AEP Reply Brief).

³ AEP concedes that Texas has not reverse-preempted the Commission's jurisdiction under 47 U.S.C. § 224(c), yet denies that Texas “lacks jurisdiction over this particular dispute.” Answer at 3, para. 5 & n.12 (citing general authority of Public Utilities Commission of Texas to regulate utilities and incumbent LECs within Texas). Because Texas has not certified to the Commission that it regulates the rates, terms, and conditions for pole attachments in that state, jurisdiction of this dispute remains with the Commission. See 47 U.S.C. § 224(c)(2), (c)(3).

⁴ 47 U.S.C. § 224(b)(1). We briefly summarize here section 224 and the Commission's pole attachment rules and orders as they relate to the rates that electric utilities may charge incumbent LECs, and we incorporate by reference the fuller description of this legal framework set forth in the Commission's *AT&T v. DEP Recon Order*. See *AT&T v. DEP Recon Order*, 2022 WL 17100973, at *2-3, paras. 2-8.

⁵ 47 U.S.C. § 224(e)(1).

3. In the *2011 Pole Attachment Order*, the Commission reexamined the pre-existing formula for calculating the maximum pole attachment rate to be paid by telecommunications carriers and adopted a revised rate (the New Telecom Rate) that is lower than the pre-existing rate (the Old Telecom Rate)⁶ and more closely approximates the rate that cable operators pay (the Cable Rate).⁷ The Commission also concluded that section 224(b) authorized it to regulate the rates, terms, and conditions of incumbent LEC pole attachments.⁸ In doing so, the Commission noted that incumbent LECs frequently obtain access to electric utility poles through joint use agreements, which differ from cable company and competitive LEC pole attachment agreements in that they are typically “structured as cost-sharing arrangements” and arguably provide incumbent LECs advantages not found in competitive LEC and cable company agreements.⁹ Thus, the Commission “question[ed] the need to second guess” such arrangements and opined that it would be “unlikely to find the rates, terms and conditions in existing joint use agreements unjust or unreasonable.”¹⁰ Noting that the record indicated that incumbent LECs and other utilities have the ability to terminate existing agreements and seek new arrangements, the Commission stated, however, that if an incumbent LEC demonstrated that it “genuinely lacks the ability to terminate an existing agreement [i.e., one entered into before the *2011 Order*] and obtain a new arrangement[.]” it could take such evidence into consideration in a complaint proceeding examining the rates, terms, and conditions in that agreement.¹¹

4. In the *2018 Pole Attachment Order*, the Commission cited evidence of declining levels of incumbent LEC pole ownership and rising incumbent LEC pole attachment rates while pole attachment rates for cable and telecommunications attachers were decreasing.¹² In view of these facts, the

⁶ See *2011 Order*, *supra* note 1, at 5244, para. 8. In the *2011 Order*, the Commission referred to the competitive LEC rate in effect prior to that order as the “pre-existing, high-end telecom rate.” See *id.*, at 5337, para. 218 & n.661. For ease of reference, we refer to that rate as the “Old Telecom Rate.” The New Telecom Rate, like the Old Telecom Rate, governs pole attachments by competitive LECs and by cable operators providing telecommunications services. 47 CFR § 1.1406(d)(2) (New Telecom Rate formula); 47 CFR § 1.1409(e)(2) (2010) (Old Telecom Rate formula).

⁷ *2011 Order*, *supra* note 1, at 5244, para. 8. The Cable Rate applies to pole attachments by cable operators providing cable services. See 47 U.S.C. § 224(d)(3); 47 CFR § 1.1406(d)(1). The Commission took further steps in 2015 to harmonize the Old Telecom Rate and the Cable Rate. See *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Order on Reconsideration, 30 FCC Rcd 13731 (2015) (*2015 Implementation Recon Order*); *Erratum*, FCC 15-151 (Feb. 8, 2016).

⁸ See *2011 Order*, *supra* note 1, at 5327-33, paras. 199-213; *Am. Elec. Power Serv. Corp. v. FCC*, *supra* note 1, at 188 (affirming the *2011 Order*’s conclusion that section 224(b) authorized it to regulate the rates, terms, and conditions of incumbent LECs); see also *AT&T v. DEP Recon Order*, *supra* note 1, at *2, para. 3 n.13.

⁹ See *2011 Order*, *supra* note 1, at 5334, 5335, 5337, paras. 216, 218 & nn.651, 654; see also *id.* at 5337, para. 218 (noting that the Old Telecom Rate is “a higher rate than the regulated rate available to telecommunications carriers and cable operators” and therefore “it helps account for particular arrangements that provide net advantages to incumbent LECs relative to cable operators or telecommunications carriers”). We use the term “competitive LEC” as a shorthand for the statutory term “telecommunications carrier,” defined in section 224(a)(5), which excludes incumbent LECs. We note that the definition of “telecommunications carrier” in section 224(a)(5) includes carriers other than competitive LECs (e.g., interexchange carriers and CMRS providers). The shorthand notation used here should not be construed as limiting the statutory rights available to all providers that qualify as telecommunications carriers under section 224(a)(5). See 47 U.S.C. § 224(a)(5).

¹⁰ *2011 Order*, *supra* note 1, at 5335, para. 216.

¹¹ *Id.* at 5335-36, para. 216 & n.655. See also *2018 Order*, *supra* note 1, at 7768, para. 124 & n.466 (the *2011 Order* “placed the burden on incumbent LECs to rebut the presumption that they are not similarly situated to an existing telecommunications attacher in order to obtain access on rates, terms, and conditions that are comparable to the existing telecommunications attacher”) (citing *2011 Order*, *supra* note 1, at 5336, para. 217).

¹² *2018 Order*, *supra* note 1, at 7769, para. 126; see also *id.* at 7767-69, paras. 123-26; *id.* at 7769, para. 125.

Commission determined that “for new and newly-renewed pole attachment agreements” between incumbent LECs and utilities,¹³ incumbent LECs are presumed to be “similarly situated” to “telecommunications attachers” and thus entitled to “comparable” rates that are no higher than the New Telecom Rate.¹⁴ The Commission held that a utility can rebut this presumption “with clear and convincing evidence that [an] incumbent LEC receives net benefits under its pole attachment agreement with the utility that materially advantage the incumbent LEC over other telecommunications attachers.”¹⁵ If a utility rebuts this presumption, the Commission designated the Old Telecom Rate as “the maximum rate that the utility and incumbent LEC may negotiate.”¹⁶ The 2018 Order made this rate a “hard cap” in order to “provide further certainty within the pole attachment marketplace” and “limit pole attachment litigation.”¹⁷

B. The Parties’ Joint Use Agreement

5. AT&T and AEP are parties to a joint use agreement (JUA) between Southwestern Bell Telephone Company and Central Power and Light Company that was executed in 1992 and amended in 2001 and 2005.¹⁸ The JUA, as amended, contains the rates, terms, and conditions for each party’s use of the other’s utility poles in parts of Texas.¹⁹

6. The 2001 Amendment extended the initial term of the JUA until December 31, 2008, and the 2005 Amendment further extended the JUA’s term until December 31, 2010.²⁰ Both Amendments specify that the JUA “shall automatically renew for successive one year terms” after the expiration of their respective terms “unless either Party provides advance written notice of its intention to terminate the [JUA] twelve months in advance of the proposed termination.”²¹ Neither party has provided written notice of termination.²²

¹³ *Id.* at 7769, para. 126. A “new or newly-renewed” agreement is “one entered into, renewed, or in evergreen status after the effective date of [the 2018 Order], and renewal includes agreements that are automatically renewed, extended, or placed in evergreen status.” *Id.* at 7770, para. 127 n.475.

¹⁴ *Id.* at 7769, para. 126 (establishing a rebuttable presumption that an incumbent LEC that is a party to a new or “newly-renewed” agreement is “similarly situated” to competitive LEC attachers and therefore entitled to the same rate (i.e., the New Telecom Rate)); *see also* 47 CFR § 1.1413(b). This presumption became effective on March 11, 2019. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 84 Fed. Reg. 2460, 2460 (Feb. 7, 2019) (establishing effective date of rate presumption rule revisions).

¹⁵ 2018 Order, *supra* note 1, at 7768, para. 123; *see also* 47 CFR § 1.1413(b).

¹⁶ 2018 Order, *supra* note 1, at 7771, para. 129; *see also* 2011 Order, *supra* note 1, at 5300, para. 141 (stating that the Old Telecom Rate formula serves as the “upper bound” of the range of reasonable rates).

¹⁷ 2018 Order, *supra* note 1, at 7771, para. 129.

¹⁸ *See* Complaint, Exh. 1 at ATT89-114 (“Agreement between Southwestern Bell Telephone Company and Central Power and Light Company for the Joint Use of Wood Poles”) (JUA); *id.*, Exh. 1 at ATT115-18 (“Master Addendum”) (JUA, 2001 Amendment); *id.*, Exh. 1 at ATT119-21 (“Second Master Addendum”) (JUA, 2005 Amendment) (collectively referred to herein as the JUA unless otherwise specified). *See also* Joint Statement at 2, paras. 3, 6. For the sake of brevity, we omit the leading zeros from all Bates-numbered pages cited herein.

¹⁹ *See, e.g.*, JUA at ATT91 (stating that the JUA “set[s] forth the mutual rights, duties and obligations concerning the joint use of wood poles”); *id.* at ATT89-121. Although AT&T and AEP are also parties to a joint use agreement covering a different area of Texas, that agreement is not at issue in this proceeding. Joint Statement at 2, para. 3.

²⁰ JUA, 2001 Amendment, § 1(a) at ATT116; JUA, 2005 Amendment, § 1(a) at ATT120.

²¹ *Id.*

²² Joint Statement at 3, para. 8.

7. At all times since 1992, the pole attachment rates specified in the JUA have been reciprocal, such that each party pays the same rate for the use of space on the other's poles irrespective of the actual amount of space that each party occupies.²³ The JUA also includes an annual rate escalator, which provides that, "during any renewal term" after 2008, the JUA rate {[REDACTED]} unless otherwise agreed by the parties.²⁴

C. The Complaint

8. AT&T challenges the lawfulness of the pole attachments rates AEP charges, claiming they exceed both the New and Old Telecom Rates.²⁵ AT&T argues that, under the rate presumption adopted in the *2018 Order* and the principle of competitive neutrality adopted in the *2011 Order*, the lawful rate for its attachments to AEP's poles is the New Telecom Rate.²⁶ AT&T asserts that the JUA does not provide material benefits not afforded other telecommunications carrier attachers, and that AEP thus cannot rebut the presumption in the *2018 Order*.²⁷ However, according to AT&T, should AEP prove the existence of a net material advantage over AT&T's competitors, it would be entitled to a rate no higher than the Old Telecom Rate.²⁸

9. Applying the New Telecom Rate formula to the 2018 through 2022 rental years (based on a four-year limitations period under Texas law), AT&T calculates that it is entitled to a refund of nearly \${{[REDACTED]}}.²⁹ If the Commission instead applies the Old Telecom Rate formula, AT&T calculates that it would be entitled to a refund of more than \${{[REDACTED]}} for overcharges over that same time period.³⁰ AT&T asks the Commission to (i) "set the just and reasonable rate that AEP may charge AT&T," (ii) "order AEP to charge AT&T no greater than that rate," and (iii) "order AEP to refund AT&T the amounts unlawfully collected during the [four-year] limitations period [] in Texas."³¹

III. DISCUSSION

10. As explained below, we conclude that the rates AT&T pays under the JUA to attach to AEP's poles are unjust and unreasonable. In reaching that conclusion, we find that (1) the JUA automatically renewed and extended on January 1, 2020, after the March 11, 2019 effective date of the

²³ See JUA, Art. XVII at ATT108; JUA, 2001 Amendment, § 1(b) at ATT116; JUA, 2005 Amendment, § 1(b) at ATT120; see also Complaint, Exh. D, Affidavit of Christian M. Dippon at ATT44, para. 11 (Dippon Complaint Aff.) ("regardless of which party attached facilities to the other's poles, [under the 1992 Agreement,] both parties paid the same [] per pole rate").

²⁴ JUA, 2001 Amendment, § 1(b) at ATT116; accord JUA, 2005 Amendment, § 1(b) at ATT120-21 (describing {{[REDACTED]}} rate escalator in effect after 2010). Material set off by double brackets {{[REDACTED]}} is confidential and is redacted from the public version of this document.

²⁵ Complaint at 6, 7, paras. 11-12. AT&T contends that, since 2018, the New Telecom Rate for the use of AEP's poles has averaged about \${{[REDACTED]}} per pole and the Old Telecom Rate has averaged about \${{[REDACTED]}} per pole, compared to the average JUA rate over that period of about \${{[REDACTED]}} per pole. Complaint at 6, para. 11 (citing Complaint, Exh. A, Affidavit of Daniel P. Rhinehart at ATT7-8, paras. 15, 20 (Rhinehart Complaint Aff.)).

²⁶ See, e.g., Complaint at 7-8, 20, paras. 13-15, 38.

²⁷ See *id.* at 8-9, 14-17, 20, paras. 16-17, 24-30, 38.

²⁸ See, e.g., *id.* at 21, para. 39.

²⁹ *Id.* at 20, para. 38 (citing Rhinehart Complaint Aff. at ATT7, ATT13-14, para. 14, Exh. R-1).

³⁰ *Id.* at 21, para. 39 & n.102 (citing Rhinehart Complaint Aff. at ATT11, ATT15, para. 21, Exh. R-2).

³¹ *Id.* at 2; see also *id.* at 21-22, paras. 40-44. AT&T also asks the Commission to (1) calculate the lawful rate to avoid further "protracted [rate] negotiations" between the parties following the release of this *Order*, and (2) require the parties to file a joint status report 30 days following release of this *Order* to ensure AEP's compliance with the *Order*. *Id.* at 2 n.6.

2018 Order, and the JUA rates are thus reviewable under the 2018 Order for the period starting January 1, 2020; (2) AT&T is entitled to a pole attachment rate that does not exceed the Old Telecom Rate as of January 1, 2020; and (3) any relief due AT&T in this case must be based solely on the standards and presumptions established in the 2018 Order and extend no earlier than January 1, 2020, as AT&T has not shown that it is entitled to relief under the 2011 Order for any period prior to that date.

A. The JUA was “Newly-Renewed” on January 1st of Every Year Since 2011 and Is Thus Subject to Rules Adopted in the 2018 Order for the Period Beginning January 1, 2020

11. We conclude that the JUA is reviewable under the framework of the 2018 Order because it was renewed after the 2018 Order’s March 11, 2019 effective date. The standards and presumptions established in section 1.1413(b) of the Commission’s rules, which governs incumbent LEC pole attachment complaints, apply to incumbent LEC agreements “entered into or renewed after the effective date of this section.”³² Although the term “renewed” is not defined in section 1.1413, the 2018 Order indicated that a “new or newly-renewed” agreement is “one entered into, renewed, or in evergreen status after the effective date of [the 2018 Order], and renewal includes agreements that are automatically renewed [or] extended.”³³ In this case, the 2001 Amendment to the JUA extended the term of the JUA to December 31, 2008, and the 2005 Amendment further extended its term to December 31, 2010.³⁴ The 2005 Amendment also specified that the JUA “shall automatically renew for successive one year terms thereafter [i.e., after December 31, 2010] unless either Party provides advance written notice of its intention to terminate the [JUA] twelve months in advance of the proposed termination.”³⁵ Thus, by its express terms, the JUA has automatically renewed and extended annually since January 1, 2011, including on January 1, 2020, marking the first automatic renewal after the 2018 Order effective date.³⁶ “Because automatic renewal and extension have occurred since the 2018 Order’s effective date, the JUA is ‘renewed’ within the meaning of section 1.1413(b) and the 2018 Order[.]”³⁷ and those authorities provide the relevant standard for reviewing the JUA as of January 1, 2020.³⁸

³² 47 CFR § 1.1413(b).

³³ 2018 Order, *supra* note 1, at 7770, para. 127 & n.475 (emphasis added).

³⁴ JUA, 2001 Amendment, § 1(a) at ATT116; JUA, 2005 Amendment, § 1(a) at ATT120.

³⁵ JUA, 2005 Amendment, § 1(a) at ATT120; *see also* JUA, 2001 Amendment, § 1(a) at ATT116 (stating that the JUA “shall automatically renew for successive one year terms thereafter [i.e., after December 31, 2008] unless either Party provides advance written notice of its intention to terminate the [JUA] twelve months in advance of the proposed termination”); JUA, Art. I.D at ATT91-92 (stating that “[The JUA] shall continue in force and effect from year to year [after the effective date] until terminated by either Party giving at least one year’s advance notice of termination in writing to the other Party”).

³⁶ *See* JUA, 2005 Amendment, § 1(a) at ATT119-121; *see also* Verizon Maryland, *supra* note 1, at 13613, para. 15 (where joint use agreement stated that it “shall continue in force” until terminated upon one year’s notice, agreement was determined to have been “automatically renewed and extended” after the 2018 Order effective date “because ‘continue’ and ‘extend’ are synonymous in this context”).

³⁷ *See* AT&T v. DEP, *supra* note 1, at 13689, para. 14; *see also* Verizon Maryland, *supra* note 1, at 13614, para.18.

³⁸ AEP concedes this point. *See* Answer at 18-19, para. 14 & n.47 (“AEP admits that [the JUA] likely would be considered a ‘newly-renewed agreement’ as of January 1, 2020, under the Commission’s current authority . . . [and] admits that, under the Commission’s current authority, the contractual rates for periods beginning January 1, 2020, are subject to review under the standard adopted in the [2018 Order.]”) (citing AT&T v. DEP Recon Order, *supra* note 1, at *5, para. 12). AEP nevertheless claims that “[i]f AT&T has a contractual right to remain attached to AEP’s poles” after termination of the JUA, then the JUA, at least with respect to “existing” attachments at the time of termination, “cannot be said to ‘renew’ given the absence of a right to terminate.” Answer at 18, para. 14 n.47. We need not address this argument because neither party has alleged that the JUA accords AT&T the right to keep
(continued....)

B. AT&T Is Entitled to Relief Under Section 1.1413(b) As Revised in the 2018 Order

12. Having determined that the JUA is subject to review under the 2018 Order and section 1.1413(b) from January 1, 2020, on, we consider whether AEP has met its burden to establish, by clear and convincing evidence, that AT&T “receives benefits under [the JUA] that materially advantage[] [it] over” competitive attachers on the same poles.³⁹ We find that AEP has met this burden, having demonstrated that the JUA provides AT&T a number of important benefits not accorded competitive attachers.⁴⁰ These benefits include the right to have AEP replace a pole under a 60-day deadline, along with a self-help right allowing AT&T to replace the pole itself if that deadline is not met; the right to occupy an unlimited amount of space on AEP’s poles for one rental fee; the absence of various fees imposed on competitive attachers; and payment of pole rents in arrears, rather than in advance. Each of these benefits is discussed below.

13. *Right to Pole Replacements.* The JUA requires AEP to replace a Joint Pole at AT&T’s request whenever a pole “is insufficient in height or strength,” for AT&T’s “existing attachments” or “proposed additional attachments.”⁴¹ The JUA requires AEP to make the requested “replacement” “within 60 days” after receiving AT&T’s notice seeking replacement,⁴² and it states that AT&T “shall have the right to do such work” if AEP fails to do it in 60 days.⁴³ Competitive attachers do not enjoy this important right to expand capacity. Indeed, their license agreements disclaim any right to a pole replacement, and specify that any right under the agreement to do self-help, make-ready work excludes pole replacements.⁴⁴ Additionally, the JUA permits AT&T to “replace a damaged or otherwise

(Continued from previous page)

its attachments on AEP’s poles following termination of the agreement. See *infra* note 95. In any event, as AEP admits, the Commission has squarely rejected the argument that renewal of a JUA is not possible where a party retains the right to keep its attachments on the other party’s poles following termination of the agreement. See Answer at 18-19, para. 14 n.47 (citing *AT&T v. DEP Recon Order*, *supra* note 1, at *5, para. 12).

³⁹ 47 CFR § 1.1413(b); see 2018 Order, *supra* note 1, at 7769-71, paras. 126-28. We use the shorthand term “competitive attachers” to refer to competitive LECs and cable operators, entities covered by section 224. 47 U.S.C. § 224.

⁴⁰ *Infra* paras.13-19; see also Answer at 14, 21-22, 23, 31-32, 48-49, 51, paras. 11 n.39, 16, 21, 27, 28; see also generally JUA; Answer, Exh. A, Declaration of Pamela F. Ellis (Ellis Answer Decl.); Complaint, Exh. 2, Pole Attachment License Agreement (AEP Model License Agreement); AEP Texas, Inc.’s Responses to AT&T’s First Set of Interrogatories, Exh. 2, Proceeding No. 22-357 (filed Nov. 10, 2022) (License Agreements).

⁴¹ JUA, Art. IV.B at ATT94. A “Joint Pole” is “a pole used by both Parties or a pole that has been reserved by either Party for joint use as provided [by the JUA].” *Id.*, Art. II.A at ATT92.

⁴² *Id.*, Art. IV.B at ATT94. See also Answer at 21, para. 16.

⁴³ *Id.*, Art. IV.C at ATT94.

⁴⁴ Answer at 21-22, para. 16; AEP Model License Agreement, § 7 at ATT127 (“Self-Help Make-Ready shall not be available for pole replacements”). *E.g.*, License Agreements at AEP1239 ({}), AEP380 ({}), AEP408 ({}), AEP408 (same), AEP492 (same), AEP514 (same), AEP898 (same); AEP Model License Agreement, § 1 at ATT125 (“Nothing in this Agreement shall be construed to compel Owner to construct, reconstruct, retain, extend, repair, place, replace or maintain any pole which, in Owner’s sole discretion, is not needed for its own purposes.”); see also, *e.g.*, License Agreements at AEP62, AEP112, AEP376, AEP894 ({}). See 2018 Order, *supra* note 1, at 7771, para. 128.

unserviceable” AEP pole in an emergency,⁴⁵ thereby protecting AT&T’s ability to provide service to its customers when service may be at its most vital. Competitive attachers have no comparable right.⁴⁶

14. AT&T does not deny that the JUA requires AEP to replace a Joint Pole at AT&T’s request when the pole has insufficient height or strength to accommodate AT&T’s existing or additional attachments.⁴⁷ AT&T asserts, however, that the 60-day timeframe⁴⁸ and the “self-help” remedy⁴⁹ in JUA Articles IV.B and IV.C apply only to work performed with respect to attachments, and it disputes AEP’s contention that these provisions also apply to pole replacements. We find AT&T’s construction of the relevant language unpersuasive and conclude that AEP has the more reasonable interpretation.⁵⁰ The structure and language of Article IV describes changes to attachments in terms of “placing,” “transferring,” and “rearranging” the attachments,⁵¹ whereas the terms “replace” or “replacement” are only used in reference to changing out an existing pole and putting a new one in its place.⁵²

15. When Article IV.B is reasonably read to require Joint Pole replacement within the 60-day timeframe, AT&T’s argument regarding the “self-help” remedy in Article IV.C necessarily fails. Article IV.C specifies that AEP’s failure “to timely perform any work as obligated under this Article”—which would include pole replacement work—triggers AT&T’s right to “do such work.”⁵³ Moreover, wholly

⁴⁵ JUA, Art. VII at ATT99.

⁴⁶ See generally AEP Model License Agreement; License Agreements.

⁴⁷ Reply at 33, para. 16; Reply Legal Analysis at 20.

⁴⁸ Reply at 33 (“Article IV.B of the JUA . . . states, in relevant part, that ‘*Replacement or changes to attachments* shall be made by the OWNER within 60 days following receipt of written notice.’”) AT&T therefore denies that ‘the JUA essentially requires AEP to replace poles (i.e., expand capacity) within 60 days as needed to accommodate AT&T’s needs’ because the provision does not include a deadline for pole replacements.”) (emphasis in original; close single quote added).

⁴⁹ Reply at 33-34 (“Instead, Article IV.C of the JUA limits the self-help remedy to ‘replacements or changes to attachments’ subject to the deadline in Article IV.B, stating that ‘[s]hould either Party fail to *timely* perform any work as *obligated* under this Article, the other Party shall have the right to do such work or have such work performed.’”) (emphases in original); Reply Legal Analysis at 20.

⁵⁰ Answer at 21-22, para. 16.

⁵¹ JUA, Art. IV.B at ATT94 (“requires transferring or rearrangement of OWNER’s attachments,” “ACTUAL COST incurred in connection with establishing joint use of existing poles including any necessary pole replacements, extensions and transferring or rearranging of attachments”). If the sentence at issue intended “replacement” to refer to attachments, it would most naturally be drafted to state “replacement of,” not as AT&T’s interpretation reads, “replacement to attachments.” *Id.* (“Replacement or changes to attachments shall be made by the OWNER within 60 days following receipt of written notice.”).

⁵² *Id.*, Art. IV.B at ATT94 (“OWNER, after receipt of written notice from the JOINT USER shall replace such pole” and “ACTUAL COST incurred in connection with establishing joint use of existing poles including any necessary pole replacements”). We also note that throughout the JUA, the term “replace” or “replacement” is used to describe action taken with reference to poles, not attachments on poles. See, e.g., JUA, Art. II.D at ATT92 (defining “EMERGENCY REPLACEMENT” as “any replacement of a JOINT POLE due to an immediate threat to service and/or safety”); *id.*, Art. VII at ATT98 (referring to owner’s obligation to “replace poles as they become defective,” to circumstances when “it is necessary to replace or change the location of a JOINT POLE” and when the joint user “requires that the replacement pole be placed in a specific location”); *id.*, Art. XV.B at ATT105-06, (referring to joint user requests “to replace an existing pole(s),” owner’s responsibility to “replace defective or deteriorated poles,” joint user’s option “to replace the pole(s) if permission is granted in writing” and the joint user’s right to bill the owner if it should “replace the pole(s)”).

⁵³ *Id.*, Art. IV.C at ATT94.

apart from the 60-day deadline and the self-help remedy, AT&T's right to require pole replacements is an important benefit under the JUA not enjoyed by competitive attachers.⁵⁴

16. *Access to unlimited pole space.* The JUA expressly allows AT&T "to reserve" an unlimited amount of space "on any existing [AEP] pole" by submitting a written application.⁵⁵ The application must "specify[] the location of the poles in question, the amount of space desired and the number and character of the attachments."⁵⁶ The JUA provides that AT&T "shall, following notice, have the right as provided herein to make attachments of the character specified in its application" unless AEP notifies AT&T that the poles in question are "excluded from joint use."⁵⁷ The JUA places no restriction on the number of attachments AT&T is allowed to make or the amount of space it may occupy on a pole.⁵⁸ And the rate AT&T pays per pole does not vary depending on the number of attachments or the amount of space they occupy.⁵⁹ Competitive attachers do not benefit from the same arrangement.⁶⁰

⁵⁴ See, e.g., AEP Model License Agreement, § 1 at ATT125; License Agreements at AEP62, AEP112, AEP376, AEP894 ({})).

⁵⁵ JUA, Art. IV.A at ATT93-94.

⁵⁶ *Id.*

⁵⁷ *Id.*, Art. IV.A at ATT94; *id.*, Art. I.B at ATT91 ("This Agreement shall apply to all wood poles of either Party now erected or to be erected during the term of this Agreement However, each Party reserves the right to exclude any of its wood poles from joint use as set out in this Agreement"). See *id.*, Art. V.A at ATT95-96 ("Whenever either Party requires an additional pole or poles, . . . the Party requiring such addition . . . shall promptly notify the other Party Within 30 days, the notified Party shall [state whether] it desires space on the said poles If space is requested, the constructing Party shall erect poles suitable for joint use . . . provided that the character and number of the attachments are such that the constructing Party does not consider joint use undesirable."). We note that the cited language from Art. I.B of the JUA is somewhat broader than similar provisions quoted in some prior cases. See, e.g., *AT&T v. DEP Recon Order*, *supra* note 1, at *16, para. 49 n.193 (JUA allowed a party to exclude from joint use poles that "should be restricted for reasons of safety or economy or its own use" and poles that "carry or are intended to carry, circuits or equipment" that make such poles "undesirable for proper rendering of its service."); see also Reply at 32-33, para. 16. We find, as we have in prior cases, that the reciprocal nature of the exclusionary provision at issue here makes it unlikely to be invoked by either party. *Verizon Maryland Recon Order*, *supra* note 1, at *2, para. 6 n.23 (In response to argument that JUA provision permits utility to exclude poles from joint use, Commission finds "possibility appears remote because the right to exclude poles from joint use is reciprocal, giving both parties an incentive not to interpret the right broadly"); *AT&T v. DEP Recon Order*, *supra* note 1, at *16, para. 49 n.193 (In response to argument that JUA provision permits utility to exclude poles from joint use, Commission finds the possibility "remote, given the reciprocal nature of the provision")

⁵⁸ See JUA, Art. IV.A at ATT93-94; *id.*, Art. V.B at ATT95-96; Answer at 31-32, 48-49, paras. 21, 27.

⁵⁹ See JUA, Art. XVII at ATT108-09; JUA, 2001 Amendment, § 1(b) at ATT116; JUA, 2005 Amendment, § 1(b) at ATT120; Answer at 48-49, para. 27; see Complaint at 9, para. 16 (acknowledging that the JUA does not allocate any specific amount of space to AT&T).

⁶⁰ See Answer at 49, para. 27 & n.120 (citing AEP Model License Agreement, § 17.B at ATT132 ("Licensee agrees to pay Owner an Annual Attachment Fee *per attachment* pursuant to 47 U.S.C. 224.")); AEP Model License Agreement, § 1 at ATT125 ("An Attachment shall be a single point of wireline contact utilizing no more than one foot of vertical space on each pole and no less than one vertical foot between any other Attachments."). E.g., License Agreements at AEP8, AEP13 (defining {})) and requiring {} and requiring {}); see also *id.* at AEP27, AEP 35 (defining {})) and establishing {}), AEP406, AEP413 (defining {})) and requiring {} (continued....)

Instead, they pay an additional amount when they place more than one attachment on a pole or place attachments that occupy more than one foot of space on the pole.⁶¹ AT&T hypothesizes that, if the Commission invalidates the flat rate AT&T currently pays under the JUA and grants AT&T's request to substitute the New Telecom Rate, AT&T's rate will be based on the space its facilities occupy, and AT&T will not be advantaged over competitive attachers.⁶² We are not persuaded. Under Commission precedent, analysis of a material advantage "is limited to a comparison of the contractual rights afforded the incumbent LEC and those afforded other relevant attachers."⁶³ We therefore consider the terms currently in the JUA, not terms that may exist in the future. Because the parties will be free to negotiate new JUA terms consistent with the rulings in this *Order*, we do not know whether the parties will strike a bargain that charges AT&T a rate that depends on the space it occupies rather than a flat rate per pole. Thus, AT&T's argument about future terms is speculative.⁶⁴ In sum, although the JUA does not allocate to AT&T a certain amount of space on every pole,⁶⁵ we find that AT&T's right to reserve an unlimited amount of space on AEP's poles is a benefit accorded AT&T but not its competitors.⁶⁶

17. *No Permitting-Related Fees.* The JUA requires AT&T to provide "written application" or written notice to AEP before attaching its facilities to AEP's poles,⁶⁷ but makes no mention of any fees related to the permitting process.⁶⁸ Indeed, AT&T admits that the JUA does not require AT&T to pay permitting-related fees to AEP.⁶⁹ By contrast, competitive attachers must pay, pursuant to their licenses, several permitting-related fees for work performed by AEP, which can include administrative application

(Continued from previous page)

 [REDACTED]), AEP871, AEP878 (same), AEP1045, AEP1046 (defining { [REDACTED]
 [REDACTED]
 [REDACTED] } and { [REDACTED]
 [REDACTED] })).

⁶¹ See *supra* note 60. AT&T argues that "[i]f AEP is charging AT&T's competitors per-foot or per-attachment rates that exceed the per-pole rate that results from the new telecom formula . . . [t]he solution is to correct the rates charged AT&T's competitors . . . not to charge AT&T more." Reply Legal Analysis at 21. The justness and reasonableness of the rates AEP charges competitive attachers under their individual licensing agreements is not at issue in this proceeding, and thus we do not address it here.

⁶² Reply Legal Analysis at 20-21; Reply at 53, para. 27; Reply, Exh. C, Reply Affidavit of Mark Peters at ATT317-18, para. 26 (Peters Reply Aff.).

⁶³ *AT&T v. DEP Recon Order*, *supra* note 1, at *16, para. 48 (citing *AT&T v. FPL Order on Review*, *supra* note 1, at *4, para. 12; *Verizon Maryland Recon Order*, *supra* note 1, at *2-3, paras. 6-8).

⁶⁴ Although we conclude in this *Order* that AT&T is entitled to a rate no greater than the Old Telecom Rate for the timeframe covered by the 2018 *Order*, *infra* para. 21, the parties are free to negotiate a rate that is lower than the Old Telecom Rate.

⁶⁵ Cf. *AT&T v. DEP Recon Order*, *supra* note 1, at *15-16, paras. 47-48; *AT&T v. FPL Order on Review*, *supra* note 1, at *4, paras. 11-12; *Verizon Maryland*, *supra* note 1, at 13615, para. 20.

⁶⁶ This benefit is similar, although not identical, to benefits that the Commission has found in other JUAs. See *AT&T v. DEP Recon Order*, *supra* note 1, at *16, para. 50 (JUA granted AT&T the right to use additional space on each pole at no additional expense, but utility charged other attachers for additional space); *Verizon Maryland*, *supra* note 1, at 13615, para. 20 (JUA allocated more space to Verizon than the utility made available to other attachers and required other attachers to pay to use additional space).

⁶⁷ See JUA, Art. IV, V at ATT93-95, ATT95-96; see also Answer at 23-24, para. 16 n.63; Ellis Answer Decl. at AEP1422, para. 49.

⁶⁸ See generally JUA; see also Answer at 51, para. 28 ("AT&T does not pay the costs associated with undergoing AEP's application process; rather, AEP absorbs those costs."); *id.* at 23, para. 16 n.63; Ellis Answer Decl. at AEP1422, para. 49; see also *id.* at AEP1420, para. 42.

⁶⁹ Reply Legal Analysis at 19.

review, survey, engineering analysis/make-ready work order generation, and post construction inspection fees.⁷⁰

18. Consistent with precedent, we find that AT&T benefits by avoiding permitting-related fees that its competitors pay.⁷¹ Despite the differences between the JUA and competitors' license agreements regarding permitting-related fees, AT&T argues that it bears the cost of performing the activities that generate such fees by engineering its own facilities, conducting its own field surveys, and performing its own post-installation inspections.⁷² Even if AT&T performs its own engineering, survey, and inspection work, we find that AT&T nevertheless benefits from less costly and more efficient facilities deployment.⁷³ As the Commission has observed, when the attacher is in control, the process

⁷⁰ Answer at 23, para. 16 n.63; *id.* at 51, para. 28; Ellis Answer Decl. at AEP1422-23, paras. 49-50; AEP Texas Inc.'s Supplemental Responses to AT&T's First Set of Interrogatories, Proceeding No. 22-357, at 2-3 (filed Jan. 24, 2023); *see also id.* at Exh. 2 (extract from AEP contract with its permitting contractor showing charges for permitting-related costs that are passed through to licensees deploying new attachments on AEP's poles); *see also, e.g.*, AEP Model License Agreement, § 4.C at ATT127 ("Licensee shall remain responsible for the Total Cost of all projects initiated by Owner as the result of a Licensee Proposal . . . Licensee shall be responsible for all engineering, inspection . . . work undertaken by Owner on Owner's poles"), § 11 at ATT129 ("Owner may conduct at Licensee's expense a post-construction inspection of all new Attachment installations or modifications of existing Attachments"), § 17.A at ATT132 (requiring licensees to "reimburse Owner for the Total Cost of all non-recurring expenses incurred by Owner, which are caused by or attributable to Licensee's Attachments"); License Agreements at AEP377 ({[REDACTED]}), AEP123, AEP386 ({[REDACTED]}), AEP484 ({[REDACTED]}), AEP873 ({[REDACTED]}), AEP955 ({[REDACTED]}). Because the license agreements impose an obligation to pay permitting related fees, we reject AT&T's assertion that "[i]f anyone pays the fees" that AEP has identified "it is not because they are required by . . . AEP's license agreements." Reply Legal Analysis at 19; Reply at 55, para. 28. The fact that specific fees and their amounts are not set forth in the license agreements themselves does not persuade us that licensees have no contractual obligation to pay them.

⁷¹ *See AT&T v. DEP Recon Order*, *supra* note 1, at *17, para. 52; *Verizon Maryland*, *supra* note 1, at 13616, para. 20; *AT&T v. DEF*, *supra* note 1, at 18265-66, para. 29.

⁷² Reply at 55-57, para. 28; Reply Legal Analysis at 18-19; Peters Reply Aff. at ATT323-25, paras. 36, 38-41; AT&T Initial Brief at 5-7. Although AT&T asserts that it does its own installation and maintenance work, it acknowledges that competitive attachers likewise perform their own installation and maintenance work under their license agreements. Complaint at 15-16, para. 28; Reply at 56, para. 28; Reply Legal Analysis at 18. AT&T further notes that when it requires replacement of an AEP owned pole or a rearrangement of AEP's facilities, AT&T reimburses AEP for the cost of that work. Reply Legal Analysis at 19; Peters Reply Aff. at ATT325-26, paras. 40-41; JUA, Art. IV.B at ATT94. Competitive attachers also pay the cost of rearranging AEP's facilities when necessary to accommodate their attachments, *e.g.*, License Agreements at AEP10, AEP28, AEP65, AEP114, AEP170, AEP233, AEP378-79, and the cost of an AEP pole replacement, where AEP has agreed to replace a pole at the attacher's request. *Id.* at AEP10, AEP28, AEP63, AEP64, AEP168, AEP169, AEP230, AEP232, AEP954.

⁷³ AT&T contends that the self-help provisions in the JUA are comparable to the one-touch make-ready and self-help provisions in AEP's license agreements with competitive attachers. Reply at 57, para. 28; Complaint at 15-16, para. 28. AT&T, however, retains a material advantage over competitive attachers regarding permitting-related work. For example, AT&T admittedly conducts its own surveys from the outset, but competitors are only accorded that right under limited circumstances, *e.g.*, where AEP decides to forgo the engineering review or fails to complete it within a specified period. *Compare* Reply Legal Analysis at 18-19; Reply at 55-57, para. 28 *with* AEP Model License Agreement, § 6 at ATT127 ("If owner fails to conduct its engineering review within the statutorily allotted time frame, then Licensee may hire a contractor to complete a survey."); License Agreements at AEP83 ({[REDACTED]}).

(continued....)

almost certainly takes less time and costs less money.⁷⁴ The deployment process is further enhanced by AT&T's right, as noted above, to obtain needed pole replacements in 60 days, along with a self-help remedy where that deadline is not met.⁷⁵ We find that AT&T thus enjoys the benefit of largely controlling the pole attachment process.

19. *Billing in Arrears.* The JUA permits AT&T to pay its pole rental payments in arrears,⁷⁶ but other attachers to AEP's poles must pay in advance.⁷⁷ AT&T does not dispute these facts. Thus, consistent with Commission precedent,⁷⁸ we find that the JUA's billing provision allows AT&T to benefit from the time value of money and thereby accords a material advantage not provided to its competitors.

20. *Other Arguments.* AEP claims that the JUA affords AT&T a number of additional material benefits that competitive attachers do not enjoy. We find that AEP has failed to establish these benefits by clear and convincing evidence for the reasons discussed below.

Lowest Position on the Pole. The JUA contains no provision that reserves "a particular location on the pole for AT&T,"⁷⁹ as AEP acknowledges.⁸⁰ AEP nevertheless asserts that AT&T benefits

(Continued from previous page)

_____)], AEP407 (same), AEP491 (same), AEP513 (same), AEP721 (same), AEP378 (_____

_____)]; AEP896 (same). As the Commission has recognized, placing the
attacher in control of the surveys, notices and make-ready work is faster and cheaper. *See AT&T v. FPL Order on Review*, *supra* note 1, at *6, para. 17 (citing *AT&T v. FPL I*, *supra* note 1, at 5328, para. 14 n.56); *2018 Order*, *supra* note 1, at 7711-19, paras. 11-24.

⁷⁴ *AT&T v. DEP Recon Order*, *supra* note 1, at *17, para. 52 (citing *AT&T v. FPL Order on Review*, *supra* note 1, at *6, para. 17 and *2018 Order*, *supra* note 1, at 7711-19, paras. 13-24); *AT&T v. FPL I*, *supra* note 1, at 5328, para. 14 n.56.

⁷⁵ *Supra* paras. 13-15.

⁷⁶ Answer at 14, para. 11 n.39; JUA, Art. XVII at ATT109 (requiring each Party to issue a bill by January 30 each year for poles occupied or reserved by the other Party during the prior calendar year).

⁷⁷ *E.g.*, License Agreements at AEP13, AEP67, AEP89, AEP123, AEP235, AEP413, AEP455, AEP957.

⁷⁸ *AT&T v. FPL Order on Review*, *supra* note 1, at *6, para. 19; *Verizon Maryland*, *supra* note 1, at 13616, para. 20. AT&T, however, claims that its ability to pay in arrears is not a "net advantage." Reply at 25-26, para. 11; Reply Legal Analysis at 23 ("If AT&T and its competitors paid the same just and reasonable rate . . . , AEP would pay a proportional rate for use of AT&T's poles 'such as the same rate per foot of occupied space.' In this scenario, AEP's rates for use of AT&T's poles would necessarily be higher than AT&T's rate, given AEP's greater pole space needs. And, with a greater payment obligation, AEP stands to gain far more from paying in arrears than AT&T does The payment accommodation AT&T would provide AEP would offset any timing difference between AT&T and its competitors.") (citations omitted); Reply, Exh. D, Reply Affidavit of Christian M. Dippon at ATT379-380, para. 94 (Dippon Reply Aff.). AT&T's argument is irrelevant to the current discussion of material benefits, which focuses on comparing the JUA with competitors' license agreements, and in any event, is speculative.

⁷⁹ Complaint at 8-9, para. 16; Complaint, Exh. C, Affidavit of Mark Peters at ATT35-36, para. 17 (Peters Complaint Aff.) (referencing Exhibit 10, which shows "AT&T's facilities are not always the lowest facilities on AEP's poles"). The Commission has previously found that a preferential location on the pole is a net benefit. *2018 Order*, *supra* note 1, at 7771, para. 128; *AT&T v. FPL Order on Review*, *supra* note 1, at *5, para. 14.

⁸⁰ Answer at 23, para. 16 ("the 1992 Agreement itself does not expressly reserve the lowest position on the pole to AT&T"); *id.* at 22, para. 16 ("the 1992 Agreement contains no express space allocation").

from a “long-standing practice” of reserving the lowest position on a pole for AT&T.⁸¹ As stated above, analysis of a material advantage “is limited to a comparison of the contractual rights afforded the incumbent LEC and those afforded other relevant attachers.”⁸² Here, it is undisputed that the JUA does not reserve a particular location on the pole to AT&T, much less the lowest position. For these reasons, we cannot find that the JUA grants AT&T a benefit relating to the lowest position on AEP’s poles.⁸³

Built to Suit Network. AEP asserts that the JUA, and a prior agreement executed in 1934, caused AEP to build a network of taller and stronger poles than was necessary for its facilities.⁸⁴ According to AEP, in a hypothetical world where the JUA and the prior agreement did not exist, AEP would have built shorter poles and, if AT&T had later requested access to AEP’s poles, AT&T would have had to pay for the cost of replacing AEP’s existing poles.⁸⁵ AEP therefore maintains that the JUA provides AT&T with the additional benefit of avoided network deployment costs.⁸⁶ The Commission has rejected similar arguments in prior orders,⁸⁷ and we do so here.⁸⁸ First, as the Commission has observed, the height of the utility’s poles “is not a

⁸¹ *Id.* at 23, 31-32, paras. 16, 21; *see id.* at 32, para. 21 n.76 (citing Answer, Exh. 6, BellSouth Telecommunications, LLC d/b/a AT&T Kentucky General Subscriber Services Tariff, Section A5.13 AT&T’s Stand-Alone Structure Access Agreement for Poles, Ducts, Conduits, and Rights-of-Ways, at AEP1373, which states that “generally” parties attaching to AT&T’s poles will be attached above AT&T facilities); Ellis Answer Decl. at AEP1420-22, paras. 44-48; *id.* at para. 45 (referencing AEP313-15, { [REDACTED] }).

⁸² *Supra* para. 16 (citing *AT&T v. DEP Recon Order*, *supra* note 1, at *16, para. 48 (citing *AT&T v. FPL Order on Review*, *supra* note 1, at *4, para. 12; *Verizon Maryland Recon Order*, *supra* note 1, at *2-3, paras. 6-8)).

⁸³ Further, as discussed *infra* note 125, the record shows that in some instances attachments are in fact placed below AT&T’s facilities on AEP’s poles. This evidence undermines AEP’s claim that AT&T is entitled to occupy the lowest position on AEP’s poles.

⁸⁴ *See* Answer at 52-53, para. 29 & n.134; Ellis Answer Decl. at AEP1417-18, paras. 35-37. AEP also points to AT&T’s alleged right to “notice and the opportunity to ‘opt in’ to joint use” when AEP replaces existing poles, extends poles or constructs new pole lines as additional evidence of its build to suit network argument. Answer at 52, para. 29. *See also* Answer, Exh. D, Declaration of Christopher Tierney at AEP1581, paras. 20, 23 (Tierney Answer Decl.).

⁸⁵ *See* Answer at 52-53, para. 29 & n.134; *see* Ellis Answer Decl. at AEP1417-19, paras. 35-40; Tierney Answer Decl. at AEP1581, paras. 20, 23.

⁸⁶ Answer at 52-53, para. 29; *see also* Ellis Answer Decl. at AEP1417-19, paras. 35-41 (AEP installed poles taller than it otherwise would due to JUA and (prior JUA executed in 1934), and thus, AT&T avoided the cost of replacing all of the shorter poles AEP would have otherwise installed without the JUA; competitive LECs and cable attachers, on the other hand, “take AEP’s network as they find it”); Tierney Answer Decl. at AEP1578, para. 11 (“The only reason it would make sense for AEP Texas to incur costs of a more expensive network is if it had a basis for recovering the costs, such as the JUA. In the absence of a joint use agreement, had AT&T later requested access to AEP Texas’s poles, AT&T would have had to pay for the cost of replacing AEP Texas’s existing poles . . .”), AEP1580-86, paras. 19-38 (quantifying avoided costs due to JUA); Answer, Exh. C, Declaration of William Ross McCorcle, at AEP1559-60, paras. 9, 11, 12 (McCorcle Answer Decl.).

⁸⁷ *See, e.g., AT&T v. DEP Recon Order*, *supra* note 1, at *10, para. 31 (affirming Bureau’s rejection of pole owner’s “effort to justify an inflated rate based on the cost of a duplicative network that does not, and likely never would, exist”); *AT&T v. DEF*, *supra* note 1, at 18273-74, para. 42 & n.152 (citing *AT&T v. FPL I*, *supra* note 1, at 5330, para. 15).

⁸⁸ AEP acknowledges that the Commission has rejected its theory of avoided network costs in prior cases but contends those decisions are “legally or factually incorrect.” Answer at 52-53, para. 29. AEP’s disagreement with Commission precedent is not a reason to reach a different conclusion.

competitive advantage for AT&T, as AT&T's competitors also require space on [the utility's] joint use poles and have for decades."⁸⁹ Second, the Commission has rejected attempts to "justify a higher rate based on [an incumbent LEC's] historical status as the first attacher on [a utility's] poles, rather than on specific, advantageous terms in the JUA."⁹⁰ Third, the testimony AEP cites in support of its "built to suit" theory is speculative and unpersuasive.⁹¹

The Rate AEP Pays AT&T. AEP maintains that AT&T receives a benefit denied competitive attachers because the pole attachment rate AEP has paid AT&T under the JUA has averaged {[REDACTED]} of AT&T's annual pole cost.⁹² But the central question here is whether AT&T, as an attacher to AEP's poles, has a material advantage over other attachers on AEP poles. If it does, the Old Telecom Rate is the maximum rate AEP can charge AT&T under the *2018 Order*.⁹³ The rate AEP pays AT&T under the JUA for attachments to AT&T poles is not relevant to the question of whether the JUA provides AT&T a material advantage over other attachers on AEP's poles.⁹⁴

21. In sum, although we do not accept every "benefit" that AEP alleges, we conclude, on balance, that AEP has demonstrated, by clear and convincing evidence, that the JUA collectively provides AT&T with a variety of unique benefits that materially advantage AT&T over competitive attachers on the same poles.⁹⁵ Accordingly, we find that AT&T is entitled to a rate no greater than the Old Telecom Rate for the timeframe covered by the *2018 Order*.

⁸⁹ *AT&T v. DEP Recon Order*, *supra* note 1, at *10, para. 32.

⁹⁰ *Id.* at *10, n.114; *see also Verizon Maryland*, *supra* note 1, at 13620, para. 32 (rejecting alleged benefits that "relate to the date the JUA was entered into and not to any specific terms and conditions in the JUA"). Notably, AEP acknowledges that approximately 60 percent of the joint use poles were already in place when the parties entered into the JUA in 1992. Ellis Answer Decl. at AEP1412, para. 16.

⁹¹ *See* Ellis Answer Decl. at AEP1418, para. 35 ("If AEP had constructed its network in the absence of the 1934 and 1992 Agreements, AEP would have built a network to suit only its own service needs—i.e., AEP's pole network would have been built with shorter poles."); McCordle Answer Decl. at AEP1559, para. 9 ("Because of AEP's joint use agreements with AT&T, AEP's pole network consists of poles that are 5 to 10 feet taller than necessary to install electric service facilities only."). Here, as in *AT&T v. DEP*, the declarants cited by AEP did not establish that they had any role in determining the height of the utility's poles at the time the parties entered the JUA, or that they had examined any company records documenting the utility's decision-making concerning the height of its poles at that time. *See AT&T v. DEP Recon Order*, *supra* note 1, at *11, para. 33. Nor did AEP provide "information regarding the height of the poles in the parties' overlapping service area before and immediately after the parties entered into a joint use relationship" or "data on the height of [the utility's] poles not jointly used by AT&T." *Id.*

⁹² Answer at i, 15-16, 17, 29-30, 54, paras. 12, 13, 17, 20, 30. AEP further argues that, when pole attachment payments from competitive LEC and cable attachers to AT&T for attachment to AT&T's poles are included, AT&T enjoys {[REDACTED]} on its own poles. *Id.* at 29, para. 20.

⁹³ *See 2018 Order*, *supra* note 1, at 7771, para. 129.

⁹⁴ *See AT&T v. DEP Recon Order*, *supra* note 1, at *8, para. 24 n.88 (the relevant comparison is between AT&T and other attachers, and not between AT&T and DEP in terms of how much each contributes to each other's pole costs).

⁹⁵ We note that AEP attached an expert declaration to its Answer suggesting that the JUA permits AT&T to keep attachments on AEP poles upon termination, which would be an additional advantage to AT&T. Tierney Answer Decl. at AEP1577, AEP1580, paras. 9, 18. Because AEP did not allege in its Answer that the JUA accords this right, we do not find that AEP has met its burden to plead and present facts and legal analysis in support of such an advantage. *See 2018 Order*, *supra* note 1, at 7768, para. 123; *see also* 47 CFR §§ 1.1413(b), 1.726(b), 1.721(b), (d).

C. AT&T Is Not Entitled to Relief Under the 2011 Order

22. As discussed above, AT&T is entitled to review under the *2018 Order* as of January 1, 2020, because the JUA renewed and extended on that date.⁹⁶ AT&T also seeks review under the *2011 Order* of the JUA rates it paid before January 1, 2020 based on the claim that AT&T was unable to terminate the JUA and obtain a new arrangement.⁹⁷ As we explain below, we conclude that AT&T has failed to show that it is entitled to review, and thus relief, under the *2011 Order*.

23. The *2011 Order* states that if an incumbent LEC that is a party to an “existing” joint use agreement can demonstrate that it lacks the ability to terminate an agreement and negotiate a new arrangement, “the Commission can consider that as appropriate in a [pole attachment] complaint proceeding.”⁹⁸ In the *AT&T v. DEP Recon Order*, the Commission interpreted the *2018 Order* to provide that “the *2011 Order*’s ‘guidance regarding review of incumbent LEC pole attachment complaints will continue to apply’ to existing agreements[.]” consistent with the relevant statute of limitations, “*pending renewal of those agreements*.”⁹⁹ Thus, review of an existing joint use agreement under the *2011 Order* is available until the agreement is renewed and thereby becomes subject to review under the *2018 Order*.¹⁰⁰

24. For AT&T to obtain review under the *2011 Order*, it must have initiated negotiations with AEP when the “existing” JUA was subject to review under the *2011 Order*—i.e., “pending” the JUA’s January 1, 2020 renewal. But the undisputed facts show that AT&T first sought renegotiation of the JUA rates on June 9, 2021,¹⁰¹ more than 17 months after the JUA renewed on January 1, 2020.¹⁰² By

⁹⁶ See *supra* Part III.A (finding that the JUA automatically renewed and extended, within the meaning of rule 1.1413(b) and the *2018 Order*, on January 1st each year, and that the *2018 Order* provides the relevant standard for reviewing the JUA as of January 1, 2020, the date of the first automatic renewal after the *2018 Order*’s March 11, 2019 effective date).

⁹⁷ Complaint at 10, 12-14, paras. 19, 22-23; see also Reply at 16, para. 8 & n.66 (citing *AT&T v. DEP Recon Order*, *supra* note 1, at *7, para. 18) (quoting *2011 Order*, *supra* note 1, at 5335-36, para. 216)). Although AT&T briefly lists factors that it contends establish its inability to terminate the JUA and obtain a new rate, we do not address this argument in light of our determination that the *2011 Order* does not apply to the JUA for any period at issue in this case. See Complaint at 12-14, paras. 22-23.

⁹⁸ *2011 Order*, *supra* note 1, at 5335-36, para. 216. An “existing agreement” is one entered into before the *2011 Order*. *Id.*

⁹⁹ *AT&T v. DEP Recon Order*, *supra* note 1, at *7, para. 20 (quoting *2018 Order*, *supra* note 1, at 7770, para. 127 & n.478) (emphasis added).

¹⁰⁰ See, e.g., *2018 Order*, *supra* note 1, at 7770, para. 127 & n.478; *AT&T v. DEP Recon Order*, *supra* note 1, at *7, para. 20 (internal citation omitted); *Verizon Maryland*, *supra* note 1, at 13616, para. 22 n.70 (internal citation omitted); see also *AT&T v. DEP*, *supra* note 1, at 13687-88, paras. 9-10; *id.* at 13701, para. 37 n.114 (where incumbent LEC initiated rate negotiations with electric utility seven months *prior* to renewal date of parties’ joint use agreement under *2018 Order*, incumbent LEC was entitled to review under *2011 Order* for pre-renewal period); *Verizon Maryland*, *supra* note 1, at 13612, 13616-20, paras. 14, 22-32 (incumbent LEC entitled to *2011 Order* review for pre-renewal period where negotiations commenced more than a year prior to renewal date under *2018 Order*); *AT&T v. FPL I*, *supra* note 1, at 5325-27, paras. 10-12 & n.37 (parties’ relationship governed by *2011 Order* standards where the parties’ negotiations commenced in August 2018 and the rate period in question began July 1, 2014, and ended December 31, 2018).

¹⁰¹ See Complaint, Exh. 4, June 2021 Letter at ATT146-48; Complaint at 13, para. 23 & n.59. Although AT&T states that AT&T and AEP “discussed the possibility of a global pole attachment rental rate settlement between all AEP-affiliated and AT&T-affiliated companies” at an unspecified time in 2020, AT&T concedes that it did not request “executive-level negotiations specific to the JUA” until June 2021. See Reply at 7, para. 6. And even if these 2020 discussions had encompassed the JUA, they could not trigger review under the *2011 Order* because they occurred after January 1, 2020, when the JUA was subject to review under the *2018 Order*.

¹⁰² See, e.g., Complaint at 7-8, para. 14; Answer at 18-19, para. 14.

that time, the JUA was no longer reviewable under the *2011 Order* because, upon renewal on January 1, 2020, it became subject to review under the *2018 Order*. AT&T's assertion that it is entitled to review under the *2011 Order* rests on the hypothetical and speculative proposition that it *would have* failed to obtain a new arrangement *if* it had tried to obtain one prior to January 1, 2020. Because AT&T never made that attempt when the JUA was subject to review under the *2011 Order*, AT&T cannot rely on its asserted inability to renegotiate the JUA with AEP to obtain relief under the *2011 Order* here.¹⁰³

25. We reject AT&T's assertion that it was not required to initiate negotiations "'during any period governed by the [2011 Order]'" in order to obtain relief under the *2011 Order*.¹⁰⁴ AT&T relies on the Commission's statement in the *AT&T v. DEP Recon Order* that "[n]othing in the Commission's rules or orders required AT&T to request negotiations prior to the effective date of the *2018 Order* in order to secure review of the JUA rates under the *2011 Order*."¹⁰⁵ But the facts of that case are materially different from the facts here. The complainant in *AT&T v. DEP* initiated negotiations after the effective date of the *2018 Order*, but approximately seven months *before* its JUA was renewed and became subject to review under the *2018 Order*. Thus, when the complainant in *AT&T v. DEP* initiated negotiations with the utility, its JUA was subject to review under the *2011 Order*.¹⁰⁶ Here, by contrast, AT&T initiated negotiations with AEP 17 months after the JUA renewed and became subject to the *2018 Order*.¹⁰⁷ Accordingly, the cited language from the *AT&T v. DEP Recon Order* does not support AT&T's claim that it is entitled to relief under the *2011 Order* despite having failed to initiate negotiations before the JUA renewed on January 1, 2020.

26. We therefore conclude that any relief due AT&T in this case must be based solely on the *2018 Order*, and may extend no earlier than January 1, 2020.¹⁰⁸ By that time, the JUA was no longer reviewable under the *2011 Order* because, upon renewal on January 1, 2020, it became subject to review under the standards of the *2018 Order*.

D. Calculating the Old Telecom Rate

27. The parties dispute two inputs to the Old Telecom Rate: (1) how much space AT&T occupies on AEP's poles, and (2) how many attachers are on the poles. We resolve the disputes below.¹⁰⁹

¹⁰³ We reach no conclusions as to whether AT&T lacked the ability to terminate the JUA and obtain a new arrangement, as required to secure review under the *2011 Order*, see Complaint at 12-14, paras. 22-23, given that the parties' negotiations commenced after the *2011 Order* ceased to govern the parties' relationship in this case. See *2011 Order*, *supra* note 1, at 5335-36, para. 216 (stating that the Commission can consider, "as appropriate," whether an incumbent LEC "genuinely" lacks the ability to terminate an agreement and obtain a new arrangement under the *2011 Order*).

¹⁰⁴ Reply at 47, para. 22 (quoting *AT&T v. DEP Recon Order*, *supra* note 1, at *7, para. 20) (italics added). See Reply at 61, para. 31 (asserting that the date when it first sought to negotiate a new arrangement with AEP is not "relevant for purposes of awarding relief").

¹⁰⁵ Reply at 47, para. 22 (quoting *AT&T v. DEP Recon Order*, *supra* note 1, at *7, para. 20) (italics added).

¹⁰⁶ See *AT&T v. DEP Recon Order*, *supra* note 1, at *4, *13, paras. 10, 41.

¹⁰⁷ Of course, if the JUA had never become subject to the *2018 Order*, the JUA would have continued to be reviewable under the *2011 Order*.

¹⁰⁸ Accordingly, any refund due AT&T under the *2018 Order* will extend back approximately 33 months (i.e., from January 1, 2020 until the filing of the Complaint on October 4, 2022). This result is consistent with the Commission's decision declining to allow refunds under the *2018 Order* to extend as far back as the statute of limitations to the extent that period pre-dates renewal of an existing agreement. *2018 Order*, *supra* note 1, at 7770, para. 127 n.478 (internal citation omitted).

¹⁰⁹ AT&T contends that it has rebutted the presumption of 37.5 feet for the pole height input in section 1.1410 and claims the correct input for the height of AEP's poles is { [REDACTED] } feet. AT&T Initial Brief at 12-13; Suppl. Joint (continued....)

28. *Space Occupied by AT&T.* Calculating the Old Telecom Rate requires a determination of the amount of space attachments occupy on an owner's poles.¹¹⁰ To avoid excessive cost and burden, the Commission has established a rebuttable presumption that an attachment occupies one foot of space on the poles.¹¹¹ Either party may rebut this presumption by "probative direct evidence,"¹¹² which may include, "[w]here the number of poles is too large, and/or complete inspection impractical ... a statistically sound survey."¹¹³

29. AEP proposes three different figures for the space AT&T occupies on its poles.¹¹⁴ Initially, AEP claims that the actual space AT&T occupies on its poles is either { [REDACTED] } or { [REDACTED] } feet.¹¹⁵ AEP arrives at the { [REDACTED] } figure by allocating the 3.33 feet of safety space on the pole and adding { [REDACTED] } feet, which AEP asserts is the average amount of space AT&T's attachments actually occupy on its poles.¹¹⁶ The { [REDACTED] } figure is based on a survey AEP commissioned (November 2022 Survey) "for the purpose of determining the height of AT&T's attachments."¹¹⁷ That survey data purports

(Continued from previous page)

Statement, Exh. A, Supplemental Affidavit of Daniel P. Rhinehart at ATT398-99, paras. 28-29 (Rhinehart Suppl. Joint Statement Aff.); *see also* 47 CFR § 1.1410. AEP suggests that it is open to using AT&T's proposed input. AEP Reply Brief at 5. Thus, we do not believe there is a dispute about the pole height input that we need to address at this time. AT&T requests that we "set the just and reasonable rate" it should pay AEP. Complaint at 21, 23, paras. 41, 42; *id.* at 2 n.6. As the parties will need to negotiate additional matters, including the rate AEP will pay for attaching to AT&T's poles, we resolve the proper rate formula to be used and the rate inputs that are in dispute.

¹¹⁰ 47 CFR § 1.1409(e)(2) (2010) (calculating preexisting telecom rates based on "Space Occupied").

¹¹¹ 47 CFR § 1.1410 (providing that "the space occupied by an attachment is presumed to be one foot" and this presumption "may be rebutted by either party").

¹¹² *AT&T v. FPL Order on Review*, *supra* note 1, at *7, para. 21 (noting that the one-foot space occupied presumption may be rebutted by "probative direct evidence"); *see also Teleport Commc'ns Atlanta, Inc. v. Georgia Power Co.*, Order on Review, 17 FCC Rcd 19859, 19866, para. 19 n.41 (2002) (*Teleport v. Georgia Power*) ("A party may always choose to present probative direct evidence regarding an acceptable alternative to a presumption in order to reflect its unique circumstances."); *AT&T v. DEP Recon Order*, *supra* note 1, at *18, para. 55 (noting that the presumptive number of attachers in the Old Telecom Rate may be rebutted by "probative direct evidence"); *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, CC Docket No. 86-212, Report and Order, 2 FCC Rcd 4387, 4394, para. 52 n.27 (1987).

¹¹³ *Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12135, para. 63 (2001) (*2001 Order on Reconsideration*); *AT&T v. FPL II*, *supra* note 1, at 258-59, 260, paras. 17, 21.

¹¹⁴ AEP specifically alleges that AT&T occupies { [REDACTED] } feet of space on its poles. Answer at 58, para. 31; *id.* at 6, 14-15, 22-23, 31-32, 43, 49, 58, 64-65, paras. 7, 11, 16, 21, 23, 27, 31, 39; Ellis Answer Decl. at AEP1412-15, paras. 15-25; Suppl. Joint Statement at 5-7, paras. 10-13; Suppl. Joint Statement, Exh. A, Supplemental Declaration of Pamela F. Ellis, at AEP2929-31, paras. 13-20 (Ellis Suppl. Joint Statement Decl.).

¹¹⁵ *See* Answer at 58, para. 31; *see also id.* at 6, 14-15, 22-23, 31-32, 43, 49, 64-65, paras. 7, 11, 16, 21, 23, 27, 39; Ellis Answer Decl. at AEP1412-15, paras. 15-25; Suppl. Joint Statement at 5-7, paras. 10-13. AT&T also claims that AEP "proposed" { [REDACTED] } feet as the amount of space AT&T occupies on AEP's poles. Reply Legal Analysis at 10-11. We do not agree that AEP makes this argument, but instead was merely referencing a provision of the parties' superseded JUA that allocated this amount of space to AT&T. Answer at i, 6, para. 7. Nonetheless, we agree with AT&T that allocated space under a superseded JUA is not "probative direct evidence" of the amount of space AT&T now occupies. Reply Legal Analysis at 10.

¹¹⁶ Answer at 6, 14-15, 22-23, 31-32, 43, 49, 58, 64-65, paras. 7, 11, 16, 21, 23, 27, 31, 39; *id.* at 32-38, para. 21 (alleging safety space should be allocated to AT&T); Ellis Answer Decl. at AEP1412-15, paras. 15-17, 19-25; Suppl. Joint Statement at 5, para. 10.

¹¹⁷ Ellis Answer Decl. at AEP1413, para. 20; *see also* Suppl. Joint Statement at 5-7, paras. 10-12 (describing survey design and collection methods); Suppl. Joint Statement, Exh. B, Declaration of James C. Manlove at AEP2934, (continued....)

to show that the average height of AT&T's highest attachment is {[REDACTED]} feet.¹¹⁸ AEP offers two slightly different explanations of how it reaches the {[REDACTED]} feet figure it claims AT&T's attachments actually occupy, but both rely on the assumption that the space AT&T's attachments occupy begins at the Commission's presumed 18-foot minimum ground clearance¹¹⁹ and includes one foot above the average height of AT&T's highest attachment.¹²⁰

30. Under longstanding Commission precedent, the safety space is attributed to the electric utility, not the attacher.¹²¹ We reject AEP's suggestion that the 3.33 feet of safety space should be included in the calculation of space occupied by AT&T and, therefore, we reject AEP's claim that AT&T occupies {[REDACTED]} feet of space on its poles. We also reject AEP's claim that AT&T's attachments actually occupy {[REDACTED]} feet of space because AEP's methodology is based on faulty assumptions. In particular, AEP assumes that the space AT&T's attachments occupy must begin at the 18-foot minimum ground clearance point on the pole, which is generally presumed to be the bottom of the usable space.¹²² First, AEP does not assert that, on average, AT&T has attachments at the 18-foot minimum ground clearance level. Indeed, AEP states that "the average height of AT&T's lowest attachment is {[REDACTED]} feet" and that, on poles on which AT&T has only one attachment, 70% of poles surveyed, "the average

(Continued from previous page)

para. 6; Suppl. Joint Statement, Exh. C, Declaration of Joseph D. Chambers (Chambers Suppl. Joint Statement Decl.); AEP Compliance Filing, Proceeding No. 22-357, Exhs. 5-8 at AEP2920-23 (filed Feb. 24, 2023) (AEP Compliance Filing) (bearing on the statistical validity of AEP's pole survey)); AEP Texas Inc.'s Supplemental Responses to AT&T's First Set of Interrogatories, Proceeding No. 22-357, Exh. 5 at AEP1662 (filed Jan. 24, 2023) (November 2022 Numerical Data); *id.*, Exhs. 6.1-6.8 at AEP1663-2915 (Survey Photos). We note that AEP filed the underlying data used to support its space occupied claims after AT&T filed its Reply and Reply Legal Analysis. Although AT&T raises questions regarding the survey in its Reply and Reply Legal Analysis, AT&T does not challenge "the statistical validity or margin of error of the data gathering AEP performed" in its subsequent pleadings. Rhinehart Suppl. Joint Statement Aff. at 2, para. 2. We accept AEP's survey as statistically valid.

¹¹⁸ See Ellis Answer Decl. at AEP1413, para. 19; Suppl. Joint Statement at 6, para. 12; Chambers Suppl. Joint Statement Decl. at AEP2944, para. 12.

¹¹⁹ The calculation of the maximum Old Telecom Rate requires a space factor determination. 47 CFR § 1.1409(e)(2) (2010). In turn, the space factor input requires a determination of the space occupied by an attachment and total unusable space. *Id.* Total unusable space is space below the minimum grade level. 47 CFR § 1.1402(c). The Commission generally presumes an average minimum ground clearance of 18 feet. 2001 Order on Reconsideration, *supra* note 113, at 12129, para. 48.

¹²⁰ See Answer at 22-23, para. 16 ("When the {[REDACTED]} average height of AT&T's highest attachment is paired with the Commission's presumption that the lowest point of attachment on a pole is 18 feet, this means that AT&T is actually occupying, on average, {[REDACTED]} feet of space. An attachment at 18' would be deemed to occupy one foot of space. Thus, if the average height of AT&T's highest attachment is 1.29' above 18' then this means AT&T is occupying an[] additional {[REDACTED]} of space (i.e., {[REDACTED]} of space."); *see also id.* at 23, para 16; Ellis Answer Decl. at AEP1412, AEP1413-14, paras. 17, 19-24. AEP also asserted that the {[REDACTED]} feet of space it claims AT&T's attachments actually occupy is based, in part, on its assertion that the average midspan sag of AT&T's facilities precludes attachments below AT&T's attachment. Ellis Suppl. Joint Statement Decl. at AEP2930, paras. 17-18; Suppl. Joint Statement at 6-7, para. 12.

¹²¹ *AT&T v. DEP Recon Order*, *supra* note 1, at *14, paras. 42-44; *see also Amendment of Rules and Policies Governing Pole Attachments*, CS Docket No. 97-98, Report and Order, 15 FCC Rcd 6453, 6467-68, paras. 21-22 (2000) (2000 Fee Order); 2001 Order on Reconsideration, *supra* note 113, at 12130, para. 51 (2001) (the safety space is "usable and used by the electric utility") (citing *Adoption of Rules for the Regulation of Cable TV Attachments*, CC Docket No. 78-144, Memorandum Opinion and Second Report and Order, 72 FCC 2d 59, 69-70 (1979); 2011 Order, *supra* note 1, at 5320, para. 180 & nn.558-59 (declining to revisit prior ruling that the safety space is usable and used by the electric utility).

¹²² *Supra* note 119.

height of AT&T's attachment is {[REDACTED]} feet."¹²³ Second, AT&T is not guaranteed the right to locate its facilities at the lowest point in the communications space on AEP's poles.¹²⁴ Finally, AEP itself states that "the survey data reveals that there is between {[REDACTED]} to {[REDACTED]} feet of *usable* space [at the pole] below AT&T's lowest attachment on jointly used poles owned by AEP."¹²⁵ Based on these facts, the record does not support AEP's premise that all of the space from the 18-foot minimum ground clearance to the average height of AT&T's highest attachment is occupied by AT&T's attachments. Thus, AEP's methodology fails to provide a reasonable approach to determine the space AT&T's attachments occupy on AEP's poles.

31. AEP alternatively claims that AT&T's attachments occupy {[REDACTED]} feet of space on AEP's poles.¹²⁶ This claim is based on data from AEP's November 2022 Survey showing that AT&T has, on average, {[REDACTED]} attachments on AEP's poles.¹²⁷ AEP applies the presumption in section 1.1410 that an attachment occupies one foot to the average number of AT&T attachments on its poles, {[REDACTED]}, and concludes that AT&T's attachments occupy {[REDACTED]} feet.¹²⁸ Thus, AEP does not attempt to rebut the

¹²³ AEP Initial Brief at 5 (citing Chambers Suppl. Joint Statement Decl. at AEP2944, AEP2946, para. 12, Attachment 1). We note that there is a minor discrepancy between these two pleadings with regard to the average height of AT&T's lowest attachment—AEP Initial Brief states it is {[REDACTED]}, Chambers Suppl. Joint Statement Decl. states it is {[REDACTED]}—but we do not find it material.

¹²⁴ *Supra* para. 20; Complaint at 8-9, para. 16; Answer at 23, para. 16.

¹²⁵ AEP Initial Brief at 5-6 (emphasis added); *see id.* at 6 n.17. Although AEP acknowledges there is usable space below AT&T "at the pole," AEP contends "there is, on average, insufficient space midspan for an additional attachment below AT&T." *Id.* at 6 n.17; *see also* Ellis Suppl. Joint Statement Decl. at AEP2930, paras. 17-18 (asserting that because AEP's survey showed that the average height of AT&T's lowest midspan clearance is {[REDACTED]} feet and the National Electric Safety Code requires 15.5 feet of ground clearance at midspan over most types of terrain, "there is no room for another attacher to attach below AT&T."). We are not convinced. AEP has failed to demonstrate that midspan clearance issues make it impossible to accommodate a wireline or other attachment below AT&T's facilities, through make-ready or otherwise. Indeed, AEP has acknowledged that its survey showed a small number of third-party headline facilities below AT&T, and that municipalities are allowed to place attachments below AT&T on AEP poles. AEP Initial Brief at 5 n.13 (citing Arnett Decl. at AEP1464, para. 21); *see also* Answer at 23, para. 16 & n.62; Ellis Answer Decl. at AEP1421-22, paras. 47-48.

¹²⁶ Answer at 15, 58, paras. 11, 31; Ellis Answer Decl. at AEP1413, para. 18; Ellis Suppl. Joint Statement Decl. at AEP2931, para. 20 (stating that data from its pole survey shows "AT&T has an average of {[REDACTED]} attachments per AEP pole. Because an attachment is deemed to occupy one foot of space under the Commission's presumptions, this means that . . . AT&T is occupying {[REDACTED]} feet of space per each AEP pole according to those presumptions."); AEP Initial Brief at 2, 7-8.

¹²⁷ Answer at 15, 58, paras. 11, 31; Ellis Answer Decl. at AEP1413, para. 18 ("AEP's data indicates that, for the period from 2018-2022, AT&T had an average of {[REDACTED]} attachments on each AEP pole."); Chambers Suppl. Joint Statement Decl. at AEP2944 ("subject to a 4.8% margin of error, the average number of AT&T attachments per pole with the Population is {[REDACTED]} attachments"); AEP Initial Brief at 7. AT&T initially took issue with the figure of {[REDACTED]} attachments per pole because it was "uncorroborated and impossible to verify or challenge without source data." AT&T Reply at 12, para. 7. AEP subsequently submitted the source data. *Supra* note 117. AT&T's pleadings filed after AEP submitted the source data do not dispute the {[REDACTED]} figure, even though it had the opportunity to address "factual material" filed subsequent to filing its Reply. *See* Letter from Rosemary H. McEnery, Chief, Market Disputes Resolution Division, to Christopher S. Huther, Counsel for Complainant, and Eric B. Langley, Counsel for Defendant, Proceeding No. 22-357 (Mar. 16, 2023). *See also* Chambers Suppl. Joint Statement Decl. at AEP2945. Thus, we accept that AT&T, on average, has {[REDACTED]} attachments on AEP's poles.

¹²⁸ Answer at 15, 58, paras. 11, 31; Ellis Answer Decl. at AEP1413, para. 18; Ellis Suppl. Joint Statement Decl. at AEP2931, para. 20 (stating that data from its pole survey shows "AT&T has an average of {[REDACTED]} attachments per AEP pole" and that "[b]ecause an attachment is deemed to occupy one foot of space under the Commission's presumptions, this means that . . . AT&T is occupying {[REDACTED]} feet of space per each AEP pole according to those presumptions."); AEP Initial Brief at 2, 7-8. *See* 47 CFR § 1.1410.

presumption in section 1.1410, as AT&T suggests;¹²⁹ rather AEP relies on the presumption that an attachment occupies one foot and applies it. We find this to be a reasonable approach to calculating the space occupied input to the Old Telecom Rate formula.¹³⁰

32. AT&T's attempt to undermine AEP's {[REDACTED]} foot calculation based on photos taken during AEP's November 2022 Survey is unavailing.¹³¹ According to AT&T, these photos refute AEP's {[REDACTED]} foot space occupied figure because they show that AT&T's attachments are {[REDACTED]}.¹³² AEP counters that the Survey Photos AT&T cites show conditions not authorized by AEP.¹³³ In light of the disputed record regarding the extent to which attachments spaced closer than one foot are authorized, and because we cannot determine the validity of either party's position from the Survey Photos alone,¹³⁴ we find AT&T's critique inadequate to rebut the presumption that each of its attachments occupies one foot.

33. Further, we find that AT&T's analysis of the November 2022 Survey data also fails to rebut this presumption. AT&T claims that its analysis of AEP's November 2022 Survey data supports a space occupied figure of one foot or less for its attachments.¹³⁵ AT&T measured the distance between

¹²⁹ See, e.g., AT&T Reply Legal Analysis at 33 (AEP "seeks to rebut the space occupied input"). AT&T's arguments seem to be based on the mistaken premise that under our rules, the total amount of space an attacher occupies on a pole—regardless of the number of attachments—is presumed to be one foot. See, e.g., AT&T Initial Brief at 10; Peters Reply Aff. at ATT313, para. 17; *id.* at ATT310, 313, paras. 12, 18. But section 1.1410 provides that "the space occupied by an attachment is presumed to be one foot." 47 CFR § 1.1410 (emphasis added); see also *2011 Order*, *supra* note 1, at 5297 n.399 (referring to the Commission's rebuttable presumption of "1 foot for the space occupied by an attachment"). Section 1.1410 does not address the total amount of space an attacher occupies on a pole where, as here, it averages more than one attachment on a pole. We also reject any claim that our precedent suggests a different view. See AT&T Reply Brief at 2-3 (citing *AT&T v. DEP Recon Order*, *supra* note 1, at *8, para. 24 & n.91; *AT&T v. DEF*, *supra* note 1, at 18276, para. 47). Unlike here, the utilities in those cases provided only statistically invalid surveys to rebut the presumption that an attachment occupies one foot of space. *AT&T v. DEP Recon Order*, *supra* note 1, at *8, para. 24 & n.91; *AT&T v. DEF*, *supra* note 1, at 18276-78, paras. 47-50.

¹³⁰ Our ruling here is consistent with the Commission's observation in the *Verizon Maryland Recon Order* that "the presumption to account for attachments and clearances is one foot of space" and "an incumbent LEC's position as the lowest attacher is irrelevant to the calculation." *Verizon Maryland Recon Order*, *supra* note 1, at *9, para. 27. Thus, where a party relies upon the presumption, as AEP does here, it may reasonably assume each attachment occupies one foot of space regardless of whether some of those attachments occupy the lowest position on the pole. Of course, as discussed below, AT&T is free to attempt to rebut the presumption that each of its attachments occupies one foot of space.

¹³¹ See Rhinehart Suppl. Joint Statement Aff. at ATT397-98, para. 26; AT&T Reply Brief at 2, 5-6.

¹³² *Id.*

¹³³ See AEP Initial Brief at 7-8 (explaining that, consistent with the NESC, communications attachments should be twelve inches apart, unless agreed to by parties involved, including the pole owner; that AEP "has never agreed to reduce the required separation between communications attachments on its poles" and therefore "the photographs cited by AT&T establish nothing more than the fact that AT&T is creating NESC violations on AEP's poles"). See also Peters Reply Aff. at ATT316, para. 22; Reply, Exh. A, Reply Affidavit of Daniel P. Rhinehart at ATT279, para. 16 (Rhinehart Reply Aff.).

¹³⁴ For example, numerous Survey Photos show attachments below the presumptive 18-foot minimum ground clearance, potentially supporting AEP's claims that the attachments are unauthorized. *E.g.*, Survey Photos at AEP1668, AEP1776, AEP1790, AEP1806, AEP2142, AEP2326. However, AT&T argues that site-specific ground clearance requirements vary based on factors such as "topography and what is below the aerial facilities." Peters Reply Aff. at ATT311, para. 14. We have no way to resolve the issue based on the current record.

¹³⁵ See Suppl. Joint Statement at 7-8, para. 14; Rhinehart Suppl. Joint Statement Aff. at ATT394-96, paras. 18, 20-22; *id.* at ATT396, para. 22 (calculating an {[REDACTED]}); see also AT&T Reply

(continued....)

AT&T's {[REDACTED]} on AEP's surveyed poles, computed an {[REDACTED]} distance of {[REDACTED]} feet and, in apparent recognition of the need for clearance between attachments, {[REDACTED]},¹³⁶ but {[REDACTED]}].¹³⁷

34. The record shows, however, that AT&T has no guaranteed right to have the lowest attachment on the pole,¹³⁸ that "the average height of AT&T's lowest attachment is {[REDACTED]} feet," and that, on poles on which AT&T has only one attachment, 70% of poles surveyed, "the average height of AT&T's attachment is {[REDACTED]} feet."¹³⁹ Thus, as discussed above, the survey data indicates that "there is between {[REDACTED]} to {[REDACTED]} feet of usable space [at the pole] below AT&T's lowest attachment on jointly used poles owned by AEP."¹⁴⁰ This amount of usable space, on average, permits another attachment below AT&T on such poles. Yet AT&T's calculation is based on the premise that the space "below [its] lowest attachment is *unusable* space already accounted for in the Commission's rate formula."¹⁴¹ Because AT&T's calculation assumes, incorrectly, that there is only unusable space below its attachments where it has the lowest attachment, we are not persuaded that AT&T's measurement is reasonable. Therefore, based on the record before us, we find that AEP has shown that AT&T's attachments occupy, on average, {[REDACTED]} feet of space on AEP's poles.

35. *Average Number of Attachers.* Calculating the Old Telecom Rate requires a determination of the average number of attaching entities per pole.¹⁴² In order to avoid excessive cost and burden, the Commission has established rebuttable presumptions of three or five attachers (for rural or urban areas, respectively).¹⁴³ As with the one-foot presumption, this presumption may be rebutted by

(Continued from previous page)

Brief at 2-3. Although AT&T characterizes its analysis as "corroborating" its conclusion that "the proper space occupied input for AT&T's use of AEP's poles is the presumptive input of 1 foot because AEP has not rebutted the presumption," we note that AEP did not attempt to rebut the presumption with its use of {[REDACTED]} feet. *Supra* para. 31.

¹³⁶ Rhinehart Suppl. Joint Statement Aff. at ATT394-95, paras. 20-21; *see also* AEP Initial Brief at 3. AT&T alleges that its {[REDACTED]}. *Id.* at ATT395, para. 20. Because we are not persuaded that AT&T's methodology is reasonable, we attach no significance to this alleged {[REDACTED]}.

¹³⁷ *Id.* at ATT396, para. 22. Using the November 2022 Survey data, AT&T determined that there were {[REDACTED]}. *Id.* at para. 22.

¹³⁸ *Supra* para. 20.

¹³⁹ AEP Initial Brief at 5 (citing Chambers Suppl. Joint Statement Decl. at AEP2944, AEP2946, para. 12, Attachment 1).

¹⁴⁰ *Supra* para. 30.

¹⁴¹ Rhinehart Suppl. Joint Statement at ATT396 n.39 ("I did not assign 6 inches of additional space where AT&T is the lowest attacher because below that lowest attachment is *unusable* space already accounted for in the Commission's rate.") (emphasis added). *See also* Rhinehart Complaint Aff., Exh. R-1 at ATT13 (basing AT&T's rate calculation, in part, on {[REDACTED]}; Dippon Reply Aff. at ATT352, para 40 ("pole space below the lowest attachment is unusable space, which the Commission's rate formula takes into account").

¹⁴² 47 CFR § 1.1409(e)(2) (2010) (calculating preexisting telecom rates based on "No. of Attaching Entities"); *AT&T v FPL Order on Review*, *supra* note 1, at *7, para. 21.

¹⁴³ 47 CFR § 1.1409(c).

“probative direct evidence,”¹⁴⁴ including “a statistically sound survey.”¹⁴⁵ AT&T asserts that its service area qualifies for the presumption of five attachers under our rules—a point AEP does not dispute.¹⁴⁶ However, AEP maintains that it has rebutted that presumption with data for the years 2018 through 2021 showing that the overall average number of attaching entities on its poles is between {[REDACTED]} and {[REDACTED]}.¹⁴⁷ AT&T’s analyses of AEP’s data purportedly show an average number of attaching entities input that ranges from {[REDACTED]} to {[REDACTED]} attachers for the years 2018 through 2021,¹⁴⁸ and AT&T has stated that it is willing to {[REDACTED]}.¹⁴⁹ The parties’ competing analyses are both largely based on data that AEP collected as part of its annual pole inventory for the years 2018 to 2021.¹⁵⁰

36. We find that AEP has produced data sufficient to rebut the presumption of five attachers per pole.¹⁵¹ We now consider which party’s methodology for calculating an average number of attachers

¹⁴⁴ See *AT&T v. DEP Recon Order*, *supra* note 1, at *18, para. 55 (noting that the presumptive number of attachers in the Old Telecom Rate may be rebutted by “probative direct evidence”); *AT&T v. FPL Order on Review*, *supra* note 1, at *7, para. 21 (same); *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, *supra* note 112, at 4394, para. 52 n.27; *Teleport v. Georgia Power*, *supra* note 112, at 19866, para. 18 n.41.

¹⁴⁵ *2001 Order on Reconsideration*, *supra* note 113, at 12135, para. 63; *AT&T v. FPL Order on Review*, *supra* note 1, at *7, para. 21.

¹⁴⁶ Rhinehart Complaint Aff. at ATT4, para. 7; Suppl. Joint Statement at 4, para. 8; AT&T Initial Brief at 1.

¹⁴⁷ Suppl. Joint Statement at 2, para. 3; Ellis Suppl. Joint Statement Decl. at AEP2926-29, paras. 3-12; AEP Initial Brief at 8-11, 12; AEP Reply Brief at 6-8; Answer at 14, 58, 64, paras. 11 n.40, 31, 39; Ellis Answer Decl. at AEP1415-16, para. 28. AEP’s average number of attaching entities is largely based on data from its annual pole attachment inventories conducted by AEP’s pole inventory contractor, VentureSum. Ellis Answer Decl. at AEP1416, para. 29 (“each year, AEP performs an attachment inventory on approximately twenty percent (20%) of the distribution poles within its service territory . . . [and as a result], the data used to determine each year’s average attaching entity figure was collected during the five (5) preceding years”); see *id.* at AEP1416-17, para. 31; see also AEP Compliance Filing at 1, para. 1; *id.*, Exhs. 1-4 at AEP2916-19; Suppl. Joint Statement at 3, para. 7.

¹⁴⁸ Suppl. Joint Statement at 4, para. 8; Rhinehart Suppl. Joint Statement Aff. at ATT385-393, paras. 3-17; Rhinehart Reply Aff. at ATT282, para. 24. As indicated above, the data used to determine each year’s average attaching entity figure was collected during the five preceding years. Thus, each party’s calculation of average number of attachers for the years 2018, 2019, 2020 and 2021 is based on data collected during the five preceding years, and when the parties refer to data for a given year, they mean a dataset collected over multiple years. We adopt the same convention here in referring to data for a given year.

¹⁴⁹ AT&T Initial Brief at 1; Suppl. Joint Statement at 4, para. 8 (“{[REDACTED] }”);
[REDACTED];
[REDACTED];
[REDACTED] }”);

Rhinehart Suppl. Joint Statement Aff. at ATT385, para. 3. See Complaint at 18, para. 31 & nn.85, 86 (calculating both the New Telecom Rate and the Old Telecom Rate using average number of attaching entities input of {[REDACTED]}).

¹⁵⁰ *Supra* note 147; Rhinehart Suppl. Joint Statement Aff. at ATT386-391, paras. 5-13; AT&T’s Data Submission in Accordance with February 15, 2023 Letter Ruling, Proceeding No. 22-357 at 1-2 & Exhs. 1-7 (filed Feb. 24, 2023); Suppl. Joint Statement at 2-3, 4-5, paras. 3-7, 9. See Rhinehart Reply Aff. at ATT279-283, paras. 18-26; Rhinehart Complaint Aff. at ATT4-5, paras. 4-10. As explained below, AT&T used 3 different methodologies to filter AEP pole inventory data for 2021. *Infra* paras. 37, 39.

¹⁵¹ Although AT&T claims there are “flaws” in the data AEP produced, AT&T has not shown that these “flaws” provide a reasonable basis to disregard the data entirely and apply the presumption of five attachers. See Rhinehart Reply Aff. at ATT282-283, paras. 25-26; Rhinehart Suppl. Joint Statement Aff. at ATT385, ATT391, para. 3 & n.21. AT&T’s claim is largely based on its observation that there is an “inexplicable dip” in the average number of attaching entities and a lower pole match rate for the year 2020. See *infra* paras. 37, 39. Other than a mere

(continued....)

from that data is more reasonable and persuasive.¹⁵² AEP calculates an average number of attaching entities based on three datasets:¹⁵³ (1) poles throughout AEP's entire service territory, including an area that is not covered by the JUA, known as the former AEP Texas North Company territory;¹⁵⁴ (2) poles throughout the entire service area covered by the JUA, known as the former AEP Texas Central Company service territory, including areas within that territory that AT&T does not serve;¹⁵⁵ and (3) poles located in counties within the former Texas Central Company service where AT&T has attachments.¹⁵⁶ AEP states that all three of its datasets yielded numbers ranging from {[REDACTED]} to {[REDACTED]} for the years 2018 to 2021, for an average of {[REDACTED]} for those years.¹⁵⁷ AEP asserts that if the Commission believes that it would be inappropriate to calculate an average number of attachers based on the first dataset described above, encompassing poles in AEP's entire service territory, the Commission should look to the averages derived from its second or third datasets.¹⁵⁸

37. AT&T by contrast, filtered the pole inventory data AEP produced to identify only those AEP poles covered by the JUA on which AT&T has attachments.¹⁵⁹ AT&T's analysis of these poles

(Continued from previous page)

observation, there is nothing in the record to show this "dip" justifies an upward adjustment in the average number of attachers. We likewise find that the "dip" does not justify setting aside AEP's survey data entirely and imposing the presumptive input of five attachers. See AT&T Initial Brief at 12.

¹⁵² In determining a reasonable average number of attaching entities, we consider all relevant record evidence, regardless of the purpose for which it was offered. Thus, we consider AT&T's detailed analyses of AEP's data even though AT&T asserts that it "did not 'propose' a methodology for calculating the average number of attaching entities, but instead argued for use of the presumptive input." See AT&T Reply Brief at 7 n.33.

¹⁵³ The JUA at issue here covers poles located within the former AEP Texas Central Company's service territory. Ellis Suppl. Joint Statement Decl. at AEP2928, para. 11; Joint Statement at 2, para. 3. AEP Texas Central Company and AEP Texas North Company merged in 2016. Ellis Suppl. Joint Statement Decl. at AEP2926, para. 5. Beginning with billing year 2019, AEP began to calculate its pole attachment rates based on the entire service area of these former two companies. *Id.* at AEP2926, paras. 5-6; Compliance Filing Exhs. 1-4 at AEP2916-19.

¹⁵⁴ Suppl. Joint Statement at 2-3, para. 4; Rhinehart Suppl. Joint Statement Aff. at ATT386-88, paras. 5, 7. The former AEP Texas North Company territory is covered by a separate joint use agreement, not at issue here. See Suppl. Joint Statement at 2-3, para. 4; see Joint Statement at 2, para.3.

¹⁵⁵ Suppl. Joint Statement at 3, para. 5; Ellis Suppl. Joint Statement Decl. at AEP2927, AEP2928, paras. 7-9, 11.

¹⁵⁶ Suppl. Joint Statement at 3, para. 5; Ellis Suppl. Joint Statement Decl. at AEP2928, para. 11.

¹⁵⁷ See Suppl. Joint Statement at 2, para. 3; Ellis Suppl. Joint Statement Decl. at AEP2926, AEP2927, AEP2928, paras. 3, 5, 7, 8, 11 (for AEP's entire service area, AEP calculated the average number of attaching entities to be {[REDACTED]} (2018, based on Texas Central Company poles only), {[REDACTED]} (2019), {[REDACTED]} (2020), and {[REDACTED]} (2021); for the former AEP Texas Central Company service territory, AEP calculated the average number of attaching entities to be {[REDACTED]} (2018), {[REDACTED]} (2019), {[REDACTED]} (2020), and {[REDACTED]} (2021); for the counties in which AT&T has attachments in the former AEP Texas Central Company service territory, AEP calculated the average number of Attaching entities to be {[REDACTED]} (2018), {[REDACTED]} (2019), {[REDACTED]} (2020), and {[REDACTED]} (2021)).

¹⁵⁸ AEP Initial Brief at 11.

¹⁵⁹ See Rhinehart Reply Aff. at ATT282, para. 24; Rhinehart Suppl. Joint Statement Aff. at ATT386-91, paras. 5-12. AEP provided AT&T several spreadsheets that contained information pertaining to the number of attaching entities on AEP's poles, referred to as Attacher Detail Spreadsheets, which AEP relied on to support its proposed average number of attaching entities inputs for the years 2018 to 2021. Rhinehart Suppl. Joint Statement Aff. at ATT386, para. 5; *supra* note 147. AT&T then reviewed the pole count in each Attacher Detail Spreadsheet and determined that the number of poles identified was higher than the number of poles for which AT&T had been invoiced over the same time period. Rhinehart Suppl. Joint Statement Aff. at ATT386-87, para. 6. AT&T largely attributed the difference to AEP's inclusion of poles on which AT&T had no attachments and poles not covered by the JUA. *Id.* at ATT386-388, paras. 6-7. AT&T filtered out those poles in its calculations. *Id.* at ATT388-89, paras. 8-10; see also *id.* at ATT389, paras. 9 (describing efforts to compare AEP's Attacher Detail Spreadsheets with pole information

(continued....)

yielded an average number of attachers ranging from { [REDACTED] } to { [REDACTED] } for the years 2018 to 2021.¹⁶⁰ In addition, AT&T applied two alternative filtering methodologies to data for 2021, which respectively produced averages of { [REDACTED] } and { [REDACTED] }.¹⁶¹ AT&T claims that in order to correct for certain alleged “flaws” in AEP’s data, evidenced by an “inexplicable dip” in the average number of attaching entities for 2020, we should use an average number of attaching entities input of { [REDACTED] }.¹⁶²

38. In considering which party’s calculation is more reasonable, we begin with the standard announced in *Teleport v. Georgia Power*, cited by both parties.¹⁶³ There, the Commission stated that “to be a reasonable reflection of the actual poles to which an attacher is fixed,” an average number of attachers based on survey data “must reflect only those poles in areas where the attacher is actually affixed.”¹⁶⁴ In applying this precedent, we agree that there may be multiple ways to calculate an average number of attachers, as AEP observes,¹⁶⁵ but, where the record supports it, we find it more reasonable to rely on an approach likely to yield the most accurate number for the poles at issue. We are also mindful that AEP “does not contend that AT&T’s proposed methodology [which only considers poles on which AT&T has attachments,] is incorrect.”¹⁶⁶

(Continued from previous page)

collected by AEP’s pole inventory contractor, VentureSum, for exact pole matches to “produce[] a list that included the number of attaching entities identified in the Attacher Detail spreadsheet for each pole identified as an AEP-owned JUA pole shared by AEP and AT&T in the VentureSum inventory spreadsheet”; *id.* at para. 10 (explaining that the VentureSum information “provides a valid comparative data set for isolating poles with AT&T attachments covered by the JUA” and noting that “AEP describes the VentureSum inventory spreadsheet as ‘the source data for the attachment inventories utilized in the Attacher Detail spreadsheets’”); *id.* at ATT390, para. 11 (asserting that “the high number of exact matches between poles identified in the Attacher Detail spreadsheets and those identified as JUA poles shared by the parties in the VentureSum inventory spreadsheet . . . validated the process [AT&T used] to filter the AEP Attacher Detail data”); *see also* Ellis Answer Decl. at AEP1416, para. 29. AT&T states that this filtering methodology produced a “reliable list” of AEP poles with the number of attaching entities identified that allowed AT&T to “calculate the average number of attaching entities on AEP poles to which AT&T is attached under the JUA.” Rhinehart Suppl. Joint Statement Aff. at ATT390, para. 12.

¹⁶⁰ *See* Rhinehart Suppl. Joint Statement Aff. at ATT391, para. 12 (using AEP data, AT&T calculated the average number of Attaching entities to be { [REDACTED] } (2018), { [REDACTED] } (2019), { [REDACTED] } (2020), and { [REDACTED] } (2021)).

¹⁶¹ AT&T arrived at an average of { [REDACTED] } attachers by taking the “list of all poles with AT&T attached” that AEP used to identify the sample of 425 poles to be included in AEP’s November 2022 survey—a list of more than { [REDACTED] } poles—and comparing it with the poles in AEP’s most recent 2021 Attacher Detail Spreadsheet to identify “exact matches” between the two. Rhinehart Suppl. Joint Statement Aff. ATT391-392, paras. 14-15; *see* AEP Compliance Filing, Exh. 5 at AEP2920; *id.*, Exh. 4 at AEP2919 (AEP’s 2021 Attacher Detail Spreadsheet). To arrive at an average of { [REDACTED] } attachers, AT&T compared the spreadsheet identifying the 425 poles that AEP asked its contractor to survey in November 2022 with AEP’s 2021 Attacher Spreadsheet to identify exact matches between the two. Rhinehart Suppl. Joint Statement Aff. at ATT393, paras. 16-17; *see also* Ellis Answer Decl. at AEP1413-14, paras. 20-24; AEP’s 2021 Attacher Detail Spreadsheet at 2919; November 2022 Numerical Data spreadsheet at AEP1662.

¹⁶² *See* Rhinehart Reply Aff. at ATT282, para. 25 (“the average number of attaching entities tends to increase over time” but AEP’s data show “an inexplicable dip in the number of attaching entities for a single year (2020)”; Rhinehart Suppl. Joint Statement Aff. at ATT385, para. 3; *id.* at ATT391, n.21 (claiming that there is a “similar unexplained anomaly in the lower pole match rate for 2020”); Suppl. Joint Statement at 4, para. 8.

¹⁶³ Suppl. Joint Statement 3, 4-5, paras. 5, 9.

¹⁶⁴ *Teleport v. Georgia Power*, *supra* note 112, at 19869, para. 25.

¹⁶⁵ AEP Initial Brief at 11; AEP Reply Brief at 8.

¹⁶⁶ AEP Initial Brief at 11. We find no basis for AEP’s assertion, however, that AEP’s chosen method is entitled to deference. *Id.*; AEP Reply Brief at 8.

39. Given the circumstances here, where the data about the poles on which AT&T is attached is readily available from AEP's records, we find that a calculation based on that data provides the most "reasonable reflection of the actual poles to which [AT&T] is affixed."¹⁶⁷ We therefore conclude that AT&T's analyses of AEP's data, which include only poles on which AT&T is attached, more persuasive than AEP's analyses, which include poles on which AT&T has no attachments.¹⁶⁸ Although we accept AT&T's approach to calculating the average number of attachers, we reject AT&T's argument that we should adopt an input of {[REDACTED]} to account for an alleged "inexplicable dip" in the average number of attaching entities for 2020, particularly since AT&T failed to investigate this issue in discovery.¹⁶⁹

40. Rather than computing one overall average number of attaching entities figure to be used in calculating any refund liability, we find that the parties should use the AT&T-calculated average number of attaching entities figure that most closely aligns with the relevant rate year for which a refund may be due.¹⁷⁰ Thus, for the year 2020, the parties should use the AT&T calculated figure of {[REDACTED]}, and for the year 2021, the parties should use the AT&T-calculated figure of {[REDACTED]}.¹⁷¹ As additional

¹⁶⁷ *Teleport v. Georgia Power*, *supra* note 112, at 19869, para. 25. We do not hold that *Teleport v. Georgia Power* requires that a survey supporting the average number of attachers input be limited to poles on which a party has attachments. See *id.* ("the average must reflect only those poles in areas where the attacher is actually affixed"); see also 2001 Order on Reconsideration, *supra* note 113, at 12137 n.227. Nor are we persuaded by AEP's suggestion that using such a methodology here will make it impossible for AEP to calculate an average attaching entity figure for a new attacher that has no attachments. As AEP admits, it charges all competitive attachers the Cable Rate, which requires no input for average number of attachers. Answer at 14, n.40; see *id.* at 55-56, 64, nn.138, 156.

¹⁶⁸ Even putting aside AEP's inclusion of poles on which AT&T is not attached, we believe AEP fails to show that its analyses and resulting calculations produce the more reasonable input figures. Specifically, AEP acknowledges that two of its calculations include areas broader than the service area in which AT&T attaches to AEP's poles, but fails to explain why including poles from such broad service areas reasonably reflects AT&T's service area at issue. See AEP Reply Brief at 7; see also Ellis Suppl. Joint Statement Decl. at AEP2926-28, paras. 4-11; Joint Statement at 2, para. 3; *Teleport v. Georgia Power*, *supra* note 112, at 19869, para. 25 (noting that Teleport targeted only local business telephone customers in urban areas, which "tends to support the use of a smaller, denser representative area," and that the pole owner failed to offer any explanation of why it included or excluded poles in determining a representative area). AEP similarly fails to explain why its third calculation, which includes all poles within the counties in the former AEP Texas Central Company in which AT&T has attachments, is a reasonable reflection of the poles to which AT&T is attached. Indeed, the fact that AT&T's analyses, which are limited to poles with AT&T attachments, all yield a larger average number of attaching entities than AEP's third calculation, suggests that this third county-focused calculation does not reasonably reflect the areas where AT&T is attached.

¹⁶⁹ See AEP Initial Brief at 9-10 n.33 (noting that it provided AT&T with this data during the "pre-complaint settlement negotiations," but despite having the data, AT&T failed to "prove this issue during pre-complaint negotiations or discovery in this proceeding"); Rhinehart Suppl. Joint Statement Aff. at ATT386, ATT389, paras. 5, 10; see also 47 CFR § 1.730. We also reject AT&T's suggestion that using an input of {[REDACTED]} is supported by the two alternative filtering methodologies that AT&T applied to data for 2021, which respectively produced averages of {[REDACTED]} and {[REDACTED]}. Rhinehart Suppl. Joint Statement Aff. ATT391-393, paras. 14-17; see also AEP Compliance Filing, Exh. 5 at AEP2920; AEP's 2021 Attacher Detail Spreadsheet at AEP2919; Ellis Answer Decl. at AEP1413-14, paras. 20-24; November 2022 Numerical Data spreadsheet at AEP1662. The first alternative, {[REDACTED]}, is not materially different from, and essentially corroborates, the average of {[REDACTED]} that AT&T calculated for 2021 using its original filtering technique. The {[REDACTED]} figure provides no basis to adopt an average of {[REDACTED]} for the entire period at issue. Further, because the second alternative filtering methodology, which produced an average of {[REDACTED]}, was based on a vastly smaller number of poles, we see no basis to substitute that figure for the {[REDACTED]} figure that AT&T's original filtering technique produced for 2021 based on an analysis of {[REDACTED]} poles. See Rhinehart Suppl. Joint Statement Aff. at ATT391, para. 12.

¹⁷⁰ As noted elsewhere in this Order, any refund due AT&T would extend from filing of the Complaint back to January 1, 2020.

¹⁷¹ See *supra* note 160.

pole inventory data becomes available, the parties should calculate the average number of attaching entities input figure for subsequent years consistent with AT&T's methodology and our finding here. Alternatively, the parties may agree to use another average number of attaching entities input during their negotiations to implement this *Order*.

E. AT&T's Refund Request is Governed by a Four-Year Statute of Limitations

41. Section 1.1407 of the Commission's rules states that, if the Commission finds that a rate is not just and reasonable, it may "prescribe a just and reasonable rate" and "[o]rder a refund."¹⁷² The refund "will normally be the difference between the amount paid under the unjust and/or unreasonable rate" and "the amount that would have been paid under the rate . . . established by the Commission, plus interest, consistent with the applicable statute of limitations."¹⁷³ Neither the Act nor Commission rules specifies a limitations period for pole attachment complaints. Consequently, the Commission has established a "borrowing" rule, which looks to the law of the state where the utility's poles are located, determines the state cause of action most analogous to the claims at issue, and applies the state statute of limitations for such actions.¹⁷⁴

42. In this case, the poles at issue are located in Texas. The Commission has held that a state limitations period governing breach of contract actions is the most closely analogous statute of limitations in a pole attachment complaint proceeding because "[t]he Commission has long recognized that pole attachment agreements are individually-negotiated contracts that may be subject to claims for breach of contract under local jurisdictions."¹⁷⁵ Applying this precedent, we find that the most closely analogous state statute of limitations is for an action involving a breach of contract. The limitations period for breach of contract actions in Texas is four years.¹⁷⁶ We therefore find that this action is governed by a four-year statute of limitations.

43. AEP does not dispute that contract actions in Texas are governed by a four-year limitations period. Rather, AEP asserts that because "AT&T does not contend that AEP breached the contract" but instead "claims that an express term of the contract is unlawful" the "state law claim most analogous to AT&T's refund claim is a claim for unjust enrichment."¹⁷⁷ AEP cites a case from Texas holding that "[u]njust enrichment claims are governed by the two-year statute of limitations in section 16.003 of the Civil Practice and Remedies Code."¹⁷⁸ Section 16.003 provides that a two-year limitations

¹⁷² 47 CFR § 1.1407(a).

¹⁷³ 47 CFR § 1.1407(a)(3).

¹⁷⁴ See *AT&T v. DEP Recon Order*, *supra* note 1, at *12, para. 38; *Verizon Maryland*, *supra* note 1, at 13626, paras. 40-42; see also *AT&T v. DEP*, *supra* note 1, at 13711, para. 58; *AT&T v. FPL II*, *supra* note 1, at 256, paras. 9-10; *AT&T v. DEF*, *supra* note 1, at 18280, para. 56.

¹⁷⁵ See *Verizon Maryland*, *supra* note 1, at 13626-27, para. 43 & n.155 (applying Maryland statute of limitations governing breach of contract actions to pole attachment complaint challenging rates in a joint use agreement) (citing *Ala. Cable Telecomms. Ass'n v. Ala. Power Co.*, Order, 16 FCC Rcd 12209, 12217, para. 18 (2001)); see also *AT&T v. DEP*, *supra* note 1, at 13712, para. 59; *AT&T v. DEF*, *supra* note 1, at 18280-81, para. 57; *AT&T v. FPL II*, *supra* note 1, at 256, para. 10 & n.26.

¹⁷⁶ See *Stine v. Stewart*, 80 S.W.3d 586, 592 (Tex. 2002) ("A party asserting a breach of contract claim must sue no later than four years after the day the claim accrues.") (citing Tex. Civ. Prac. & Rem. Code § 16.051). Tex. Civ. Prac. & Rem. Code § 16.051 provides: "Every action for which there is no express limitations period, except an action for the recovery of real property, must be brought not later than four years after the day the cause of action accrues."

¹⁷⁷ See Answer at 56; *id.* at 14 n.38; *id.* at 68 (Affirmative Defense 5); *id.* at 59 (arguing that although "AT&T is challenging the contractual payment obligation set forth in a Texas contract, this action 'involves' a federal administrative claim that sounds in restitution").

¹⁷⁸ *Elledge v. Friberg-Cooper Water Supply, Corp.*, 240 S.W.3d 869, 871 (Tex. 2007); Answer at 57 & n.142.

period governs actions for “trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer.”¹⁷⁹ We are not persuaded that the claims governed by this statute are more analogous to AT&T’s cause of action than a claim for breach of contract. AT&T’s claims in this case require us to analyze and interpret the terms of the JUA to determine whether and when the JUA renewed, whether it provides material advantages to AT&T, and whether the rate term in the JUA complies with section 224(b) of the Act, section 1.1413(b), and Commission precedent. Similar to a contract dispute, the focus of our inquiry here is on how to interpret and apply specific contractual terms in the JUA, and not on applying equitable principles, such as unjust enrichment, to void a contract provision. Indeed, the remedy in this case requires the parties to enter negotiations over new rate terms in their agreement, with instructions that the rate charged AT&T may not exceed the Old Telecom Rate, and the rate charged AEP should be a proportional reciprocal rate. For all of these reasons, we find that the Texas statute of limitations applicable to contract actions is the most closely analogous statute of limitations.¹⁸⁰

44. We also reject AEP’s argument that we should apply the two-year limitations period in section 415(b) of the Act which governs complaints against a “carrier” for the recovery of damages not based on overcharges.¹⁸¹ Prior Commission orders have repeatedly rejected application of section 415(b) in similar pole attachment complaint proceedings involving incumbent LECs.¹⁸²

45. Application of the four-year statute of limitations would ordinarily mean that any refund due AT&T would extend back for four years from the filing date of the Complaint. However, because we

¹⁷⁹ Tex. Civ. Prac. & Rem. Code § 16.003(a). See *Elledge v. Friberg-Cooper Water Supply Corp.*, 240 S.W.3d at 869-70 (citing Tex. Civ. Prac. & Rem. Code § 16.003(a)).

¹⁸⁰ See *Verizon Maryland*, *supra* note 1, at 13626-27, para. 43. AEP cites *BMG Direct Mktg., Inc. v. Peake*, 178 S.W.3d 763, 775 (Tex. 2005) (*BMG v. Peake*) in support of its contention that AT&T’s claim is most analogous to a claim for unjust enrichment, and thus the two-year limitation period in Tex. Civ. Prac. & Rem. Code § 16.003 should apply here. Answer at 56-57, para. 31. *BMG v. Peake* does not address a statute of limitations issue. The case addresses whether the voluntary payment rule, an equitable defense, is available in an action alleging that a late payment fee provision in a contract is an unlawful penalty. The court found that a claim to void a late fee term in a contract as an unlawful penalty sounds in restitution for unjust enrichment rather than in contract and is subject to a “voluntary payment” defense. In this case, by contrast, AT&T does not seek to void a term in the JUA and obtain relief based on equitable principles. Rather, as discussed, AT&T seeks review of the rate term in the JUA to ensure that it complies with section 224(b) and Commission rules and precedent. AEP’s citation to *BMG v. Peake* therefore does not persuade us that AT&T’s claims in this case should be governed by the two-year limitations period in Tex. Civ. Prac. & Rem. Code § 16.003. Cf. *AT&T v. DEP*, *supra* note 1, at 13712, n.199 (rejecting argument that AT&T’s complaint was analogous to an action to rescind a contract, noting that “the complaint seeks to establish a just and reasonable rate in the JUA that will apply from a date defined by the statute of limitations and on a going-forward basis; it does not seek to rescind the JUA.”).

¹⁸¹ Answer at 56 & n.139 (citing Petition for Declaratory Ruling of the Electric Edison Institute, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 (filed Apr. 20, 2021)) (EEI Petition); *id.* at 68 (Affirmative Defense 6); see 47 U.S.C. § 415(b) (providing that “[a]ll complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after”).

¹⁸² *AT&T v. DEP Recon Order*, *supra* note 1, at *13, para. 40; *Verizon Maryland*, *supra* note 1, at 13627, para. 45 & n.158; *AT&T v. FPL II*, *supra* note 1, at 256-57, para. 11. AEP’s Answer does not address this precedent regarding application of section 415 to pole attachment complaints. Indeed, AEP’s advocacy in favor of the two-year limitations period in section 415(b) of the Act is limited to its citation to a petition for declaratory ruling filed by a third party in a separate proceeding. See Answer at 56, para. 31 & n.139 (citing EEI Petition); see also *id.* at 4-5, para. 6 & n.15. As stated in *AT&T v. DEP Recon Order*, we address here only the arguments made in the pleadings before us and do not address arguments set forth in materials filed in a separate proceeding. *AT&T v. DEP Recon Order*, *supra* note 1, at *13, n.149.

find that AT&T is only entitled to relief under the *2018 Order*, any refund due AT&T will not be available before the date when AT&T became entitled to relief under the *2018 Order*—i.e., upon renewal of the JUA on January 1, 2020. Thus, any refund due AT&T would extend from filing of the Complaint back to January 1, 2020.¹⁸³

46. AEP asserts additional grounds to limit or bar AT&T’s recovery of a refund. None have merit. AEP asserts the equitable defenses of estoppel,¹⁸⁴ waiver,¹⁸⁵ accord and satisfaction,¹⁸⁶ unconscionability,¹⁸⁷ laches,¹⁸⁸ the voluntary payment doctrine,¹⁸⁹ unjust enrichment,¹⁹⁰ and the filed rate doctrine.¹⁹¹ Even assuming such defenses may be asserted in a pole attachment complaint proceeding under section 224,¹⁹² they fail here because AEP did not plead the essential elements of each defense, explain how the evidence supports each element, or cite supporting legal authority as the Commission’s

¹⁸³ We reject AEP’s assertion that “awarding a refund for periods preceding the complaint would constitute retroactive ratemaking” given (a) that AEP charged AT&T consistent with the JUA and (b) “there has never been a rate or formula establishing defined parameters for joint use agreement rates, particularly for periods governed by the [2011 Order].” Answer at 66, paras. 41-43. First, reference to the *2011 Order* is inapposite because we find here that relief is available only under the *2018 Order*. Second, the *2018 Order* established defined parameters for rates in newly renewed agreements such as the one at issue here. For such agreements, the *2018 Order* established a presumption that the incumbent LEC is similarly situated to other telecommunications attachers and entitled to a rate no higher than the New Telecom Rate and, if the presumption is rebutted, a rate no higher than the Old Telecom Rate, which serves as a “hard cap.” See *2018 Order*, *supra* note 1, at 7767-71, paras. 123, 126-129. Thus, in awarding a refund here, we prospectively apply the *2018 Order* to an agreement that was renewed after the *2018 Order* took effect.

¹⁸⁴ Answer at 68 (Affirmative Defense 1).

¹⁸⁵ Answer at 68 (Affirmative Defense 2).

¹⁸⁶ Answer at 68 (Affirmative Defense 3).

¹⁸⁷ Answer at 69 (Affirmative Defense 8).

¹⁸⁸ Answer at 69 (Affirmative Defense 12).

¹⁸⁹ Answer at 68 & n.161 (Affirmative Defense 4).

¹⁹⁰ Answer at 68 (Affirmative Defense 7).

¹⁹¹ Answer at 69 (Affirmative Defense 14).

¹⁹² See *Air Touch Cellular v. Pacific Bell*, Memorandum Opinion and Order, 16 FCC Rcd 13502, 13508 (2001) (finding that defendant failed to provide specific authority for the availability of equitable defenses in a formal complaint proceeding).

rules require.¹⁹³ AEP's filed rate doctrine defense also fails because AEP does not file tariffs with the Commission and thus there is no filed rate here.¹⁹⁴

47. We reject AEP's further defense that the "rule upon which AT&T's complaint is premised is unlawful, *ultra vires*, arbitrary, capricious, and unreasonable."¹⁹⁵ The assertion that the rule, which presumably targets section 1.1413, is unlawful or *ultra vires* is meritless because the Commission duly adopted that rule pursuant to the authority in section 224 to ensure that pole attachment rates are just and reasonable.¹⁹⁶

48. We also reject AEP's argument that the Commission should forbear, under section 10(a) of the Act, from exercising regulatory authority in this case generally, or from applying a four-year limitations period under section 1.1407.¹⁹⁷ AEP's forbearance request lacks merit because, as discussed above, we find that the JUA rates are not just and reasonable; thus forbearing from enforcement of section 224(b) here would impede, rather than ensure, just and reasonable charges.¹⁹⁸ Further, forbearance would

¹⁹³ See 47 CFR §§ 1.721(b) (all matters concerning a claim or defense "should be pleaded fully and with specificity"); 1.721(d) (claims or defenses "must be supported by relevant evidence"); 1.721(e) (legal arguments "must be supported by appropriate statutory, judicial, or administrative authority"); 1.726(b) (an answer must state "fully and completely" "the nature of any defense"); 1.726(c) (an answer shall "include legal analysis relevant to the claims and arguments set forth therein"); see also *AT&T Corp. v. Business Telecom, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd. 12312, 12336, para. 52 & n.154 (2001) (defendant's attempt to plead an estoppel defense did not comply with the Commission's rules where the defendant "failed to cite any legal authority supporting the affirmative defense and failed to allege and provide evidentiary support for facts which, if true, would establish an estoppel defense"); *AT&T Servs. v. 123.net*, Proceeding No. 19-222, Memorandum Opinion and Order, 35 FCC Rcd 6401, 6414, para. 29 (EB 2020) (rejecting asserted defenses where the defendant "failed adequately to explain in its Answer the factual or legal basis for these defenses and their applicability to this dispute, as the Commission's rules require) (citing 47 CFR §§ 1.721(b), (d), (e) and 1.726(b), (c)); *AT&T v. DEF*, *supra* note 1, at 18283, para. 62; *AT&T v. DEP*, *supra* note 1, at 13714, para. 61.

¹⁹⁴ See *Am. Tel. & Tel. Co. v. Cent. Office Tel., Inc.*, 524 U.S. 214, 222 (1998) (under the filed rate doctrine "'the rate of the carrier duly filed [in a tariff] is the only lawful charge'" (quoting *Louisville & Nashville R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915))); *Wireless Consumers Alliance, Inc.*, WT Docket No. 99-263, Memorandum Opinion and Order, 15 FCC Rcd 17021, 17029, 17031, paras. 16, 18 (2000) (explaining that "[t]he filed rate doctrine forbids a regulated entity from charging rates 'for its services other than those properly filed with the appropriate federal regulatory authority'" and concluding that because CMRS carriers do not file tariffs with the Commission, the filed rate doctrine does not preclude a state court from awarding monetary relief against such carriers) (internal citations omitted).

¹⁹⁵ Answer at 69 (Affirmative Defense 11).

¹⁹⁶ See 2018 Order, *supra* note 1, at 7767-71, 7791-91, paras. 123-29, 174-75. As noted in *Verizon Maryland*, two circuit courts of appeal have upheld the Commission's authority under section 224 to set just and reasonable rates for incumbent LECs. See *Verizon Maryland*, *supra* note 1, at 13612 n.43 (citing *City of Portland v. United States* and *Am. Elec. Power Serv. Corp. v. FCC*, *supra* note 1).

¹⁹⁷ Answer at 62, para. 36 & n.151; *id.* at 69 (Affirmative Defense 9); *id.* at 57, para. 31 & n.143. See 47 U.S.C. § 160(a) (The "Commission shall forbear from applying any regulation or any provision of [the Act] to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services . . . if the Commission determines that—(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.").

¹⁹⁸ See *supra* Parts III.A, B.; see also 47 U.S.C. § 160(a) (forbearance requires a determination, *inter alia*, that enforcement of a regulation or provision is "not necessary to ensure that . . . charges . . . are just and reasonable"); (continued....)

not be “consistent with the public interest”¹⁹⁹ because the Commission has determined that the public interest is served by permitting incumbent LECs to file complaints, like AT&T’s here, challenging the justness and reasonableness of pole attachment rates, and to obtain refunds of unjust and unreasonable rates “consistent with the applicable statute of limitations.”²⁰⁰ For similar reasons, we find no merit in AEP’s request, under section 1.3 of the rules, for a waiver or suspension of section 1.1413.²⁰¹ Waiver of 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.²⁰² AEP did not plead, and has not shown, that waiver of section 1.1413 would be in the public interest.²⁰³ Having found that AEP is charging AT&T pole attachment rates that are unjust and unreasonable, we see no good cause to waive or suspend a rule that allows incumbent LECs to challenge such rates or obtain a refund of unjust and unreasonable charges previously paid.²⁰⁴

49. In sum, we apply the most closely analogous statute of limitations borrowed from state law²⁰⁵ and conclude that the applicable limitations period for a refund under section 1.1407(a)(3) is four years. Accordingly, any refund due AT&T shall extend from the filing of the Complaint on October 4, 2022, back to January 1, 2020, the date when the 2018 Order came to govern the agreement at issue here.

IV. ORDERING CLAUSES

50. Accordingly, IT IS HEREBY ORDERED, pursuant to sections 4(i), 4(j), 208, and 224 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 208, and 224, and sections 0.111, 0.311, 1.720-1.740, and 1.1401-1.1415 of the Commission’s rules, 47 CFR §§ 0.111, 0.311, 1.720-1.740, and 1.1401-

(Continued from previous page)

AT&T v. FPL I, *supra* note 1, at 5332, para. 19; *AT&T v. DEP*, *supra* note 1, at 13714, para. 62; *AT&T v. DEF*, *supra* note 1, at 18283-84, para. 63 & n.236.

¹⁹⁹ 47 U.S.C. § 160(a)(3).

²⁰⁰ 47 CFR § 1.1407(a)(3); *see 2011 Order*, *supra* note 1, at 5327-28, paras. 199-203; *AT&T v. FPL I*, *supra* note 1, at 5332, para. 19; *AT&T v. DEP*, *supra* note 1, at 13714, para. 62; *AT&T v. DEF*, *supra* note 1, at 18283-84, at para. 63 & n.236. AEP argues that the Commission should forbear from applying a four-year limitations period under rule 1.1407(a)(3) because it would be unjust and unreasonable to allow a refund to extend back to October 4, 2018 (four years prior to filing the complaint), which would precede AT&T’s first request to renegotiate the JUA rates on June 9, 2021 and the Commission’s first determination in November 2020 that the “applicable statute of limitations” under rule 1.1407(a)(3) was the state law limitations period for breach of contract action. Answer at 57, 58, para. 31 & nn.143, 144 (citing *Verizon Maryland*, *supra* note 1, at 13627-28, para. 46). We note that our ruling above, that any refund to AT&T may extend no earlier than January 1, 2020, partially moots this forbearance request. Indeed, under the two-year limitations period that AEP advocates, any refund to AT&T would extend back to October 4, 2020—a refund period that is only 10 months shorter than the one prescribed here, which extends back to January 1, 2020. *See* Answer at 56-57, para. 31 (arguing that the Commission should impose the two-year limitations period under 47 U.S.C. § 415(b) or the two-year limitations period for unjust enrichment claims under Texas state law). In any event, the Commission has repeatedly permitted recovery of refunds under rule 1.1407 covering periods prior to November 2020, and rejected arguments that an attacher should receive no refund for the period before it disputed the JUA rate. *See Verizon Maryland*, *supra* note 1, at 13627-28, 13630 paras. 46, 52(c); *AT&T v. DEP Recon Order*, *supra* note 1, at *12-13, paras. 38, 41 & n.155 (citing *2011 Order*, *supra* note 1, at 5290, para. 112); *see also AT&T v. FPL II*, *supra* note 1, at 258, para. 14 & n.42.

²⁰¹ Answer at 62, para. 36 & n.152; *id.* at 69 (Affirmative Defense 10). *See* 47 CFR § 1.3 (rules “may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission”).

²⁰² *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir.1990).

²⁰³ *See* 47 CFR § 1.3; Answer at 62, para. 36 & n.152; *id.* at 69 (Affirmative Defense 10).

²⁰⁴ *See AT&T v. DEP*, *supra* note 1, at 13714, para. 62; *AT&T v. DEF*, *supra* note 1, at 18283-84, para. 63.

²⁰⁵ *See* Tex. Civ. Prac. & Rem. Code § 16.051.

1.1415, and for the reasons explained above, AT&T's Complaint is GRANTED IN PART AND DENIED IN PART as follows:

- (a) Any relief due AT&T must be based on the standards and presumptions established in the *2018 Order* and extend no earlier than January 1, 2020;
- (b) The rate AEP may charge AT&T for attachments to AEP's poles under the JUA for the period starting January 1, 2020, may equal but not exceed the rate as calculated under the Old Telecom Rate formula;
- (c) AT&T and AEP are directed to negotiate in good faith to reach an agreement on new JUA rate terms consistent with this Memorandum Opinion and Order, including (a) and (b) above, that reflect proportional reciprocal rates for AEP's attachments to AT&T's poles under the JUA;
- (d) AT&T and AEP are directed to negotiate in good faith to reach an agreement on the amount of any refund that may be due consistent with this Memorandum Opinion and Order; and
- (e) AT&T and AEP are directed to file a joint status report thirty (30) days following issuance of this Memorandum Opinion and Order summarizing the status of the parties' efforts to comply with this Memorandum Opinion and Order, including the directives in paragraphs (a) through (d) above.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement 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 23-637

Released: July 25, 2023

NOTICE OF CERTIFICATION OF STATE AND U.S. TERRITORY TELECOMMUNICATIONS RELAY SERVICES (TRS) PROGRAMS

CG DOCKET NO. 03-123

The Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (Commission) hereby grants certification to the state and U.S. territory telecommunications relay services (TRS) programs listed below,¹ pursuant to section 225(f)(2) of the Communications Act of 1934 (Act),² and section 64.606(b) of the Commission's rules.³ After reviewing each of the state applications received,⁴ the Bureau has determined that:

- (1) The TRS programs of the listed states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules;⁵
- (2) The TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of their state programs;⁶ and
- (3) The TRS programs of the listed states in no way conflict with federal law.⁷

The Bureau also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.606(d) of the Commission's rules.⁸

This certification, conditioned on a demonstration of ongoing compliance with the Commission's rules governing TRS, shall remain in effect for a five (5) year period, beginning July 26, 2023, and ending

¹ Hereinafter, for purposes of this Notice, the term "state" refers to states, U.S. territories, and the District of Columbia, where applicable.

² 47 U.S.C. § 225(f)(2).

³ 47 CFR § 64.606(b).

⁴ Section 225(a) of the Act requires any state desiring to operate a state TRS program to submit documentation to the Commission describing its program's implementation, including its procedures and remedies for enforcing any requirements imposed by its program. 47 U.S.C. § 225(f)(1); *see also* 47 CFR § 64.606(a)(1). All states certified herein submitted such documentation, after which the Bureau provided public notice of each state certification application received, in accordance with 47 CFR § 64.606(a)(1). No comments were received in response to any of the state applications received.

⁵ 47 U.S.C. § 225(f)(2)(A); 47 CFR §§ 64.606(b)(1)(i); 64.604.

⁶ 47 U.S.C. § 225(f)(2)(B); 47 CFR §§ 64.606(b)(1)(ii).

⁷ 47 CFR §§ 64.606(b)(1)(iii).

⁸ 47 CFR § 64.606(d).

July 25, 2028, pursuant to 47 CFR § 64.606(c). Beginning one year prior to the expiration of this certification, July 25, 2027, each state may apply for renewal of its TRS program certification by filing documentation in accordance with the Commission's rules, pursuant to 47 CFR § 64.606(a).

STATES APPROVED FOR CERTIFICATION

File No: TRS-46-22

Alabama Public Service Commission
State of Alabama

File No: TRS-19-22

Regulatory Commission of Alaska
State of Alaska

File No: TRS-02-22

Commission for the Deaf and Hard of Hearing
State of Arizona

File No: TRS-47-22

Arkansas Deaf and Hearing Impaired
Telecommunication Services
State of Arkansas

File No: TRS-32-22

California Public Utilities Commission
State of California

File No: TRS-23-22

Colorado Public Utilities Commission
State of Colorado

File No: TRS-48-22

Public Utilities Regulatory Authority
State of Connecticut

File No: TRS-35-22

Delaware Department of Technology and Information
State of Delaware

File No: TRS-49-22

Public Service Commission
District of Columbia

File No: TRS-50-22

Florida Public Service Commission
State of Florida

File No: TRS-51-22

Georgia Public Service Commission
State of Georgia

File No: TRS-22-22

Hawaii Public Utilities Commission
State of Hawaii

File No: TRS-43-22

Idaho Public Service Commission
State of Idaho

File No: TRS-10-22

Illinois Telecommunications Access Corporation
State of Illinois

File No: TRS-08-22

Indiana Telephone Relay Access Corporation
State of Indiana

File No: TRS-03-22

Iowa Utilities Board
State of Iowa

File No: TRS-07-22

Kansas Corporation Commission
State of Kansas

File No: TRS-52-22

Kentucky Public Service Commission
Commonwealth of Kentucky

File No: TRS-13-22

Louisiana Relay Administration Board
State of Louisiana

File No: TRS-53-22

Maine Telecommunications Relay Service Council
State of Maine

File No: TRS-33-22

Maryland Public Service Commission
State of Maryland

File No: TRS-54-22

Michigan Public Service Commission
State of Michigan

File No: TRS-55-22

Mississippi Public Service Commission
State of Mississippi

File No: TRS-56-22

Montana Telecommunications Access Program
State of Montana

File No: TRS-25-22

Nevada Department of Health and Human Services
Aging and Disability Services
State of Nevada

File No: TRS-45-22

New Jersey Board of Public Utilities
State of New Jersey

File No: TRS-16-22

New York State Department of
Public Service
State of New York

File No: TRS-12-22

North Dakota Public Service Commission
State of North Dakota

File No: TRS-57-22

Oklahoma Telephone Association
State of Oklahoma

File No: TRS-58-22

Pennsylvania Public Utility Commission
Commonwealth of Pennsylvania

File No: TRS-59-22

Rhode Island Public Utilities Commission
State of Rhode Island

File No: TRS-34-22

Massachusetts Department of
Telecommunications and Cable
Commonwealth of Massachusetts

File No: TRS-39-22

Minnesota Department of Commerce-
Telecommunications Access Minnesota
State of Minnesota

File No: TRS-15-22

Missouri Public Service Commission
State of Missouri

File No: TRS-40-22

Nebraska Public Service Commission
State of Nebraska

File No: TRS-42-22

New Hampshire Public Service Commission
State of New Hampshire

File No: TRS-14-22

New Mexico Commission for the Deaf and
Hard of Hearing
State of New Mexico

File No: TRS-30-22

North Carolina Utilities Commission
State of North Carolina

File No: TRS-37-22

Public Utilities Commission of Ohio
State of Ohio

File No: TRS-36-22

Oregon Public Utility Commission
State of Oregon

File No: TRS-28-22

Telecommunications Bureau
Puerto Rico

File No: TRS-62-22

Micronesia Telephone Corporation
d/b/a IT&E
Saipan

File No: TRS-11-22

Office of Regulatory Staff
State of South Carolina

File No: TRS-60-22

SD Department of Human Services
Division of Rehabilitation Services
State of South Dakota

File No: TRS-20-22

Tennessee Public Utility Commission
State of Tennessee

File No: TRS-17-22

Public Utility Commission of Texas
State of Texas

File No: TRS-61-22

U.S. Virgin Islands Public Service Commission
U.S. Virgin Islands

File No: TRS-09-22

Utah Public Service Commission
State of Utah

File No: TRS-44-22

Vermont Department of Public Service
State of Vermont

File No: TRS-04-22

Department for the Deaf and Hard of Hearing
Commonwealth of Virginia

File No: TRS-27-22

Office of the Deaf and Hard of Hearing
State of Washington

File No: TRS-06-22

Public Service Commission of West Virginia
State of West Virginia

File No: TRS-01-22

Public Service Commission of Wisconsin
State of Wisconsin

File No: TRS-18-22

Wyoming Department of Workforce Services
Division of Vocational Rehabilitation
State of Wyoming

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 -

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

In the Matter of	)	
	)	
Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act	)	WC Docket No. 23-62
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	

ORDER

Adopted: July 26, 2023

Released: July 26, 2023

By the Chief, Wireline Competition Bureau, and the Chief, Office of Economics and Analytics:

I. INTRODUCTION

1. By this Order, the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) adopt instructions, a reporting template,¹ and a certification form to implement the 2023 Mandatory Data Collection relating to incarcerated people’s communications services (IPCS). Our actions today are taken pursuant to the authority delegated to WCB and OEA by the Commission and largely implement the proposals set forth in the *2023 IPCS Mandatory Data Collection Public Notice*,² with refinements and reevaluations responsive to record comments.

II. BACKGROUND

2. On January 5, 2023, the President signed into law the Martha Wright-Reed Just and Reasonable Communications Act (Martha Wright-Reed Act or Act),³ which expanded the Commission’s statutory authority over communications between incarcerated people and the non-incarcerated, including “any audio or video communications service used by inmates . . . regardless of technology used.”⁴ The new Act also amends section 2(b) of the Communications Act of 1934, as amended (Communications Act), to make clear that the Commission’s authority extends to intrastate as well as interstate and international communications services used by incarcerated people.⁵

3. The Martha Wright-Reed Act directs the Commission to “promulgate any regulations necessary to implement” the Act, including its mandate that the Commission establish a “compensation plan” ensuring that all rates and charges for IPCS “are just and reasonable,” not earlier than 18 months

¹ The reporting template consists of a Word document and Excel spreadsheets. For simplicity, we refer to these respective portions of the reporting template as the Word template and the Excel template.

² *WCB and OEA Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People’s Communication Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355 (WCB/OEA Apr. 28, 2023) (*2023 IPCS Mandatory Data Collection Public Notice* or *Public Notice*).

³ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

⁴ Martha Wright-Reed Act § 2(a)(2), (b).

⁵ *Id.* § 2(c).

and not later than 24 months after the Act's January 5, 2023 enactment date.⁶ The Act requires the Commission to consider, as part of its implementation, the costs of "necessary" safety and security measures, as well as "differences in costs" based on facility size or "other characteristics."⁷ It also allows the Commission to "use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider" in determining just and reasonable rates.⁸

4. The Martha Wright-Reed Act contemplates an additional data collection by requiring or allowing the Commission to consider certain types of other costs necessary to its implementation. Prior to the enactment of the Martha Wright-Reed Act, the Commission had sought provider data related to audio communications services provided to incarcerated persons on three occasions, as part of its ongoing efforts to establish just and reasonable rates for those services, while ensuring that providers are fairly compensated for such services.⁹ To ensure that it will have the data it needs to meet its substantive and procedural responsibilities under the Act, the Commission delegated authority to WCB and OEA to "update and restructure" its most recent data collection (the Third Mandatory Data Collection) "as appropriate in light of the requirements of the new statute."¹⁰ This delegation requires that we collect "data on all incarcerated people's communications services from all providers of those services now subject to" the Commission's authority, including, but not limited to, requesting "more recent data for additional years not covered by the [Third Mandatory Data Collection]."¹¹

5. In accordance with this delegation, WCB and OEA developed proposals for the 2023 Mandatory Data Collection that updated and expanded the instructions and reporting templates from the Third Mandatory Data Collection, and issued a *Public Notice* seeking comments on all aspects of the proposed revisions to the collection.¹² Concurrently, in accordance with the Paperwork Reduction Act of 1995 (PRA), the Commission published a notice in the Federal Register seeking comment on potential burdens of the proposed reporting requirements.¹³

⁶ *Id.* §§ 2, 3(a); 47 U.S.C. § 276(b)(1)(A).

⁷ Martha Wright-Reed Act § 3(b)(2).

⁸ *Id.* § 3(b)(1).

⁹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14172-73, paras. 124-26 (2013) (adopting the First Mandatory Data Collection); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12862, para. 198 (2015) (adopting the Second Mandatory Data Collection); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9619-20, para. 221 (2021) (*2021 ICS Notice* or *2021 ICS Order*) (adopting the Third Mandatory Data Collection).

¹⁰ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking and Order, FCC 23-19, at 2, 33, paras. 2, 84 (2023) (*2023 IPCS Notice* or *2023 IPCS Order*).

¹¹ *2023 IPCS Order* at 33-34, paras. 84-85. The Commission directed WCB and OEA to "implement any appropriate modifications" to the Third Mandatory Data Collection, including updating the instructions and reporting template for that collection, "to the extent appropriate to timely collect . . . information to cover the additional services and providers now subject to [the Commission's] authority." *Id.* at 33-34, para. 85.

¹² *Public Notice* at 2.

¹³ Federal Communications Commission, Information Collection Being Reviewed by the Federal Communications Commission, 88 Fed. Reg. 27885 (May 3, 2023) (*60-Day PRA Notice*).

6. We received comments from several IPCS providers, public interest advocates, and other interested parties in response to the *Public Notice*,¹⁴ and one comment in response to the PRA notice.¹⁵ We have thoroughly considered all of these filings in adopting the requirements for the final 2023 Mandatory Data Collection.

III. DISCUSSION

A. Implementing the 2023 Mandatory Data Collection

7. Pursuant to our delegated authority, we adopt the 2023 Mandatory Data Collection Instructions, Word and Excel templates, and certification form as proposed in the *Public Notice*, with some exceptions discussed below. Commenters generally support the broad contours and specific requirements of the data collection as proposed and do not challenge our proposal to retain the overall reporting structure and organization of the Third Mandatory Data Collection as the basis for this collection.¹⁶

8. Commenters offer various suggestions that, in their view, would improve the proposed data collection.¹⁷ In light of these comments, we reevaluate some of our proposals and refine certain aspects of the instructions and templates, as set forth in greater detail below, while retaining the overall structure of the data collection as proposed. These refinements include modifying the treatment of video IPCS and safety and security measures, clarifying the reporting of costs related to site commissions, and revising certain proposed definitions. We conclude that the modifications we make “appropriately balance the need for ‘detailed and specific instructions and templates’ and the desire to avoid unduly burdening providers.”¹⁸

9. In finalizing the requirements for the data collection, we do not resolve issues pending in the *2023 IPCS Notice*, as some commenters propose.¹⁹ Doing so would exceed the authority the Commission delegated to WCB and OEA.²⁰ The *Public Notice* expressly foreclosed “seek[ing] additional comment on the questions and other issues previously raised in the *2023 IPCS Notice* or in relevant prior Commission or Bureau notices,”²¹ and we do not address commenters’ proposals to the contrary in this

¹⁴ We received comments or replies in response to the *Public Notice* from Ameelio; Global Tel*Link Corporation d/b/a ViaPath Technologies (ViaPath); Pay Tel Communications, Inc. (Pay Tel); Securus Technologies, LLC (Securus); Worth Rises; and the Wright Petitioners.

¹⁵ ViaPath Paperwork Reduction Act Comments (filed July 3, 2023) (ViaPath PRA Comments).

¹⁶ Pay Tel Comments at 1; Securus Comments at 1; ViaPath Comments at 3; Worth Rises Comments at 1; Wright Petitioners Comments at 2.

¹⁷ ViaPath Comments at 4; Pay Tel Comments at 3, 4, 6-7; Securus Comments at 2, 5; Wright Petitioners Comments Appx. A, Brattle Report at 13-14, para. 28 (Brattle Report).

¹⁸ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 37 FCC Rcd 368, 370, para. 7. (WCB/OEA 2022) (*Third Mandatory Data Collection Order* or *Third MDC Order*).

¹⁹ See, e.g., Pay Tel Comments at 3 (seeking a determination that all safety and security measure costs are recoverable); but see Worth Rises Reply at 3 (“There simply is no basis for [Pay Tel’s] claim that all safety and security measures are recoverable through IPCS rates.”).

²⁰ A change in the Commission’s rules requires action by the full Commission and cannot be adopted by WCB and OEA on delegated authority. *Third MDC Order*, 37 FCC Rcd at 371, para. 8 (explaining that a data collection is “not the proper administrative vehicle to . . . change Commission rules”).

²¹ *Public Notice* at 2; see also *2021 ICS Order*, 36 FCC Rcd at 9618-19, paras. 218, 221 (explaining that the purpose of a data collection is to provide the Commission with sufficient information to resolve various issues it is considering).

Order. Instead, the purpose of the data collection is to provide the Commission with an objective foundation for addressing the issues it must resolve to implement the Martha Wright-Reed Act.²²

10. In the sections that follow, we first address the overall scope of the data collection and then turn to proposals to revise specific instructions.

B. Overall Scope of the Data Collection

1. Reporting Period

11. We limit the data collection to calendar year 2022, consistent with our proposal in the *Public Notice*.²³ We find that the data from 2022 will provide the most pertinent and the best indicator of relevant costs. Some commenters propose that we expand the data collection reporting period beyond just 2022.²⁴ Others argue that the burden of requiring additional years of data would “outweigh[] any material benefit.”²⁵ We decline to expand the reporting period. Data from 2022 represent the most recent data available, and are therefore likely to be more representative of future operations by IPCS providers than data from prior years. To the extent that data from prior years would be useful in determining just and reasonable rates, we already have data regarding audio IPCS, including investments, expenses, revenues, demand, site commission payments, and ancillary services charges and practices, from the Third Mandatory Data Collection. We recognize that those data are limited to audio IPCS, but find that the burdens associated with collecting video data for prior years would outweigh any potential benefit. In particular, the pandemic had a substantial impact on providers’ operations and likely accelerated the implementation of (and therefore increased the costs and revenues associated with) video IPCS as a substitute for in-person visitation, such that data from those prior years may not be representative of providers’ future operations.²⁶ As a result, we find that collecting data solely for 2022 will best equip us to set rate caps that reflect providers’ operations going forward and avoid the burdens associated with collecting additional data that may not be representative or are already available for prior periods.²⁷

²² See 2021 ICS Order, 36 FCC Rcd at 9618-19, paras. 218, 221.

²³ *Public Notice* at 3.

²⁴ See, e.g., Worth Rises Comments at 3 (suggesting that we expand the data collection to include “safety and security expense data” from 2020 and 2021 so as to have three years of such data to reconcile and compare); Worth Rises Reply at 5; see also Wright Petitioners Comments, Brattle Report at 3, para. 4 (suggesting that the Commission should expand the entire data collection to capture 2021 data as well). But see ViaPath Reply at 2 (“The Bureaus should reject calls to expand the proposed MDC beyond what is ‘appropriate in light of the requirements’ of the MWR Act.”); Securus Reply at 2-4.

²⁵ See, e.g., Securus Comments at 2 (reasoning that “there is little value” in requiring data, specifically on intrastate costs, beyond 2022, because such costs are “not materially different” from interstate costs and have not been isolated by providers); Pay Tel Reply at 4 (agreeing with Securus that “the reporting period for voice and video calling services should be limited to the 2022 calendar year”); Securus Reply at 8.

²⁶ See, e.g., *Third MDC Order*, 37 FCC at 381, para. 36 (finding that the record indicated that “providers [may have] incurred large one-time costs related to COVID-19,” which posed the risk of “atypical, one-time expenses . . . being considered normal company costs”); Pay Tel Reply at 4 (explaining that “safety and security data for 2020 and 2021 is not reconcilable with past or present data submissions due to the paradigm-shifting effects of the COVID pandemic” to argue imposing reporting requirements for safety and security costs for those years “would impose a significant burden with little to no material benefit”).

²⁷ In our *60-Day PRA Notice*, we estimated that it would take IPCS providers an average of 230 hours to respond to the data collection. *60-Day PRA Notice*, 88 Fed. Reg. at 27885. ViaPath argues that we have “grossly underestimated the amount of time it will take IPCS providers to respond to the proposed MDC.” ViaPath PRA Comments at 3. We previously rejected ViaPath’s almost identical argument regarding our burden estimate for the Third Mandatory Data Collection, explaining that ViaPath “is the largest calling services provider, ‘with an estimated market share approaching 50%.’ Given that market share, we would expect that [ViaPath’s] total response time would far exceed any industry average, regardless of the number of estimated hours.” *Third MDC*

(continued....)

12. While we recognize the incremental benefits of having more comprehensive cost data, most of the categories of data that we seek in this data collection were addressed in the previous data collection, such that collecting these data from years prior to 2022 would be largely redundant. To the extent we seek new categories of data, the burden on providers to produce those data would be significant. Given the burdens already imposed by this revised data collection which are necessary to implement the new statute, as well as the comparatively shorter timeframe for submitting responses,²⁸ we decline to impose an additional burden by expanding the reporting period as some commenters propose.

2. Cost Reporting and Cost Allocation

13. In the *Public Notice*, we proposed to adapt the cost reporting and cost allocation methodologies specified for the Third Mandatory Data Collection for use in the 2023 Mandatory Data Collection. No commenter challenges this overall approach or suggests fundamental changes to our proposals for applying those methodologies to video IPCS. Instead, commenters suggest relatively discrete modifications to our proposed instructions for reporting company-wide cost data and for allocating reported costs among cost categories.²⁹ After considering these comments, we adopt the cost allocation methodology essentially as proposed, with modifications to the instructions designed to help providers understand our cost allocation methodology and to obtain further information on how providers implement it. We also modify the instructions to establish, at the facility-specific level, the same reporting structure for capital assets and expenses that is in place at the company-wide level.

14. As a general matter, our changes to the cost reporting and cost allocation instructions reflect an understanding, from our review of the Third Mandatory Data Collection submissions, that certain providers' internal accounting and recordkeeping systems limit those providers' ability to provide highly disaggregated cost data and to finely tune their cost allocation procedures.³⁰ Given these limitations, our revised instructions generally require providers to describe in greater detail their implementation of our cost reporting and cost allocation instructions, rather than prescribe additional cost reporting and cost allocation requirements for which certain providers may not have the internal accounting systems needed to comply with such requests.

15. For example, we require providers to describe the types of costs they include in various capital and operating expense categories, rather than list the types of costs that are to be included in each category, as one commenter suggests.³¹ We also require providers to describe in greater detail the factors they use to allocate certain types of shared and common costs among audio IPCS, video IPCS, and

(Continued from previous page) _____

Order, 37 FCC Rcd at 380 n.105 (citing *2021 ICS Order*, 36 FCC Rcd at 9550, para. 74). The record in this proceeding provides no indication that ViaPath's market status has changed or that our proposed burden estimate did not reflect the industry average. Nevertheless, we will revise our average burden estimate to account for the additional effort required to comply with the changes from our proposals that we adopt in this Order. Our revised estimate, which will be included in the subsequent 30-day PRA notice related to this data collection, will reflect the likely burden of the data collection.

²⁸ As discussed below, responses to this data collection will be due 97 days from the date of this Order.

²⁹ Wright Petitioners Comments, Brattle Report at 5, 7, 8, paras. 10, 15, 17 (suggesting the Commission could improve the data collection by "providing more detailed instructions on what costs should be included in a category" and by providing examples of how providers should allocate shared costs).

³⁰ Securus Reply at 2-3 (arguing that "[p]recision will not be improved by requiring providers to artificially allocate costs into ever more discrete buckets that in no way reflect how expenses are tracked in the normal course of business," and noting the difficulty smaller providers would encounter in trying to perform "highly granular allocations"); ViaPath Comments at 3-4.

³¹ Wright Petitioners Comments, Brattle Report at 7, para. 15 (contending that we should require providers "to list out example[s] of the types of services and associated costs they are attributing to each [operating expense category]").

nonregulated services, rather than specifying factors for providers to use in performing those allocations.³² We find that these revisions will help the Commission understand the nature of the reported costs, without imposing significant additional burdens on providers that would be unlikely to result in more useful information.³³

16. We reject, however, ViaPath’s proposal that we permit providers to “use the allocation methodologies that best reflect [their] business and the way in which [they] keep[] [their] books and records as long as the provider[s] document[] and explain[] [such] methodologies in [their] MDC response[s].”³⁴ The detailed cost allocation hierarchy set forth in the proposed instructions was carried forward from the instructions for the Third Mandatory Data Collection and, as such, reflects the Commission’s directive that the Third Mandatory Data Collection collect, “to the extent possible, uniform cost . . . data from each provider.”³⁵ In directing that we “update and restructure” that prior data collection,³⁶ the Commission did not propose or suggest that we should undertake wholesale revisions to the core methodologies of the Third Mandatory Data Collection by allowing each provider to devise its own allocation methodology. As the Wright Petitioners point out, allowing providers to devise their own cost allocation methodologies in the previous data collection led to “large discrepancies between costs allocated towards capital expenses and operating expenses,”³⁷ with providers assigning costs inconsistently among the categories provided and reporting nonregulated service costs as inmate calling services costs.³⁸ Allowing providers to use their own allocation methodologies also would substantially increase the back-end burden on all parties that want to process and analyze the reported data, because of the extent and complexity of the adjustments that would be necessary to correct for inconsistencies among providers’ responses. The cost allocation hierarchy set forth in the instructions provides a necessary and workable framework within which to standardize and compare the data submitted, while, as we recognize above, affording providers flexibility to implement the cost allocation instructions in a manner that reflects their accounting and recordkeeping systems.

³² See *id.* at 4, para. 9 (suggesting the possible use of a cost allocation factor “based on speed requirements, bandwidth consumption, or storage costs of audio versus video calls” to allocate common costs between audio and video IPCS); Securus Reply, Attach. Declaration of Charlie J. Choe, Brian F. Pitkin, and Steven E. Turner Regarding the Proposed 2023 Mandatory Data Collection (FTI Declaration) at 13-14, paras. 6-7 (discussing factors that Securus may use to allocate costs to services using tablets, noting “[t]ablets may provide access to . . . a multitude of other [nonregulated] services”).

³³ Relatedly, we decline to identify and exclude specific types of costs that could be characterized as unrelated to the provision of IPCS from any particular category. Wright Petitioners Comments, Brattle Report at 15-16, para. 33. The 2023 IPCS Notice invited comment on which types of costs should be reflected in IPCS rates, and we indicated that advocacy concerning issues before the Commission in the rulemaking would not be considered in this context. See 2023 IPCS Notice at 21, para. 49; Public Notice at 2.

³⁴ ViaPath Comments at 3-4; ViaPath Reply at 4. But see Wright Petitioners Reply at 5 n.11 (“As the Commission has previously concluded, concerns about different approaches to cost allocation are not a reason for the Commission to decline to take action.” (citing the 2021 ICS Order, 36 FCC Rcd at 9544, para. 59)). We once again reject ViaPath’s argument, previously raised in response to the Third Mandatory Data Collection, regarding the differences in book and record keeping between non-dominant and dominant carriers. ViaPath PRA Comments at 4. As WCB found in the Third MDC Order, “[w]hether providers are dominant has no bearing on the Commission’s authority to mandate the manner in which ICS providers report cost data. Our requests apply to all ICS providers.” Third MDC Order, 37 FCC Rcd at 381, para. 37 & n.109 (internal quotation marks and citation omitted).

³⁵ 2021 ICS Order, 36 FCC Rcd at 9621, para. 225.

³⁶ 2023 IPCS Order at 33, para. 84.

³⁷ Wright Petitioners Comments, Brattle Report at 4, para. 7.

³⁸ *Id.* At 6-7, para. 13.

3. Overall Reporting Categories

17. We adopt our proposal to require providers to allocate their investments and expenses among audio IPCS, video IPCS, safety and security measures, various types of ancillary services, and other services and products.³⁹ We find, subject to certain refinements related to safety and security measures, that these categories are well-suited to provide the Commission with the information it needs to comply with its ratemaking responsibilities under the Communications Act and the Martha Wright-Reed Act without unduly burdening providers.

18. We decline to require providers to subdivide their audio and video IPCS costs into more discrete categories based on the type of audio or video service being provided, as some parties suggest.⁴⁰ While we recognize that video IPCS costs may vary based on the equipment used to provide the service,⁴¹ we find that the best way to address this possibility is to ask providers to report the per-unit costs of the devices used for video IPCS. This information, combined with the requirement that providers report their video IPCS costs on a facility-by-facility basis while describing the video services provided at each facility, should provide sufficient information to measure any cost differentials among different video services without imposing on providers the burden of subdividing video IPCS costs into more discrete categories.

19. We adopt our proposal to allow, but not require, providers to subdivide their investments and expenses for audio IPCS, video IPCS, safety and security measures, and ancillary services between interstate/international and intrastate services.⁴² While we recognize that providers likely experience “no meaningful difference[s]” between the costs of providing interstate/international and intrastate IPCS (other than the costs of terminating audio communications in foreign destinations),⁴³ we find this option properly allows providers the flexibility to inform the Commission if they do incur different costs based on the jurisdictional nature of the services they provide.

4. Safety and Security Measures

20. We adopt our proposal to require providers to allocate the annual total expenses they incurred in providing safety and security measures among seven categories using the provider’s best estimate of the percentage of those expenses attributable to each category.⁴⁴ After considering the

³⁹ See *Public Notice* at 4; Securus Comments at 2 (agreeing that providers should endeavor to allocate their costs among traditional voice service, video calling services, ancillary services, and nonregulated services); ViaPath Comments at 3 (supporting separate cost categories for audio and video IPCS).

⁴⁰ See *Public Notice* at 4; Securus Comments at 2 (asserting that “[t]here is no need to further segregate costs into subcategories of voice and video service”); ViaPath Comments at 4.

⁴¹ ViaPath Comments at 4 (stating that “video IPCS provided over a tablet may have different costs than video IPCS provided over a dedicated unit such as a kiosk”); Wright Petitioners Comments, Brattle Report at 16 (suggesting the providers’ “overall cost structure of providing video calling services” is impacted by the cost of equipment).

⁴² See *Public Notice* at 4-5.

⁴³ ViaPath Comments at 4.

⁴⁴ *Public Notice* at 5. The seven categories, as set forth in the instructions adopted in this Order, are Communications Assistance for Law Enforcement Act (CALEA) compliance measures (i.e., safety and security measures that providers took to comply with CALEA); law enforcement support services; communication security services; communication recording services; call monitoring services; voice biometrics services; and other safety and security measures. With the exception of the CALEA compliance measures category, these categories update categories used in the Third Mandatory Data Collection. Calling Services for Incarcerated People Third Mandatory Data Collection Instructions, §§ IV.C.3.b., IV.D.2.c., http://www.fcc.gov/sites/default/files/2022_mdc_-_instructions_to_third_mandatory_data_collection_1.18.2022.docx (link provided in *Third MDC Order* at Appx. A, Third Mandatory Data Collection Instructions and Template).

comments regarding this proposed allocation process, we modify the instructions for this allocation to make them clearer and more comprehensive.

21. Some providers take issue with our proposed seven-category framework for reporting safety and security measure costs, claiming that their internal accounting systems do not align with these categories and that providers will have difficulty allocating their costs in the manner proposed.⁴⁵ We do not find these arguments persuasive. As Securus concedes, the cost categories we proposed are similar to categories employed in the Third Mandatory Data Collection.⁴⁶ Accordingly, we find, as we did with the Third Mandatory Data Collection, that the proposed categories provide a comprehensive and workable framework for dividing safety and security measure costs into reasonably homogenous groupings that “should capture all [safety and] security costs,”⁴⁷ particularly with our addition of multiple examples of costs for each category. To the extent that providers make measures available that do not fit within the first six categories,⁴⁸ the data collection also includes a catch-all category for “Other Safety and Security Measures.”⁴⁹

22. The Martha Wright-Reed Act requires the Commission to consider “costs associated with any safety and security measures necessary to provide” IPCS in setting IPCS rates.⁵⁰ While the commenters present sharply divergent views as to whether providers should be allowed to recover the costs of various types of safety and security measures through their rates,⁵¹ our purpose here is to ensure, to the extent consistent with the providers’ internal accounting and recordkeeping,⁵² that the data collection generates, in a timely manner, sufficient information for the Commission to implement

⁴⁵ ViaPath Comments at 5 (noting “it may be difficult” for providers to separate their safety and security costs and allocate those costs into the seven categories); ViaPath Reply at 5 (repeating its position that it may not be possible to separate all safety and security costs into the Commission’s categories); Pay Tel Comments at 2 (arguing that providers’ accounting systems are not designed to track safety and security costs separately); Pay Tel Reply at 1-2 (agreeing with Securus and ViaPath “that it will be difficult for providers to report safety and security cost information in the manner proposed by the Commission”); *compare with* Securus Reply at 8 (“[T]he 3rd MDC in fact did ask for cost data for these same categories of security services (excluding CALEA).”); Worth Rises Reply at 2, 4 (challenging certain providers’ assertions that they cannot separate these costs and asserting that “[i]t is absurd to believe that the providers do not have the means to separate their safety and security costs across all IPCS categories”).

⁴⁶ Securus Comments at 4 (noting that the categories are the same as those established in the Third Mandatory Data Collection “[w]ith the exception of the addition of CALEA expenses”).

⁴⁷ *Third MDC Order*, 37 FCC Rcd at 374, para. 19 (establishing a category-based framework for reporting costs and additional information on security measures, and finding this approach to be comprehensive).

⁴⁸ See ViaPath Comments at 5; Pay Tel Comments at 4 (proposing the Commission collect data on safety and security measures that are ancillary or supplementary to IPCS).

⁴⁹ We find that imperfect alignment between our framework and providers’ accounting systems fails to compel an alternative approach, especially where record proposals suggesting alternative approaches or changes are predicated on policy determinations beyond the scope of this Order. The Commission’s obligation to “consider costs associated with any safety and security measures necessary to provide” IPCS is imposed by statute, and is not contingent on the particularities of the various “way[s] in which providers record costs.” Martha Wright-Reed Act § 3(b)(2); Pay Tel Comments at 4; Wright Petitioners Reply at 5 n.11 (“As the Commission has previously concluded, concerns about different approaches to cost allocation are not a reason for the Commission to decline to take action.” (citing the *2021 ICS Order*, 36 FCC Rcd at 9544, para. 59)).

⁵⁰ Martha Wright-Reed Act § 3(b)(2).

⁵¹ Pay Tel Comments at 4-5 (arguing that safety and security costs are “by definition, recoverable costs” and suggesting that due to the lack of “a uniform system of accounting for IPCS providers,” reported costs for safety and security measures will vary depending on how providers record those costs and interpret the Commission’s instructions); Worth Rises Reply at 2-4; Wright Petitioners Reply at 2.

⁵² Securus Reply at 2; Pay Tel Reply at 5.

“whatever decision it makes regarding the necessity of safety and security measures.”⁵³ This necessarily requires tradeoffs between pinpointing the costs of each safety and security measure providers offer and the providers’ ability to produce (and the Commission’s ability to process) highly disaggregated safety and security measure cost data within the 18 to 24 month statutory timeframe.⁵⁴ We find the proposed reporting structure and associated categories, modified as described below, to be the most effective means of balancing these competing considerations.

23. One commenter claims that the proposed categories “will not provide a full or accurate picture of how safety and security costs are associated with the service offering,”⁵⁵ while other commenters propose that we should “provid[e] examples and or definitions . . . of certain security services and costs that would fall under the seven categories,” and that the required safety and security cost data should, in general, be more granular.⁵⁶ The proposed instructions already include multiple examples of safety and security measures that fall within each of the seven categories. We find that these lists, as revised in response to the comments, are sufficiently comprehensive to allow providers to sort their safety and security measures into the categories we have established. However, because some commenters may not have understood the examples we provided,⁵⁷ we have reorganized the relevant instructions to simplify them and increase their clarity. Specifically, we modify both the company-wide and the facility-by-facility instructions to first require providers to assign each of their safety and security measures to one of the seven listed categories and second to allocate their aggregate costs of providing safety and security measures among these categories.

24. In addition, we give providers the option to supplement what we require them to submit should they determine that more specific categories are needed to reflect their operations. Specifically, when allocating these costs, providers may divide the seven listed categories into subcategories of their own choosing, and thereby report costs in a more detailed manner. We find that allowing for further subdivision will better enable providers to submit a “full [and] accurate picture” of their costs in a way that “meaningfully distinguish[es] among these costs,” while also retaining the uniform reporting structure that is necessary for us to effectively compare cost data among providers.⁵⁸ We also adopt a suggestion that we instruct providers to assign any safety and security measure that does not precisely match any of our provided examples to the category that provides the best fit, and to allocate the costs of such measures accordingly.⁵⁹ Directing providers to categorize services in this manner will give them additional flexibility in applying the categories to their own internal accounting structures.⁶⁰

⁵³ Worth Rises Reply at 2.

⁵⁴ Martha Wright-Reed Act § 2(d).

⁵⁵ Pay Tel Comments at 3; Pay Tel Reply at 2.

⁵⁶ Wright Petitioners Comments, Brattle Report at 10, para. 22. Conversely, Securus argues that the *Public Notice* “provides no rationale for why the proposed . . . level of disaggregation is necessary to implement” the requirement that we “consider the costs associated with any safety and security measures necessary to provide” IPCS. Securus Comments at 4. However, the *Public Notice* explicitly proposed that this disaggregation would “facilitate the Commission’s consideration” of “costs associated with any safety and security measures necessary to provide” IPCS, as required under the Act. *Public Notice* at 5. In sum, in order to assess and distinguish between “necessary” and unnecessary costs, the Commission must obtain as comprehensive an understanding of such costs as is feasible under the circumstances.

⁵⁷ *Public Notice* at 3-4; ViaPath Comments at 5; Pay Tel Comments at 5; Securus Comments at 3-4.

⁵⁸ Pay Tel Comments at 3.

⁵⁹ Wright Petitioners Comments, Brattle Report at 10, para. 22.

⁶⁰ We decline to adopt Securus’s proposal to remove the category for CALEA compliance measures. Securus Comments at 4. Questions of the applicability of CALEA to IPCS providers are not relevant to the purpose of the data collection. Wright Petitioners Reply at 5 (arguing in opposition to proposals to remove the CALEA-related cost category, “[t]he Commission need not resolve at this time whether all IPCS providers are exempt from the
(continued....)

25. To further help providers allocate safety and security costs among the established categories, we modify the instructions to include additional guidance. These changes address certain commenters' concerns about their ability to allocate their security costs among each category within our seven-category reporting framework without further guidance.⁶¹ However, given providers' concerns with their ability to implement the seven-category framework,⁶² we decline to require that the expenses allocated to each of the seven categories be further allocated among the various safety and security measures within each category.⁶³ Conversely, we also decline to adopt Pay Tel's proposal that we limit our collection to "data regarding Safety and Security Measures associated with distinct and separate 'system[s], product[s], or service[s]' which are provided as ancillary components to the IPCS offering."⁶⁴ As an initial matter, those measures are effectively encompassed within our categories. To the extent that Pay Tel is proposing that we only collect such data, that approach would require that we prejudge which safety and security measures are "necessary," which would be beyond the scope of our delegated authority.⁶⁵

26. We also decline to subdivide the safety and security measures reporting category into different real-time and non-real-time subcategories, as one commenter urges.⁶⁶ We find that the granularity already included in the safety and security reporting requirements is sufficient to provide the Commission with the data it will need to set just and reasonable rates caps for IPCS. The additional

(Continued from previous page)

CALEA requirement" and find that only providers subject to CALEA compliance and with reportable costs "should allocate those costs in the appropriate category. . . . There is no reason to eliminate the category."). We require data on providers' costs of complying with CALEA, to the extent they are incurred, so that the Commission may decide whether to include or exclude these costs from the underlying rates. Worth Rises Reply at 5. If, as Securus claims, CALEA is not applicable to IPCS, then providers should have no costs to report in this category and the reporting burden (if any) will be minimal. Securus Comments at 4-5; Wright Petitioners Reply at 2, 5.

⁶¹ ViaPath Comments at 5 ("separating the costs associated with safety and security measures from other IPCS costs may not be possible in all cases, especially using" the seven-category framework); Pay Tel Comments at 3-4; Securus Comments 3-5; Wright Petitioners Comments, Brattle Report at 10, para. 22.

⁶² Securus Comments at 4 (taking issue with the proposed structure, level of disaggregated data sought, and categories for collecting information regarding providers' safety and security measures); Securus Reply, FTI Declaration at 14 ("A key concern is that many of the [safety and security] services do not fit neatly into the categories as outlined by the Commission."); Pay Tel Comments at 3-5 (criticizing the seven-category framework, and disputing its accuracy and usefulness); Pay Tel Reply at 3 (opposing record proposals that would require actual expense reporting of safety and security costs by arguing that "the Commission has appropriately realized" that the reporting of actual expenses may not be possible if the provider's record keeping systems do not allow for precise allocations); ViaPath Comments at 5 (noting that "it may be difficult" to perform the proposed cost allocation for safety and security measures).

⁶³ Worth Rises Comments at 2 (proposing that the Commission require providers to allocate expenses for each "line item" reported under each safety and security category); Pay Tel Reply at 3 (explaining that "if an [IPCS] provider's books and records do not show a precise allocation, then some estimate is required in order to categorize safety and security costs" and that "the reporting of 'actual expenses' in the manner [certain commenters] proposed simply is not possible in all cases, as the Commission has appropriately recognized"); Securus Reply at 2 ("Advocates appear to believe that the collection of ever more information subdivided into ever more discrete categories will heighten precision and diminish the ability of providers to submit inflated costs. This belief simply does not reflect reality.").

⁶⁴ Pay Tel Comments at 4.

⁶⁵ See *Third MDC Order*, 37 FCC Rcd at 371, para. 8 (finding that data collections, such as this one, are "not the proper administrative vehicle" to make policy determinations).

⁶⁶ See Worth Rises Comments at 1-2 (suggesting that we should require providers to allocate their costs of providing safety and security measures among real-time audio, real-time video, non-real-time audio, and non-real-time video); Worth Rises Reply at 2.

burden more subdivision would impose on providers outweighs any potential benefit of further disaggregation.

27. One commenter observes that “there are no safety and security costs associated with ancillary services of the type contemplated” for IPCS.⁶⁷ We agree that this is likely the case for most providers, but those providers can simply enter “0” in the appropriate Excel template cells. Accordingly, we will include the proposed inquiries asking providers to report any safety and security costs they incur in connection with their ancillary services. We find that this approach will accommodate potential variation among providers’ practices without burdening any provider.⁶⁸

28. Lastly, we supplement questions in the Word template in order to obtain additional information on providers’ safety and security measures.⁶⁹ Commenters discuss certain nuances that may apply to the implementation of safety and security measures and consequent cost allocation issues that are not fully addressed by the questions proposed (e.g., differences based on infrastructure and devices used to provide IPCS, and circumstances in which safety and security services apply to both IPCS and nonregulated services).⁷⁰ We agree with these commenters on the need to seek additional information from providers regarding their safety and security measures and attendant practices. Commenters also dispute the extent to which “providers’ accounting systems” are—or are not—“designed to track ‘safety and security’ costs.”⁷¹ Given this ambiguity as to providers’ accounting practices for safety and security measures, particularly in light of providers’ concerns about their ability to apply their accounting systems to the categories we proposed, we find that additional information concerning providers’ accounting practices and how they allocate their internal data among our seven categories will assist the Commission in accurately determining the costs of providers’ safety and security measures and distinguishing between “essential and non-essential costs.”⁷² Accordingly, we modify the instructions and Word template to obtain information on these subjects, in order to provide the Commission with a more comprehensive and accurate understanding of providers’ implementation of, and accounting and recordkeeping practices regarding, safety and security measures.⁷³

⁶⁷ Securus Comments at 4.

⁶⁸ *Id.*

⁶⁹ Worth Rises Comments at 1-2; Wright Petitioners Comments, Brattle Report at 16-18, para. 34; Wright Petitioners Reply at 3-4.

⁷⁰ Wright Petitioners Comments, Brattle Report at 9-10, paras. 20-22 (suggesting that providers’ costs to provide security features may differ “depending on the video access infrastructure”); Worth Rises Reply at 1-2 (advocating that the Commission not limit the definitions of audio IPCS and video IPCS based on the technologies used to deliver the services); Wright Petitioners Reply at 3-4 (evaluating some record proposals to collect more safety and security data before urging the Commission to “not collect less data than proposed”).

⁷¹ Pay Tel Comments at 2 (arguing that safety and security are “integral” to IPCS such that “providers’ accounting systems are not designed to track ‘safety and security’ costs (as opposed to specific security-related service offerings)” as separable components of the service); Pay Tel Reply at 5 (repeating the statement); ViaPath Comments at 5 (arguing that “correctional facilities face ‘legitimate security interest[s]’ when it comes to” IPCS and so “separating the costs associated with safety and security measures from other IPCS costs may not be possible in all cases”); *but see* Wright Petitioners Reply at 4-5 (pointing out that “a review of publicly available contracts indicates that safety and security costs are broken out in certain contracts”); Worth Rises Reply at 4 (arguing that “providers consistently offer many of their safety and security services to corrections agencies on an optional basis with a separate price, which demonstrates an analysis of related expenses”).

⁷² Pay Tel Comments at 4 (arguing that “[a]s crafted, the reporting form conflates essential and non-essential costs into a single category”).

⁷³ We decline to adopt Pay Tel’s proposal to develop a separate template for facilities to submit data on their own costs of providing safety and security measures. Pay Tel Comments at 5. Although we acknowledge that facilities are more likely to have this information than providers, this proposal goes beyond our delegated authority.

5. Video IPCS

29. We adopt the majority of our proposals related to video IPCS, but make targeted changes to capture more complete information.⁷⁴ As the record now makes clear, the costs of providing video IPCS likely vary depending on the specific infrastructure, devices, methods, technologies, and features used to provide those services. We find that this data collection should attempt to capture those variations at a more granular level than we proposed, to the extent possible without unduly burdening providers. Informed by the record compiled in response to the *Public Notice*,⁷⁵ we agree that additional information concerning video IPCS would assist the Commission in its ratemaking efforts and therefore add general inquiries regarding the technical requirements of the providers' video IPCS offerings, the infrastructure used to provide those services, and the reasons for and costs of any data storage associated with those services, among other matters.

30. *Service Parameters.* To help the Commission understand the providers' video IPCS offerings, we require providers to describe in detail each video service they provided during 2022.⁷⁶ Providers must also identify, among other matters, each transmission technology used to provide each type of video service they provided to incarcerated people, provide any information they have regarding service parameters and performance indicators, and describe any steps they take to monitor whether the service functions properly.⁷⁷ We also require providers to state whether they, as opposed to the correctional facilities, provide any broadband connection needed for the providers' IPCS offerings; the extent to which they use those connections to provide audio as well as video IPCS; and the extent to which facilities use those connections for their own communications.

31. *Infrastructure.* We require providers to describe the infrastructure they used to provide video IPCS, including any infrastructure that is located within correctional facilities.⁷⁸ We find that information on the type of infrastructure facilities deployed and its technical capabilities, to the extent the providers have that information, will help the Commission evaluate providers' video IPCS offerings. Accordingly, we have added a question to the Word template that directs providers to explain whether they, as opposed to the facilities they serve, provide and maintain any infrastructure that is located within facilities. We also direct providers to submit any information they have on the nature and capabilities (e.g., speed and latency) of the video IPCS infrastructure located within the facilities they serve, including use and general capability of Wi-Fi routers, if known.

32. *Data Storage.* We add additional inquiries to the Word template designed to capture data on the storage costs associated with video IPCS in comparison to audio IPCS, as well as other

⁷⁴ See generally Wright Petitioners Comments, Brattle Report at 16-18, para. 34 (suggesting several proposed additions to video IPCS-related data requests); cf. Securus Reply at 2 (challenging, generally, the relevance and appropriateness of the proposals in the Brattle Report); ViaPath Reply at 2-3 (contending that the Brattle Report's proposals exceed the mandate of the Martha Wright-Reed Act).

⁷⁵ See generally Wright Petitioners Comments, Brattle Report at 16-18, para. 34 (generally discussing additional inquiries for us to consider regarding video IPCS).

⁷⁶ Ameelio Reply at 3 (noting that the facility's network equipment and broadband connection has an impact on video IPCS and offering alternative methods the Commission could use to collect more complete information on video IPCS), see also Wright Petitioners Comments, Brattle Report at 14 (suggesting the Commission collect data on performance indicators for video IPCS).

⁷⁷ Ameelio Reply at 3 (proposing that either specifying parameters for performance indicators to be reported against or allowing providers to specify the parameters over which they provide video IPCS and the resulting performance indicators would produce "a more complete picture of IPCS performance").

⁷⁸ See *id.* (identifying the impact that a facility's network equipment has on video call quality and noting "[f]or example, if a facility has a relatively low-speed broadband connection, or a limited number of WiFi access points," a provider's video IPCS "might be limited by factors that are extrinsic to the provider's service").

information regarding data storage policies and practices.⁷⁹ Based on information in publicly available contracts, the Wright Petitioners suggest expanding our data storage-related questions to request information on data retention policies and the data processing and analysis costs associated with video IPCS.⁸⁰ We agree that additional questions regarding the quantity of data stored and the storage period will help the Commission understand the costs associated with video IPCS.⁸¹ Likewise, if, as the Wright Petitioners suggest, data storage costs vary depending on the storage method and underlying technology used,⁸² information on those factors may also be useful to help the Commission discharge its ratemaking responsibilities. We therefore include an additional narrative request asking providers to explain these matters. We find that allowing providers to submit a narrative response to this request imposes less of a burden on providers than would a more granular approach, such as requiring providers to report this information on a facility-by-facility basis.

33. *Other Video IPCS Information.* We also add questions about how providers market and sell video IPCS to consumers. These questions include inquiries regarding whether video IPCS is offered as a stand-alone service or is “bundled” with other services. We also include questions asking whether video IPCS rates are based on minutes of use, number of communications, or data usage, and whether there are any limitations or conditions on how incarcerated people may use video IPCS.⁸³ We find that these questions provide the best approach for ensuring that the data collection captures information on providers’ rate structures and practices affecting video IPCS.⁸⁴

34. We decline to adopt one commenter’s proposal that we require providers to “track and report usage data for apps that are not free to the end-user.”⁸⁵ Although such usage data might be helpful in providing context for the provision of IPCS on tablets and any associated costs, that is not the focus of this collection. Rather, we directly address the fundamental elements of providing IPCS on tablets by requiring providers to submit data on video sessions, audio minutes, and inputs for providing audio and video IPCS (e.g., hardware, software, and network connectivity), as well as costs exclusively attributable to IPCS versus other services. We find that these questions are sufficient to address, and more directly target, any issues that may be particular to the provision of IPCS on tablets.

6. Site Commissions

35. As a general matter, we adopt the questions concerning company-wide and facility-level site commissions proposed in the *Public Notice*, which were largely based on the Third Mandatory Data Collection, as well as the proposed updates to the related instructions and templates.⁸⁶ Those updates

⁷⁹ Wright Petitioners Comments at 5 (identifying how IPCS providers store video IPCS as a type of data for the Commission to collect); *see also* Wright Petitioners Comments, Brattle Report at 19-20, paras. 35-36 (discussing data storage costs for video IPCS and offering proposals); *see also* Amealio Reply at 2 (noting that the costs to store a video call may be as much as ten times higher than similar costs for storing voice calls).

⁸⁰ Wright Petitioners Comments, Brattle Report at 19, para. 35 (stating “[i]f data is stored for a long time, there is a need for more storage capacity”); *see also* Amealio Reply at 2 (stating that the costs for storing video and voice calls “scales linearly with the number of months of storage required by the correctional facility”).

⁸¹ Wright Petitioners Comments, Brattle Report at 18-20, paras. 35-36 (asking that we collect data on duration of storage of video calls and the costs of storage).

⁸² *Id.* at 19, para. 36 (explaining that “[r]ecent advancements in technology have made it cost effective to store large amounts of data” and that “cloud storage solutions are [now] significantly cheaper than data storage solutions that were traditionally used”).

⁸³ *Id.* at 16-18, para. 34 (identifying these as topics to include in the data collection, among other proposals).

⁸⁴ 2023 IPCS Notice at 19, para. 45.

⁸⁵ Amealio Reply at 2 (citing the Wright Petitioners Comments, Brattle Report at 21 (identifying services that are potentially ancillary to video IPCS on which the Commission could collect data)).

⁸⁶ *Public Notice* at 8.

include additional questions seeking information on interstate, intrastate, and international site commissions, as well as information concerning site commissions for both audio and video services.⁸⁷ No commenter opposed the adoption of this general framework. The Wright Petitioners additionally propose that the instructions include a diagram or chart explaining the structure of our site commission data requests.⁸⁸ We agree that visual aids may improve the accuracy and consistency of the data reporting by helping providers better understand how to allocate their data among the different categories of site commissions.⁸⁹ Accordingly, we have added diagrams to the instructions.

36. We decline, however, to adopt the related request that we add instructions requiring providers to report specific details regarding each type of site commission.⁹⁰ The updated instructions and templates already require providers to submit this level of detail at the facility-level.⁹¹ For instance, with regard to what qualifies as a legally mandated site commission, the instructions require that providers include a citation to the authority requiring such payment in the attached Excel template.⁹² Moreover, for in-kind site commissions, the Word template requires providers to describe “each payment, gift, exchange of services or goods, fee, technology allowance, or product provided to the Facility that [the provider] classif[ies] as an In-Kind Site Commission payment” for both legally mandated and contractually prescribed site commissions.⁹³ Thus, the instructions and templates are already designed to provide the level of transparency sought.

C. Specific Instructions

1. Definitions

37. Commenters generally support or do not comment on our proposed definitions. We therefore adopt the proposed definitions with certain modifications, as explained below.

38. *Audio IPCS and Video IPCS.* The proposed instructions included a definition of “IPCS,” but did not separately define “Audio IPCS” or “Video IPCS.” We adopt a request that we define each of these terms because we require cost allocation “between audio IPCS and video IPCS,”⁹⁴ and defining the relevant terms will help avoid potential confusion in making this allocation. We therefore add the following definitions to the instructions:

Audio IPCS means, for the purpose of this data collection, all services classified as inmate calling services within the meaning of 47 CFR § 64.6000(j), including (a) Interconnected VoIP; (b) Non-interconnected VoIP; (c) all Telecommunications Relay Services (TRS), including the use of a device or transmission service to access TRS; and (d) all point-to-point video services made available to incarcerated people for

⁸⁷ *Id.*

⁸⁸ Wright Petitioners Comments, Brattle Report at 11, para. 23.

⁸⁹ *Id.*

⁹⁰ *Id.* at 12, para. 24.

⁹¹ *Incarcerated People’s Communications Services, 2023 Mandatory Data Collection Instructions* at 53-59, § IV.D.2.b (2023 MDC Instructions) (linked to by Appx. A, *infra*).

⁹² *Id.*

⁹³ *Incarcerated People’s Communications Services, 2023 Mandatory Data Collection Word Template* at 24-25, questions 65, 68 (linked to by the 2023 MDC Instructions at 66, Appx. A, Mandatory Data Collection Word Template).

⁹⁴ Securus Comments at 5.

communication in American Sign Language (ASL) with other ASL users.⁹⁵

Video IPCS means any video communications service used by incarcerated people for the purpose of communicating with individuals outside the correctional institution where the people are incarcerated, regardless of the technology used. It typically includes an integrated audio component, and excludes all services classified as Audio IPCS, as well as Other Products and Services, such as one-way entertainment, educational, religious, vocational, and instructional programming.

39. We decline to restrict the definitions of Audio IPCS “to voice-only calling services using either circuit switched or VoIP technology” and Video IPCS “to real-time remote or on-site video visitation services,” as one commenter suggests.⁹⁶ The Martha Wright-Reed Act unequivocally expands the definition of IPCS to include advanced communications services.⁹⁷ Advanced communications services broadly include “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.”⁹⁸ We therefore do not limit the definitions of Audio IPCS or Video IPCS to specific types of technology used to transmit the services.⁹⁹

40. *Safety and Security Measures.* We proposed a broad definition of “safety and security measures,” in accordance with the Martha Wright-Reed Act’s directive that the Commission “shall consider,” as part of its ratemaking, “costs associated with any safety and security measures necessary to provide” telephone service and advanced communications services in correctional institutions.¹⁰⁰ This approach was designed to allow the Commission the broadest possible view of the costs that providers and facilities incur. We agree, however, with Pay Tel’s observation that the proposed definition is “so broad as to encompass the entirety of IPCS.”¹⁰¹ To eliminate this issue, we revise the definition of “safety and security measures” to read:

[A]ny safety or security surveillance system, product, or service, including any such system, product, or service that: helps the Facility ensure that Incarcerated People do not communicate with persons they are not allowed to communicate with; helps monitor and record on-going communications; or inspects and analyzes recorded communications. Safety and Security Measures also include other related systems, products, and services, such as a voice biometrics system, a PIN system, or a system concerning the administration of subpoenas concerning

⁹⁵ The services described in clauses (c) and (d) in this definition must be made available to incarcerated people with communication disabilities, to the extent required by 47 CFR § 64.6040, because they enable communication that is functionally equivalent to Audio IPCS. *See id.* § 225(a)(3). Therefore, they shall be treated as Audio IPCS for purposes of this data collection, notwithstanding any video component of those services.

⁹⁶ Securus Comments at 5; *see also* Securus Reply at 3-4 (maintaining that the Commission lacks authority to regulate the rates for non-real time audio and video services); *contra* Worth Rises Reply at 1 (challenging Securus’s position and proposal as being based in a “desire to limit the definition of audio and video IPCS [which] is driven by an intent to exclude services from regulation that Congress made no signal it intended to exclude”).

⁹⁷ Martha Wright-Reed Act § 2(a)(2); *see also* Worth Rises Reply at 1-2.

⁹⁸ 47 U.S.C. §§ 153(1)(E), 276(d); Worth Rises Reply at 1-2.

⁹⁹ Worth Rises Reply at 1-2.

¹⁰⁰ Martha Wright-Reed Act § 3(b)(2).

¹⁰¹ Pay Tel Comments at 4 (arguing that that the proposed definition “creates a feedback loop where providers are being asked to report the entirety of their service costs . . . in a ‘catch all’ category”).

communications. The classification of a system, product, or service as a Safety and Security Measure does not mean that it is part of a Provider's IPCS-Related Operations.¹⁰²

41. *Provider, Contractor, and Subcontractor.* In our proposed definitions, we sought to clarify the relationship between two types of IPCS providers—contractors and subcontractors—to provide notice of filing obligations to entities that may not have previously been subject to our authority.¹⁰³ We conclude, however, that further revisions are necessary. Pay Tel suggests that the Commission “should take steps to ensure that it is apprised of situations where multiple entities are involved in providing a covered service to avoid instances of incomplete or duplicated data.”¹⁰⁴ While it does not explain what the Commission should do in the event multiple entities are involved in the provision of IPCS, we agree that clarification of the definitions of “Provider” and “Subcontractor” will ensure we receive the data necessary to achieve “insight into overall service costs.”¹⁰⁵ We therefore amend our proposed definitions of “Provider” and “Subcontractor” to make clear that any contractor or subcontractor that is providing IPCS, regardless of whether that entity has a contract directly with the facility or with another provider, is considered to be a provider for the purposes of the data collection.

42. *Facility.* In the proposed instructions, we proposed including definitions for several synonyms for the term “Facility,” given the apparently interchangeable use of different terms in both the Martha Wright-Reed Act and the Commission's rules.¹⁰⁶ One provider suggests eliminating the four separate terms used “to reference a prison or jail,” and points out that “the Instructions themselves repeatedly use the term Facility.”¹⁰⁷ We agree that the inclusion of these terms is redundant and could cause confusion.¹⁰⁸ We therefore delete the defined terms “Correctional Facility,” “Correctional Institution,” and “Detention Facility” and edit the definition of “Facility” to include these terms synonymously. We likewise make conforming edits to refer only to “Facility” throughout the final instructions, templates, and certification form.

43. *Miscellaneous Definitional Edits.* We have also made various administrative revisions to the definitions. These include grammatical corrections, consistent use of terms, and other non-substantive edits.

2. Facility-Specific Data

44. We adopt, in modified form, the suggestion that we require providers to indicate via a checkbox “whether [facility-specific] data submitted is at the facility level or has been allocated from a contract, in order to ensure that contract-level data is correctly allocated to the facility level.”¹⁰⁹ We find

¹⁰² We proposed defining “Safety and Security Measures” as “including any such system, product, or service that allows Incarcerated People to communicate using IPCS as permitted by the Facility . . .” *Incarcerated Peoples’ Communication Services, 2023 Mandatory Data Collection*, Proposed Instructions at 12, <https://docs.fcc.gov/public/attachments/DOC-393014A1.docx> (last visited July 13, 2023) (*2023 MDC Proposed Instructions*) (linked to by the *Public Notice* at 12, Appx. A, Proposed Mandatory Data Collection Instructions, Templates, and Certification Form. We now exclude this language from the definition.

¹⁰³ *2023 MDC Proposed Instructions* at 8, 12.

¹⁰⁴ Pay Tel Comments at 7; *see also* ViaPath Reply at 5-6 (urging us “to ensure that all entities providing IPCS respond to the MDC”).

¹⁰⁵ Pay Tel Comments at 6-7.

¹⁰⁶ *2023 MDC Proposed Instructions* at 9; *see also* Martha Wright-Reed Act §§ 2(b), 3(b), 4; 47 CFR § 64.6000.

¹⁰⁷ Securus Comments at 5 (referencing the terms “Correctional Facility, Correctional Institution, Detention Facility, and Facility”).

¹⁰⁸ *Id.*

¹⁰⁹ Wright Petitioners Comments, Brattle Report at 4, 22-23, paras. 8, 41.

that obtaining this information may help eliminate confusion when attempting to understand how providers arrived at the amounts reported in their cost categories.¹¹⁰ However, we determine that this area is too nuanced for a checkbox and therefore revise the Word template to direct providers to identify whether the facility-specific data they report were recorded at the company, contract, or facility level. This requirement will clarify whether data were recorded at the facility-level or whether they have been allocated and must be justified. Because this step would be helpful and impose only minimal burdens on reporting providers, we add this question to the Word template.

3. Telecommunications Relay Services Costs

45. We amend the Word template to allow providers the option of providing information regarding any cost increases resulting from the TRS requirements adopted in the *2022 ICS Order*.¹¹¹ In that order, the Commission adopted several requirements to improve access to communications services for incarcerated people with communication disabilities.¹¹² IPCS providers must provide incarcerated people with communications disabilities with access to all relay services eligible for TRS Fund support in any correctional facility where broadband is available and where the average daily population incarcerated in that jurisdiction totals 50 or more persons.¹¹³ It also required that where inmate calling service providers are required to provide access to all forms of TRS, they also must allow ASL direct, or point-to-point, video communication.¹¹⁴ The Commission clarified and expanded the scope of the restrictions on inmate calling service providers assessing charges for TRS calls, expanded the scope of the required Annual Reports to reflect the above changes, and modified TRS user registration requirements to facilitate the use of TRS by eligible incarcerated persons.¹¹⁵ Providers have had to comply with certain of these requirements (i.e., the limitations on charging) since they became effective earlier this year, while compliance with other requirements is mandated beginning January 1, 2024, or, in some cases, pending approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act.¹¹⁶

46. Because this data collection seeks data only for calendar year 2022, providers' submissions will not fully reflect any additional costs they incur in complying with the new TRS requirements. In recognition of this fact, Securus and Pay Tel urge that providers be given the option of submitting data estimating the costs of implementing the new requirements, even if those costs were not incurred in calendar year 2022.¹¹⁷ We find this suggestion reasonable and therefore modify the Word template to allow, but not require, providers to report their estimates of their annual incremental costs of complying with the TRS requirements adopted in the *2022 ICS Order*, to the extent those costs are not

¹¹⁰ *Id.* at 4, para. 8.

¹¹¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 at 8-28, paras. 19-65 (2022) (*2022 ICS Order* or *2022 ICS Notice*).

¹¹² *Id.*

¹¹³ 47 CFR § 64.6040(b)(2). TRS are “telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind or who has a speech disability to engage in communication by wire or radio . . . in a manner that is functionally equivalent to the ability of a hearing person who does not have a speech disability to communicate using voice communication services.” 47 U.S.C. § 225(a)(3); 47 CFR § 64.601(a)(43).

¹¹⁴ 47 CFR § 64.6040(b)(2)(ii).

¹¹⁵ *Id.* §§ 64.611, 64.6040, 64.6060.

¹¹⁶ See Federal Communications Commission, *Rates for Interstate Inmate Calling Services*, 87 Fed. Reg. 75514 (Dec. 9, 2022). Amendments to 47 CFR §§ 64.611(k)(1)(iv)-(v), 64.6040(c), and 64.6060(a)(5)-(7) will not become effective until the Office of Management and Budget (OMB) completes any review required under the Paperwork Reduction Act (PRA), and the Commission establishes an effective date by subsequent Public Notice.

¹¹⁷ Securus Comments at 2; Pay Tel Reply at 3-4.

reflected in their data for 2022.¹¹⁸ Annual incremental costs of TRS compliance are those the provider would not have incurred but for its compliance with these TRS requirements. Shared and common costs will already be reflected in the data providers will be reporting for 2022 and thus should be excluded from the annual incremental costs of TRS compliance.

4. Facility Costs of Providing Safety and Security Measures

47. We adopt our proposal to require providers to report any verifiable and reliable information in their possession about the costs the facilities they serve incur to provide safety and security measures in connection with the provision of IPCS, as well as any verifiable and reliable information on other facility-incurred costs that are not directly related to safety and security. Any such information will provide the Commission with a more comprehensive picture of the total costs of providing IPCS. Pay Tel has encouraged us to include facilities' costs in any effort to calculate the costs of IPCS.¹¹⁹ It argues that facilities incur recoverable costs "in making IPCS available" and supports our "efforts to document and acknowledge these costs."¹²⁰

48. The record also suggests, however, that providers are "highly unlikely" to have such information on facilities' costs. One commenter proposes that the Commission develop a reporting template for use by facilities and seek this information directly from facilities.¹²¹ Although we acknowledge that facilities may be more likely to have access to this information than providers, collecting data directly from facilities would raise a number of difficulties. Any attempt to seek data directly from facilities would arguably exceed the authority delegated to WCB and OEA by the Commission regarding this data collection.¹²² Attempting to expand the data collection to include facilities would also pose significant practical challenges. Doing so would greatly expand the group of entities subject to the data collection and would multiply the burdens imposed by the collection. Furthermore, developing a template, seeking comments, and collecting responses from facilities would significantly delay the data collection and could prevent the Commission from meeting the statutory timeframe established by the Martha Wright-Reed Act. Accordingly, we decline to adopt this proposal. We emphasize, however, that the Commission has repeatedly encouraged correctional officials to submit data on their IPCS-related costs, including any costs they incur for safety and security measures.¹²³

49. Finally, we adopt our proposal to require providers to be able to produce, on request, documentation sufficient to explain and justify the accuracy and reliability of any data they report regarding the costs incurred by facilities.¹²⁴ This requirement will enable the Commission to evaluate the

¹¹⁸ Securus Comments at 2; Pay Tel Reply at 4 ("Because the Commission has adopted rules which may impose significant new costs on IPCS providers, the Commission should enable data collection on estimated costs associated with those rules.").

¹¹⁹ Pay Tel Comments at 5 ("[C]osts which should be recoverable by facilities are not limited to what the Commission proposes to label as 'safety and security' costs. . . . Pay Tel supports the Commission's efforts to document and acknowledge these costs.").

¹²⁰ *Id.* ("[C]osts which should be recoverable by facilities . . . [include] costs . . . incurred by facilities in making IPCS available.").

¹²¹ *Id.*

¹²² 2023 *IPCS Order* at 33, para. 84 (directing WCB and OEA to collect data "from all providers of those services now subject to [the Commission's] expanded authority under the Martha Wright-Reed Act and the Communications Act").

¹²³ 2021 *ICS Notice*, 36 FCC Rcd at 9666, para. 324; 2022 *ICS Notice* at 44, para. 96; 2023 *IPCS Notice* at 24-25, paras. 56-57.

¹²⁴ *Public Notice* at 6. Absent a future order adjusting the retention period, providers shall retain any such documentation until any rules the Commission adopts to implement the Martha Wright-Reed Act have become effective and are no longer subject to judicial review.

reliability and accuracy of any such data. It will minimize burdens by not requiring the submission of such documentation with providers' responses but only requiring the retention and subsequent production of the relevant documents upon request—documents which providers would likely retain in the normal course of business. No commenters challenged this aspect of our proposal. We find that this requirement will help ensure that the Commission will be able to evaluate the accuracy and reliability of the data submitted while adding only a minimal additional burden on providers.

5. Admissions, Releases, and Turnover Rates

50. We modify the Excel template to make the questions regarding facility-specific total admissions, total releases, and weekly turnover rates optional. In the *Third Mandatory Data Collection Order*, WCB and OEA identified these metrics as important to helping the Commission correct for the possibility that other population metrics, such as average daily population, might not fully account for all the costs of providing audio IPCS at smaller jails.¹²⁵ We therefore required the submission of facility-specific data on admissions, releases, and weekly turnover rates as part of the Third Mandatory Data Collection and, in the *Public Notice*, proposed to incorporate that requirement into the 2023 Mandatory Data Collection.¹²⁶ However, our review of providers' responses to the Third Mandatory Data Collection,¹²⁷ as well as comments on the proposed instructions,¹²⁸ make clear that requiring these data would impose a significant burden on providers without producing meaningful results, due in large part to difficulties providers encounter in obtaining accurate data from correctional officials.¹²⁹

51. As one commenter explains, "IPCS providers do not track or have adequate information to respond to questions about 'weekly turnover,' 'total admissions,' or 'total releases' at each correctional facility they serve."¹³⁰ Another provider explains that it has "no way of gauging the accuracy of this data or whether the sample size was useful."¹³¹ In attempting to balance competing considerations regarding the potential importance of these data and the relative inaccessibility, we make the reporting of this information optional. This approach will reduce the burdens on providers,¹³² while still allowing them to report this information where possible.¹³³

¹²⁵ *Third MDC Order*, 37 FCC Rcd at 372 n.37 (finding that this information will help correct issues in reported data for population metrics and citing the *2021 ICS Notice*, 36 FCC Rcd at 9662-63, para. 319, for its discussion on the impact of turnover rates between jails with ADP's below 1,000 and higher population facilities); *see also 2021 ICS Notice*, 36 FCC Rcd at 9662-63, para. 319 (establishing the points that generally jails with ADPs smaller than 1,000 face higher admissions and turnover rates than facilities with larger populations and noting one provider's estimated weekly turnover rates representing a significant disparity in this relationship between jails and prisons).

¹²⁶ *Third MDC Order*, 37 FCC Rcd at 371-72, paras. 11-12; *2023 MDC Proposed Instructions* at 44.

¹²⁷ Multiple providers indicated they did not track the data and were unable to obtain them from correctional officials.

¹²⁸ Securus Comments at 6-7 (discussing issues with reporting of facility-specific demand data including turnover data and arguing that the Department of Justice's, Office of Justice Programs, Bureau of Justice Statistics' datasets on turnover rate is "likely to be superior to anything providers can glean in hit-or-miss efforts"); ViaPath Comments at 7 (listing issues with collecting this information generally).

¹²⁹ *Id.* at 6 (explaining the efforts Securus undertook to report turnover rate and related data for the Third Mandatory Data Collection and the results of those efforts).

¹³⁰ ViaPath Comments at 7.

¹³¹ Securus Comments at 6 (discussing its view of the data received from the "small fraction" of facilities that responded to its queries for these data).

¹³² *See id.* at 7 (stating that "[t]he Commission can ease some of the burden by eliminating the obligation to gather this data (or at least make it optional)").

6. Bundling

52. We modify the Word template to obtain specific information on the extent to which providers bundle IPCS with nonregulated services and on the steps providers employ to ensure that the costs of their nonregulated services are not allocated to IPCS or associated ancillary services.¹³⁴ Although we did not explicitly include questions about bundling in our proposals, in the *Public Notice*, we sought comment on whether there were “additional data” that providers should be required to submit in response to the Mandatory Data Collection.¹³⁵ The Wright Petitioners explain that bundling data are needed because providers offer different services that “may or may not be bundled together when reporting the data,”¹³⁶ potentially inflating the costs reported for regulated services.

53. We agree that data on service bundles will assist the Commission in understanding what services are provided and how they are provided, and, most importantly, in establishing just and reasonable IPCS rates. We therefore add questions to the Word template that direct each provider to report, among other information, whether it offers regulated and nonregulated services as a bundle and, if so, to identify each of the components included in the bundle; to identify which components are regulated or nonregulated and the standalone price of each component; to state whether bundling affects the provider’s overall costs and, if so, how; and to indicate whether the provider’s bundling practices vary by facility or by contract.

7. Financial Reports

54. We adopt our proposal to require all providers to submit audited financial statements or reports for 2022, or, in the absence of an audited financial statement or report, similar financial documentation for 2022 to the extent produced in the ordinary course of business.¹³⁷

D. Timeframe for Provider Responses to the Data Collection

55. In the *Public Notice*, we sought comment on our proposal to require providers to file their responses to the data collection within 90 days of the release of this Order.¹³⁸ The proposed timeframe, which admittedly is somewhat shorter than the timeframe for the previous mandatory data collection,¹³⁹ reflects the time constraints the Martha Wright-Reed Act imposes for “promulgat[ing] any regulations necessary to implement” the Act.¹⁴⁰

(Continued from previous page) _____

¹³³ Because we make this requirement optional, we do not address Securus’s suggestion that the Commission rely on potentially relevant data from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. *Id.* at 6-7.

¹³⁴ Wright Petitioners Comments, Brattle Report at 20, para. 37 (“When the same provider supplies a regulated and unregulated product, especially when the unregulated product is a necessary input to the regulated service, the provider can charge monopoly prices in the unregulated market. For IPCS, if there are regulations on video calling and the calling requires the use of tablets, the providers can charge monopoly prices for the unregulated services and each supernormal profits.”).

¹³⁵ *Public Notice* at 7.

¹³⁶ Wright Petitioners Comments, Brattle Report at 7 n.11 (“For example, some providers offer video calling through tablets but these tablets also offer a wide range of additional ‘enhanced services’, such as games, books, movies, e-messaging, and picture/video messaging.”).

¹³⁷ 2023 MDC Proposed Instructions at 4-5. We note that this exception for the ordinary course of business is only applicable to the submission of this alternative documentation and does not extend to other requirements of the data collection, and we remind providers to follow the instructions for each section of the data collection.

¹³⁸ *Public Notice* at 9.

¹³⁹ *Third MDC Order*, 37 FCC Rcd at 385, para. 46 (requiring responses in 120 days).

¹⁴⁰ Martha Wright-Reed Act § 3(a).

56. Providers instead propose requiring responses to the data collection 120 days following release of this Order.¹⁴¹ ViaPath asserts that “[p]roviders need a reasonable amount of time to complete the report”¹⁴² and Securus comments that “90 days is an insufficient period of time” to respond to the data collection.¹⁴³ ViaPath contends that “a slight extension of the MDC filing deadline is reasonable.”¹⁴⁴ We agree with ViaPath and establish October 31, 2023 as the date on which provider responses will be due, unless final PRA authority for this collection is not granted prior to then. Given the date of release of this Order, this represents an extension of an additional week from the originally proposed 90-day deadline, which, while not as extensive as sought, will nonetheless allow providers additional time to prepare their submissions. We find that granting this extension will still provide the Commission with sufficient time to promulgate regulations to implement the Martha Wright-Reed Act consistent with the Act’s time constraints.

E. Digital Equity and Inclusion

57. As part of our continuing effort to advance digital equity for all,¹⁴⁵ 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, we invited comment on any equity-related considerations¹⁴⁶ and benefits (if any) that may be associated with the proposals and issues associated with the data collection.¹⁴⁷ Specifically, we sought comment on how our proposals for that collection may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

58. We conclude that the Mandatory Data Collection adopted here will promote digital equity, particularly for incarcerated people and their families. In recent years, the Commission has collected data from providers of calling services for incarcerated people as part of its ongoing efforts to establish just and reasonable rates for those services that reduce the inequitable financial burdens unreasonable rates impose on incarcerated people and their loved ones, while ensuring that providers are fairly compensated for their services.¹⁴⁸ The information IPCS providers submit in their data collection responses will help the Commission advance these goals in accordance with the Communications Act and

¹⁴¹ ViaPath Comments at 2; Securus Comments at 5; Pay Tel Reply at 5; ViaPath Reply at 3; Securus Reply at 9; *but see* Wright Petitioners Reply at 6 (“urg[ing] the Commission to retain the proposed 90-day requirement”).

¹⁴² ViaPath Comments at 3; *see also* Pay Tel Reply at 5 (explaining that “[a]dditional time to prepare data collection submissions would help alleviate [the data collection’s burden] by facilitating staffing flexibility and allowing for deconfliction with other reporting deadlines”).

¹⁴³ Securus Comments at 5-6; *see also* ViaPath Reply at 3 (“The proposed 90-day response deadline is insufficient.”).

¹⁴⁴ ViaPath Comments at 3.

¹⁴⁵ Section 1 of the Communications Act provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

¹⁴⁶ 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).

¹⁴⁷ *Public Notice* at 9-10.

¹⁴⁸ *Supra* note 9.

the Martha Wright-Reed Act.

IV. PROCEDURAL MATTERS

59. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁴⁹ 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.”¹⁵⁰ Accordingly, we have prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Order* on small entities. The Supplemental FRFA supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *Rates for Interstate Inmate Calling Services* proceeding and is set forth in Appendix B.

60. *Final Paperwork Reduction Act Analysis.* The Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.¹⁵¹ We have assessed the effects of the data collection on small business concerns, including those having fewer than 25 employees, and find that to the extent such entities are subject to the collection, any further reduction in the burden of the collection would be inconsistent with the objectives behind the collection.

V. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 155(c), 201(b), 218, 220, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 155(c), 201(b), 218, 220, 255, 276, 403, and 617 and the authority delegated in sections 0.21, 0.91, 0.201(d), 0.271, and 0.291 of the Commission’s rules, 47 CFR §§ 0.21, 0.91, 0.201(d), 0.271, 0.291 and paragraphs 84 and 85 of the *2023 IPCS Order*, this Order IS ADOPTED.

¹⁴⁹ 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).

¹⁵⁰ 5 U.S.C. § 605(b).

¹⁵¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8536-37, para. 146 (2020).

62. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

Giulia McHenry
Chief
Office of Economics and Analytics

APPENDIX A

**2023 Mandatory Data Collection Instructions,
Templates, and Certification Form**

The instructions, templates, and certification form for the 2023 Mandatory Data Collection are available through this link: <https://www.fcc.gov/2023-ipcs-mandatory-data-collection>.

APPENDIX B

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *2023 Mandatory Data Collection Public Notice*, released in April 2023.² The Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) (collectively, WCB and OEA) sought written public comment on proposals in the *Public Notice*, including comment on the Supplemental IRFA. No comments were filed addressing the Supplemental IRFA.³ The *Public Notice* sought comment on proposals to implement the 2023 Mandatory Data Collection in the Commission's Incarcerated People's Communications Services (IPCS) proceeding and supplements the Final Regulatory Flexibility Analyses completed by the Commission in the *Rates for Interstate Inmate Calling Services* and other Commission orders pursuant to which this data collection will be conducted.⁴ This present Supplemental FRFA conforms to the RFA.⁵

A. Need for, and Objectives of, the Order

2. In the Order, WCB and OEA adopt policies and specific requirements to implement the forthcoming 2023 Mandatory Data Collection for IPCS.⁶ In the *2023 IPCS Order*, the Commission adopted a new data collection requirement.⁷ The Commission determined that this data collection would enable it to “meet both [its] procedural obligations (to consider certain types of data) and [its] substantive responsibilities (to set just and reasonable rates and charges)” under the Martha Wright-Reed Act and the Communications Act of 1934, as amended (the Communications Act).⁸ Likewise, it directed WCB 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 *WCB and OEA Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People's Communication Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355, at 13, Appx. B (Supplemental Initial Regulatory Flexibility Analysis) (WCB/OEA Apr. 28, 2023) (*2023 IPCS Mandatory Data Collection Public Notice* or *Public Notice*); *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking and Order, FCC 23-19, at 33, paras. 84 (2023) (*2023 IPCS Notice* or *2023 IPCS Order*).

³ *Public Notice* at 10-11.

⁴ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14201, Appx. C (Final Regulatory Flexibility Analysis) (2013) (implementing the First Mandatory Data Collection); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12944, Appx. E (Final Regulatory Flexibility Analysis) (2015) (implementing the Second Mandatory Data Collection); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519, 9668, Appx. C (Supplemental Final Regulatory Flexibility Analysis) (2021) (implementing the Third Mandatory Data Collection).

⁵ See 5 U.S.C. § 604.

⁶ In the *2023 IPCS Order*, the Commission ordered a new mandatory data collection to ensure the proper implementation of the Martha Wright-Reed Act. *2023 IPCS Order* at 33, para. 84; Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or the Act). The accompanying *2023 IPCS Notice* included an Initial Regulatory Flexibility Analysis. *2023 IPCS Notice* at 38, Appx. A (Initial Regulatory Flexibility Analysis). The *2023 IPCS Mandatory Data Collection Public Notice* also included a Supplemental Initial Regulatory Flexibility Analysis. *2023 IPCS Mandatory Data Collection Public Notice* at 13, Appx. B (Initial Regulatory Flexibility Analysis).

⁷ *2023 IPCS Order* at 33, para. 85.

⁸ *2023 IPCS Order* at 33, para. 84.

OEA “to update and restructure the most recent data collection as appropriate to implement the Martha Wright-Reed Act.”⁹

3. The Order determines the overall scope of the data collection including: limiting the data collection reporting period to calendar year 2022; defining cost reporting and cost allocation methodologies; defining reporting categories; requiring providers to allocate safety and security measures among seven categories; requiring that providers submit additional information for video IPCS; and adding questions concerning company-wide and facility-level site commissions. The Order also clarifies specific instructions for data collection to provide clarity for the providers completing the forms. Finally, the Order establishes that providers must submit responses by October 31, 2023. Pursuant to their delegated authority, WCB and OEA have prepared instructions, reporting templates, and a certification form for the 2023 Mandatory Data Collection¹⁰ and are issuing this Order to adopt all aspects of these documents.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the Supplemental IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹¹ The Chief Counsel did not file any comments in response to the rules and policies proposed in the Supplemental IRFA.

D. Description and Estimate of the Number of Small Entities to Which the 2023 Mandatory Data Collection 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 2023 Mandatory Data Collection. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹² In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹³ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁴

7. As noted above, an IRFA was incorporated in the *2023 IPCS Notice*.¹⁵ In that analysis, the Commission described in detail the small entities that might be affected. Accordingly, in this Order,

⁹ *Id.*

¹⁰ See Appx. A, *supra*.

¹¹ 5 U.S.C. § 604(a)(3).

¹² See *id.* § 601(6).

¹³ See *id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁴ See 15 U.S.C. § 632.

¹⁵ *2023 IPCS Notice* at 38, Appx. A (Initial Regulatory Flexibility Analysis); *2023 IPCS Mandatory Data Collection Public Notice* at 13, Appx. B (Initial Regulatory Flexibility Analysis).

for the Supplemental FRFA, we incorporate by reference from these previous Regulatory Flexibility Analyses the descriptions and estimates of the number of small entities that may be impacted by the *Order*.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

8. The 2023 Mandatory Data Collection will impose new or modified reporting, recordkeeping and other compliance obligations on small entities. The *Order* requires IPCS providers to submit data and other information on, among other matters, calls, demand, operations, company and contract information, information about facilities served, revenues, site commission payments, the costs of safety and security measures, video IPCS, and ancillary fees. WCB and OEA estimate that approximately 30 IPCS providers will be subject to this one-time reporting requirement. In the aggregate, WCB and OEA estimate that responses will take approximately 7,950 hours and cost approximately \$493,224.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

9. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.”¹⁶

10. The 2023 Mandatory Data Collection is a one-time collection and does not impose a recurring obligation on providers. Because the Commission’s *2023 IPCS Order* requires all IPCS providers to comply with the 2023 Mandatory Data Collection,¹⁷ the collection will affect smaller as well as larger IPCS providers. WCB and OEA have taken steps to ensure that the data collection template is competitively neutral and not unduly burdensome for any set of providers and have considered the economic impact on small entities in finalizing the instructions and the template for the 2023 Mandatory Data Collection. For example, the 2023 Mandatory Data Collection requires the collection of data for a single calendar year instead of three calendar years, as in previous data collection. In response to the comments, WCB and OEA have refined certain aspects of the data collection, including modifying the treatment of audio IPCS and safety and security measures, clarifying the reporting of costs related to site commissions, and revising certain proposed definitions. WCB and OEA have also revised instructions for cost reporting and cost allocation that will help the Commission understand the nature of the reported costs, without imposing significant additional burdens on providers. WCB and OEA reorganized instructions for our proposed seven-category framework for reporting safety and security measure costs to simplify them and increase clarity. Further, the instructions for the data collection include relevant diagrams to facilitate providers’ responses and improve the accuracy and consistency of the data they report. The instructions allow, but do not require, providers to subdivide their audio and video IPCS costs into more discrete categories based on the type of audio or video service being provided, as some parties suggest, to give providers greater flexibility in reporting these costs.

11. WCB and OEA considered but rejected alternative proposals to allow providers to use their own allocation methodologies because of the undue burden it would have on the interested parties and the Commission to analyze and correct inconsistent responses. The modifications adopted in the *Order* avoid unduly burdening small and other responding providers while ensuring that providers have sufficiently detailed and specific instructions to respond to the data collection. The data collection also

¹⁶ 5 U.S.C. § 604(a)(6).

¹⁷ *2023 IPCS Order* at 33, para. 84.

makes certain questions optional to reduce reporting burdens, including the questions regarding correctional facility-specific total admissions, total releases, and weekly turnover rates.

G. Report to Congress

12. The Commission will send a copy of the Order, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.¹⁸ In addition, the Commission will send a copy of the Order, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order, and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.¹⁹

¹⁸ 5 U.S.C. § 801(a)(1)(A).

¹⁹ See *id.* § 604(b).



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 23-639

Released: July 26, 2023

ENFORCEMENT BUREAU REQUESTS INFORMATION ON THE STATUS OF PRIVATE-LED TRACEBACK EFFORTS OF SUSPECTED UNLAWFUL ROBOCALLS

EB Docket No. 20-195

Deadline to Submit Information: November 13, 2023

The Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) was signed into law on December 30, 2019.¹ Congress required the Federal Communications Commission (Commission) to issue a public notice annually to seek comment on private-led efforts to trace back the source of suspected unlawful robocalls and to issue an annual report on the status of such efforts and the participation of voice service providers in such efforts.² The Enforcement Bureau (Bureau) requests voice service providers and the registered consortium, USTelecom's Industry Traceback Group (Traceback Group), to submit any information necessary for the Commission's annual report.

The reporting period for this request is from November 1, 2022, to October 31, 2023. Submissions are due by November 13, 2023.

Background. Unlawful prerecorded or artificial voice message calls—robocalls—plague the American public. In many instances, unlawful robocalls include inaccurate or misleading caller identification information, known as spoofed caller ID. Spoofed caller ID makes it more difficult to identify the source of the call. In order to enforce the laws prohibiting illegal robocalls, government and industry work together to trace suspected unlawful spoofed robocalls to their origination—a process known as “traceback.” Congress acknowledged the beneficial collaboration between the Commission and the private sector on traceback issues and, in section 13(d) of the TRACED Act, required the Commission to establish a registration process for the registration of a single consortium to conduct private-led traceback efforts and to issue an annual notice seeking registrations. On July 27, 2020, the Bureau selected the Traceback Group as the registered consortium to conduct private-led traceback efforts,³ and it

¹ Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

² TRACED Act § 13(a), (c).

³ *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 35 FCC Rcd 7886, 7886-87, para. 3 (EB 2020).

reselected the Traceback Group in August 2021.⁴ Most recently, the Bureau reselected the Traceback Group as the registered consortium in August 2022.⁵

Section 13(c) of the TRACED Act requires the Commission, not later than 210 days after the date of enactment of the Act (i.e., July 27, 2020), and annually thereafter, to seek additional information from voice service providers and the registered consortium about the status of private-led traceback efforts and the participation of voice service providers in such efforts. Section 13(a) of the TRACED Act requires the Commission to publish an annual report, not later than December 30 each year, on the status of those efforts. Congress mandated that the registered consortium selected to conduct private-led tracebacks and any voice-service provider be given an opportunity to provide information to the Commission to be used in the annual report.⁶ At a minimum, the report must include the following information:⁷

1. A description of private-led efforts to trace back the origin of suspected unlawful robocalls by the registered consortium and the actions taken by the registered consortium to coordinate with the Commission;
2. A list of voice service providers identified by the registered consortium that participated in private-led efforts to trace back the origin of suspected unlawful robocalls through the registered consortium;
3. A list of each voice service provider that received a request from the registered consortium to participate in private-led efforts to trace back the origin of suspected unlawful robocalls and refused to participate, as identified by the registered consortium;
4. The reason, if any, each voice service provider identified by the registered consortium provided for not participating in private-led efforts to trace back the origin of suspected unlawful robocalls; and
5. A description of how the Commission may use the information provided to the Commission by voice service providers or the registered consortium that have participated in private-led efforts to trace back the origin of suspected unlawful robocalls in the enforcement efforts by the Commission.

Submission Process: Information may be filed via ECFS (www.fcc.gov/ecfs) in EB Docket No. 20-195.⁸ If filers wish to include confidential information as part of their submitted information, they must submit: (1) a redacted, public version via ECFS; and (2) a non-redacted, confidential version electronically to the Enforcement Bureau. Filers should contact Kristi Thompson by phone (at 202-418-1318) or e-mail (kristi.thompson@fcc.gov) to arrange electronic submission of the non-redacted version. Confidential material must be marked as such and requests for confidential treatment must conform to the requirements of section 0.459 of the Commission's rules.⁹

Parties may choose to file by paper; such filers 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

⁴ *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 36 FCC Red 12872, 12872, para. 1 (EB 2021)

⁵ *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870, at 1, para. 1 (EB Aug. 22, 2022).

⁶ TRACED Act § 13(c).

⁷ *Id.* § 13(b).

⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Red 11322 (1998).

⁹ 47 CFR § 0.459.

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-19.¹⁰

Deadline to Submit Information: November 13, 2023.

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) or 202-418-0432 (TTY).

Additional Information. For further information, contact Kristi Thompson, Chief, Telecommunications Consumers Division, Enforcement Bureau, at 202-418-1318, or via e-mail at kristi.thompson@fcc.gov.

– FCC –

¹⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.



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 23-640

Released: July 25, 2023

BROADBAND DATA COLLECTION FILING DEADLINE FOR JUNE 30, 2023 DATA EXTENDED TO SEPTEMBER 15, 2023

WC Docket No. 19-195, 11-10

By this Public Notice, the Broadband Data Task Force and Office of Economics and Analytics extend the September 1, 2023, deadline for the submission of Broadband Data Collection (BDC) data as of June 30, 2023, by granting a limited waiver¹ of section 1.7004(b) of the Commission's rules.² **All BDC data as of June 30, 2023, are now due no later than September 15, 2023.**

This extension allows broadband service providers who are filing data as of June 30, 2023, additional time to incorporate updated Fabric data into their submission. These updates were necessary to correct a processing error that occurred during the production of the June 2023 Fabric. The error resulted in broadband serviceable locations (BSLs) not being included in the June 2023 Fabric files originally sent to license holders.³ This processing error impacted the June 2023 version of the Fabric and not earlier versions of the Fabric, including the December 2022 Fabric that is currently on the National Broadband Map and was used as a basis for the allocation of BEAD funding by NTIA.⁴

Although these updates only affect a very small number (roughly 0.1 percent) of the over 115 million BSLs nationwide, it is important that we collect availability data for them in order to make the National Broadband Map as accurate and complete as possible. CostQuest, the Commission's Fabric contractor, is sending an updated version of the June 2023 Fabric by August 1, 2023, to Fabric licensees that includes the added BSLs. CostQuest will also provide a change list to filers so that they may easily identify whether they have service available at any of the added locations and therefore need to update their BDC submission. We find that extending the filing deadline until September 15, 2023, will give all filers of fixed broadband availability data time to review the updated Fabric and make any necessary changes to their June 30, 2023, service availability data.

¹ 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, 7496, para. 86 (2020) (directing "IB, WTB, WCB, and OEA to . . . implement any technical improvements or other clarifications to the filing mechanism and forms.").

² 47 CFR § 1.7004(b) (specifying that "Digital Opportunity Data Collection filings shall be made each year on or before March 1 (reporting data as of December 31 of the prior year) and September 1 (reporting data as of June 30 of the current year)."). The BDC was formerly known as the Digital Opportunity Data Collection.

³ Initial release files include "rel_3_1" in the name. Updated files include "rel_3_2" in the name.

⁴ Press Release, NTIA, Biden-Harris Administration Announces State Allocations for \$42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda (June 26, 2023), <https://internetforall.gov/news-media/biden-harris-administration-announces-state-allocations-4245-billion-high-speed-internet>.

Filers who have already uploaded or submitted fixed broadband availability data will need to re-upload or resubmit their data based on the updated Fabric release.⁵ More information on the steps a provider must take to revise and/or upload new data based on the updated Fabric can be found here: <https://help.bdc.fcc.gov/hc/en-us/articles/8148143112859-Revising-a-Submitted-BDC-Filing->.

Section 1.3 of the Commission's rules provides that the Commission may, on its own motion, waive a rule "for good cause shown, in whole or in part, at any time."⁶ This Fabric update warrants deviating from the general rule that BDC data as of June 30 be submitted by September 1. Some filers of fixed broadband availability have already submitted their BDC filings and that many others have begun preparing their availability data in anticipation of the September 1, 2023 deadline. Extension of the filing deadline to September 15, 2023, will allow providers time to review the updated Fabric and submit data based on the corrected version of the Fabric to assure that their availability submission is as complete as possible. The extension strikes a balance by enabling time for providers to reconcile and verify their data at the added locations and at the same time ensuring that the deadline extension will not delay making the data public on the National Broadband Map in a timely manner.⁷

Entities intending to file bulk challenges to the June 2023 version of the Fabric can continue uninterrupted their efforts to prepare Fabric challenges for filing by September 8, 2023.⁸ CostQuest is sending the updated Fabric to State, Tribal, and other third-party licensees at the same time as it is being sent to providers. We suggest that they review the change list provided with the data as it may indicate that some of their challenges are already accommodated. However, there is no need to take any action to modify the challenges they are preparing for filing. To the extent any of those challenges seek to add BSLs at the locations added by our update to the June 2023 Fabric, those challenges will be processed and result in confirmation to the challenger that the locations are already in the updated Fabric.

For additional information and questions regarding the Broadband Data Collection, visit the BDC website at <https://www.fcc.gov/BroadbandData>.

– FCC –

⁵ Refiling will not be necessary if a fixed filer uploaded or submitted fixed broadband availability data as a polygon (as opposed to a list of locations) on or after July 21, 2023. Because the BDC system contained the updated Fabric files on that date, polygon submissions made on or after that date are not impacted.

⁶ 47 CFR § 1.3. *See, e.g., Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see WAIT Radio v. FCC*, 418 F.2d 1153, 1155-59 (D.C. Cir. 1969) (*WAIT Radio*).

⁷ 47 U.S.C. § 642(c)(3) (requiring the Commission to update the broadband availability maps not less frequently than biannually using the most recent data collected from providers during the biannual BDC filing periods). Requests for waivers or further extensions of the new September 15, 2023, filing deadline will "face[] a high hurdle even at the starting gate," *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁸ *Broadband Data Task Force Begins Accepting Challenges to June 2023 Broadband Serviceable Location Fabric*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 23-579 (BDTF July 3, 2023). 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)). More information on best practices for Fabric challenges can be found in previous Task Force releases and on the BDC Help Center. *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), <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), <https://help.bdc.fcc.gov/hc/en-us/articles/9200359586971-Bulk-Fabric-Challenge-FAQs>.



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 23-641

Released: July 27, 2023

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PETITION FILED BY THE OSAGE NATION

WC Docket No. 09-197

Comment Date: August 14, 2023

Reply Comment Date: August 28, 2023

The Wireline Competition Bureau seeks comment on the petition filed by the Osage Nation seeking designation as an Eligible Telecommunications Carrier under Section 214(e)(6) of the Communications Act of 1934.¹

Filing Requirements. Interested parties may file comments on or before the dates indicated above.² All filings must refer to **WC Docket No. 09-197**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).³

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁴

¹ Amended Petition of the Osage Nation Seeking Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197, at 1, 22 (filed June 21, 2023), <https://www.fcc.gov/ecfs/document/1062120809474/1>.

² See 47 CFR §§ 1.2, 1.405, and 1.419.

³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

⁴ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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.

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).⁶ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information regarding this proceeding, please contact Denise Golumbaski, Telecommunications Access Policy Division, Wireline Competition Bureau at Denise.Golumbaski@fcc.gov.

- FCC -

⁵ See 47 CFR §§ 1.1200 *et seq.*

⁶ *Id.* § 1.1206(b).



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 23-642
July 31, 2023

MEDIA BUREAU ANNOUNCES
FILING PROCEDURES AND REQUIREMENTS FOR
NOVEMBER 1 - NOVEMBER 8, 2023, LOW POWER FM FILING WINDOW

LIMITED APPLICATION FILING FREEZE TO COMMENCE ON SEPTEMBER 1, 2023

This Public Notice (Notice) provides an overview of the procedures, filing requirements, and comparative selection process that will apply to the upcoming filing window for applications for Low Power FM (LPFM) new station construction permits (LPFM Applications). The Bureau will accept LPFM Applications for the entire FM band (channels 201-300) during the window. The window will open at 12:01 am EDT on Wednesday, November 1, 2023, and close at 6:00 pm EST on November 8, 2023.¹

In conjunction with this filing window, the Commission will not accept LPFM and FM translator minor modification applications after 11:59 p.m. EDT, August 31, 2023. The freeze will continue in effect until the close of the window.

The Commission established the LPFM service in 2000, and has licensed 1,989 LPFM stations from the initial 2000-2001 windows and subsequent 2013 window. This will be the first LPFM filing window since 2013, and we encourage potential applicants to carefully review these filing procedures and requirements.²

Electronic LMS Filing Instructions – Schedule 318. Applicants must file LPFM Applications electronically on FCC Form 2100, Schedule 318, Low Power FM Station Construction Permit Application (LPFM Application) in the Media Bureau's (Bureau) Licensing and Management System

¹ See *Media Bureau Announces LPFM New Station Application Filing Window; Window Open from November 1, 2023 to November 8, 2023*, Public Notice, DA 23-531 (MB June 22, 2023).

² In 2019, the Commission amended its rules and procedures for filing LPFM applications and selecting and licensing competing LPFM applications. See *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Report and Order*), *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. In 2020, the Commission also adopted certain changes to the LPFM technical rules to improve reception and increase flexibility in transmitter siting while maintaining interference protection and the core LPFM goals of diversity and localism. See *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative*, Report and Order, 35 FCC Rcd 4115 (2020).

(LMS).³ Applicants must complete *all* sections of the LPFM Application. The Bureau will dismiss any LPFM Applications filed outside the LMS system, including paper filed applications. There is no filing fee required for the LPFM Application.

The LPFM Application is now available in LMS and must be used by all LPFM applicants.⁴ Applicants may begin to prepare their applications at their earliest convenience.

Applications must be filed between November 1, 2023, and November 8, 2023. The filing deadline will be strictly enforced. Applications submitted before November 1, 2023, or after the 6:00 pm EST November 8, 2023, application deadline (Application Deadline) will be dismissed by public notice without further consideration. We, therefore, encourage applicants to file early in the window to ensure proper and timely submission. Applications filed earlier in the window, however, will not receive any preference over those filed later in the window. We will not make LPFM Applications filed during the window available to the public until after the close of the filing window.

LMS Help Center.

Instructions on using the LMS electronic filing system are available on the Media Bureau's LMS Help Center page, which can be found at <https://www.fcc.gov/media/radio/lms-help-center>.

Schedule 318 Instructions.

Instructions on completing each section of the Schedule 318 are available at <https://www.fcc.gov/sites/default/files/Form318-instructions.pdf> or <https://www.fcc.gov/media/radio/lms-help-center>.

LMS Data Entry Login.

Applicants can access the LMS applicant data entry home page here: <https://enterpriseefiling.fcc.gov/dataentry/login.html>, and login using the FCC Registration Number (FRN) associated with the applicant.⁵

For questions regarding basic filing requirements, or assistance logging into LMS or accessing Schedule 318, please contact the Commission at (877) 480-3201 (Option 2), Monday-Friday, 8:00 am-6:00 pm EST, or submit a request online at <https://www.fcc.gov/wireless/available-support-services>.

³ The form will display in LMS as “New Low Power FM Construction Permit Application.”

⁴ See *Media Bureau Announces Transition of Additional Filings to Licensing and Management System*, Public Notice, DA 23-600 (MB July 12, 2023).

⁵ To submit an application, an applicant must first have, or obtain, an FRN. An FRN is a 10-digit identifying number that is assigned to entities doing business with the Commission. Applicants who do not have an FRN must register for an FRN in the Commission's CORES (Commission REGistration System) web page. Go to <https://www.fcc.gov/licensing-databases/commission-registration-system-fcc> and follow the links to register. Applicants must use the Updated CORES System, as the legacy system is being retired and is displayed for archival purposes only. For further assistance with CORES, applicants may view tutorial videos at <https://www.fcc.gov/licensing-databases/fcc-registration-system-cores/commission-registration-system-video-tutorials>, or call the FRN help desk from 8:00 a.m. to 6:00 p.m. EST at 1-877-480-3201. Prospective applicants can obtain an FRN immediately. We encourage them to do so.

Participation Requirements. Only the following entities are eligible to file LPFM Applications: (1) a nonprofit educational organization, (2) a Tribe or Tribally-controlled entity, or (3) a state or local government or a non-government entity that will provide a noncommercial public safety radio service.⁶ Applicants must also be “local” as that term is defined in the Commission’s rules.⁷ Individuals may not submit an LPFM Application. Each applicant will be required to document its eligibility, as described in more detail below.

Protection of Other Authorizations – Minimum Distance Separations. LPFM Applications must protect all authorized FM stations,⁸ pending applications for new and existing FM stations filed prior to the release of this Notice,⁹ authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission’s rules.¹⁰ LPFM Applications must also meet the minimum distance separation requirements and protect all authorized FM translator stations,¹¹ cutoff FM translator applications, and FM translator applications filed prior to the release of this Notice.¹² We clarify that, with respect to paragraph (c) of section 73.807, and for purposes of applications filed in this filing window, LPFM Applications must protect any FM translator or LPFM modification application filed, and accepted for filing, between the release of this Notice and the start of the September 1, 2023, minor modification filing freeze. Finally, LPFM applications for Channels 201 to 220 must protect and satisfy the minimum separation distances with respect to (1) all full power TV Channel 6 stations, and (2) low power TV, TV translator, and Class A TV stations authorized on TV Channel 6.¹³ Consistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*.¹⁴

⁶ See 47 CFR § 73.853. See also *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2212-15 (2000) (nonprofit and public safety applicant eligibility); *Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15454-57 (2012) (Tribal applicant eligibility) (*LPFM Sixth Report and Order*).

⁷ See 47 CFR § 73.853(b).

⁸ LPFM Applications must protect both authorized licenses and granted construction permits for FM, LPFM, and FM translator stations.

⁹ LPFM Applications must protect granted applications, tentatively-selected applications, and pending applications from the 2021 NCE FM filing window. An LPFM Application does not need to protect a dismissed NCE application if no petition for reconsideration has been filed and the dismissal becomes final prior to the November 8, 2023, close of the LPFM window. 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).

¹⁰ 47 CFR § 73.807(a)(1).

¹¹ Authorized FM translator stations means both FM translator station licenses and granted FM translator construction permits.

¹² 47 CFR § 73.807(c).

¹³ See 47 CFR § 73.825. The spacing requirements apply unless the application is accompanied by a written agreement between the LPFM applicant and each affected TV Channel 6 broadcast station concurring with the proposed LPFM facilities. See 47 CFR § 73.825(a).

¹⁴ See, e.g., *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR § 73.870(c).

Second-Adjacent Channel Spacing Waivers. Section 3(b)(2)(A) of the Local Community Radio Act of 2010 (LCRA) authorized the Commission to waive the second-adjacent channel spacing requirements¹⁵ provided that the LPFM applicant seeking such a waiver demonstrates that its proposed LPFM facilities “will not result in interference to any authorized radio service.”¹⁶ We note that second-adjacent channel spacing waivers may only be requested with respect to domestic stations and not stations or allotments in Canada or Mexico. An LPFM applicant seeking such a waiver must include its waiver request with its application *and* an engineering study demonstrating that its proposed station will not cause interference to any authorized radio service.¹⁷ The Bureau will dismiss any application that fails to comply with the second-adjacent channel spacing requirements without requesting a waiver, and which does not contain an engineering exhibit in support of this waiver, and the applicant will not be permitted to seek *nunc pro tunc* reinstatement of its application.¹⁸ We remind applicants that the LCRA prohibits the Commission from waiving the co-channel or first-adjacent channel spacing requirements.¹⁹

Finding an LPFM Station Channel. Applicants may use the Bureau’s LPFM Channel Finder to help determine if a proposed transmitter site would meet minimum LPFM station spacing requirements. This internet-based utility is available on the FCC web site at: <http://www.fcc.gov/encyclopedia/low-power-fm-lpfm-channel-finder>. The site provides additional information on the LPFM service, specific rule requirements for LPFM applicants, and methods to determine the coordinates of an applicant’s proposed transmitter site. Please note that the LPFM Channel Finder tool is intended solely to assist LPFM applicants in tentatively identifying available FM channels.²⁰ There is no guarantee that channels represented as “available” will be technically acceptable at the time an application is filed. An applicant should consider using a consulting engineer or a party familiar with the LPFM technical rules to determine the technical acceptability of its application, particularly if the applicant is requesting a second-adjacent channel spacing waiver.

Major Modification Applications. Only applications for new LPFM stations may be filed in the upcoming filing window. The Bureau will not accept applications proposing major modifications to existing LPFM stations. A licensee seeking a major modification to an existing LPFM station authorization, however, may apply for a new station and note in the application that it is seeking a major modification. Any such application must include a statement indicating that the licensee will surrender its existing LPFM license before commencement of operation with the parameters requested in the new LPFM construction permit application. We will dismiss any proposals from existing LPFM stations that fail to include such a request. Any granted new application filed in this manner will be conditioned on the surrender of the related LPFM license. Specifically, if the application is granted, the applicant must

¹⁵ See 47 CFR § 73.807.

¹⁶ Pub. L. No. 111-371, 124 Stat. 4072 (2011).

¹⁷ See 47 CFR § 73.807(e).

¹⁸ See, e.g., *Clifford Brown Jazz Foundation*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014) (affirming dismissal of application, without ability to amend and seek reinstatement, where applicant failed to comply with second-adjacent spacing rules and failed to include a waiver request with its application) (citing 47 CFR § 73.870(c)).

¹⁹ LCRA, § 3(b)(1) (“The Federal Communications Commission shall not amend its rules to reduce the minimum co-channel and first- and second-adjacent channel distance separation requirements in effect on the date of enhancement of this Act between – (A) low power FM stations; and (B) full-service FM stations.”).

²⁰ The Bureau will update the LPFM Channel Finder on a regular basis to reflect changes in operations of existing stations.

surrender its old station license subsequent to commencement of operations with its new authorized facilities.

Application Limitation. Nonprofit educational organizations may not file more than one application in this window. Tribal applicants may not file more than two applications. State or local governments or a non-government entity that will provide a noncommercial public safety radio service may file more than one application. However, applicants proposing public safety or emergency services must designate a “priority” application if multiple applications are submitted. The Bureau will dismiss non-priority applications if competing applications are filed in the window. For applicants subject to the one application filing limit, any additional applications filed in this window will be treated as a “conflicting” application and dismissed pursuant to section 73.3518 of the Commission’s rules.²¹ This restriction applies even where more than one frequency is available at the applicant’s proposed transmitter site.

Pending NCE FM Applications. As of the date of this Notice, the Bureau is still processing a limited number of applications for construction permits for new noncommercial educational (NCE) FM stations filed in the November 2021, NCE FM filing window.²² We realize that applicants with pending NCE FM applications may wish to participate in the upcoming LPFM window if they believe they will not be granted a full-service NCE FM construction permit. Section 73.3518 of the Commission’s rules, however, prohibits an applicant from filing a subsequent inconsistent or conflicting application when a prior filed application from the same applicant remains pending and undecided.²³ To enable applicants with pending NCE FM applications to participate in the LPFM filing window, we hereby waive section 73.3518 of the rules for this limited purpose.²⁴ Accordingly, an applicant with a pending NCE FM application from the 2021 NCE FM filing window that applies for an LPFM authorization *must* include, with its LPFM Application, (1) a statement listing all pending NCE FM applications, and (2) a divestiture pledge authorizing the Bureau to dismiss its pending NCE FM application(s) upon grant of an LPFM construction permit application, and/or dismiss its LPFM construction permit application upon grant of any of its pending NCE FM applications.²⁵

General LPFM Application Certifications. The LPFM new station construction permit application, Schedule 318, is certification-based, but requires applicants to document certain of their

²¹ 47 CFR § 73.3518. *See also* 47 CFR § 73.801 (making section 73.3518 applicable to LPFM stations).

²² *See Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB 2021).

²³ 47 CFR § 73.3518; *see also* 47 CFR § 73.860(a) (prohibiting a party from having an attributable interest in both an LPFM station and a full-power broadcast station).

²⁴ We believe that the unique circumstance of a new filing window for a different noncommercial service while NCE applications remain pending warrants this limited waiver of the inconsistent or conflicting applications rule for this filing window. Moreover, there are only 80 still-pending NCE FM applications, a number that is likely to decrease by the opening of this window, and this waiver, therefore, will impose a minimal burden on Commission resources. Further, the public interest will be furthered by this limited waiver because, by requiring applicants to consent to the immediate dismissal of their pending NCE FM application(s) upon grant of an LPFM construction permit, it will promote expedient resolution of both NCE FM and LPFM mutually exclusive groups.

²⁵ The Commission considers an appeal of a dismissed application as a pending proceeding. *See Premier Broadcasting, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 867 (1992). Thus, any applicant that has filed a petition for reconsideration or an application for review of its dismissed NCE FM application must list that dismissed application and agree to the dismissal of the petition for reconsideration or application for review upon the grant of an LPFM authorization.

claims by submitting supporting information. Some of the required certifications are described below. Each applicant should carefully read the instructions to the LPFM Application to ensure that, in addition to the materials detailed below, all the required information is included within its application. Each applicant bears full responsibility for submitting an accurate, complete, and timely application.

Eligibility Qualifications. Applicants for LPFM stations must meet basic eligibility requirements²⁶ and certify their eligibility to own and operate an LPFM station. Each applicant must also certify that it is local.²⁷ The LPFM Application requires each applicant to certify that it is either a nonprofit educational organization, Tribe or Tribal organization, or public safety radio service. Each applicant must submit an explanatory exhibit in connection with its response. Applicants that fail to provide the required materials, detailed below, are subject to dismissal.

Nonprofit Educational Organizations.²⁸ These applicants must provide an attachment showing that they have an educational objective and that the LPFM station will be used for the advancement of an educational program.²⁹ Applicants should provide detailed descriptions of the nature of their proposed station programming and, if possible, program schedules.³⁰ Applicants accredited by State departments of education or recognized by regional and/or national accrediting organizations should identify the accrediting entities. Applicants also must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation. Any applicant that is an unincorporated association must submit documents demonstrating it is recognized in its relevant jurisdiction and that the organization meets the requirements for such an entity.³¹

²⁶ See 47 CFR § 73.853.

²⁷ To qualify as local, the applicant must either (1) be physically headquartered or have a campus within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application; (2) have 75% of its board members residing within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application; (3) be a Tribe and have its Tribal Lands within the service area of the proposed LPFM station; or be a Tribal organization whose controlling Tribe has its Tribal Lands within the service area of the proposed LPFM station; or (4) propose a public safety radio service and have jurisdiction within the service area of the proposed station. See 47 CFR § 73.853(b).

²⁸ A nonprofit educational organization can be a public entity (such as a governmental agency) or a private, nonprofit entity which operates a *bona fide*, full-time school in the community where it proposes to operate. A nonprofit educational organization also can be a private, nonprofit entity such as a nonprofit foundation, corporation or association. Individuals *cannot* qualify as organizational applicants.

²⁹ See 47 CFR §§ 73.503(a); 73.801.

³⁰ The requirement to provide programming that advances an educational objective may be satisfied by a variety of programs, including, but not limited to, “instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children’s programs such as Sesame Street that entertain as they teach.” *Comparative Standards for Noncommercial Educational Applicants*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167, 21169 (1998). In order to qualify as an educational station, however, it is not necessary that the proposed station’s programming be exclusively, or even primarily, educational in nature. See *Lower Cape Communications, Inc.*, Memorandum Opinion and Order, FCC 80-453, 47 RR 2d 1577, 1579 (1980); *Denny Hazen*, Letter, 23 FCC Rcd 11579 (2008). All programming on the station, however, must be noncommercial in nature, with no advertisements, and no support for or opposition to a candidate for political office.

³¹ See, e.g., *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13397-98, para. 22 (2013).

*Tribes and Tribal Organizations.*³² These applicants should provide a detailed description of the noncommercial nature of their proposed station programming and, if possible, program schedules. Applicants that are Tribal organizations must explain which Tribe or Tribes own or control them. Applicants that are Tribal organizations must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.

*Public Safety Radio Services.*³³ Applicants that are non-government entities – incorporated or unincorporated – must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.

Reasonable Site Assurance. At the time it files its application, an applicant must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities.³⁴ Each LPFM applicant filing the LPFM Application must certify that it has obtained reasonable assurance from the tower owner, its agent, or authorized representative that its specified site will be available.³⁵ The applicant must specify the name of the person contacted to verify the site's availability, the person's telephone number, and whether the contact is the tower owner, agent, or authorized representative. The failure to obtain reasonable site assurance prior to filing the application is *not* a correctable application defect.³⁶

Electronic Signature – Authorized Party Must Sign. Depending on the nature of the applicant, the LPFM application must be electronically signed and certified as follows: (1) if a partnership, by a general partner; (2) if a corporation, by an officer; (3) for an unincorporated association, by a member who is an officer; and (4) if a governmental entity, by such duly elected or appointed official as is competent under the laws of the particular jurisdiction.

Technical Parameters – Channel and Antenna Location Data. The technical parameters (including, but not limited to the channel and the antenna location coordinates) specified in the “Channel and Facility Information” and the “Antenna Location Data” sections of the LPFM Application represent crucial technical components of the application because they determine the proposed facility's compliance with general technical rules, such as channel spacing and interference protection. We, therefore, remind

³² A Tribe is any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community, which is recognized by the federal government. See 47 CFR §§ 73.853(c) and 73.7000. A Tribal organization is a private nonprofit entity such as a nonprofit foundation, corporation or association that is 51% or more owned or controlled by a Tribe or Tribes.

³³ State and local governments and non-government entities may be eligible for LPFM station authorizations because they propose to provide public safety radio services under section 309(j)(2)(A) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(j)(2)(A). In order to qualify, an applicant must not be organized for profit, must use the proposed LPFM station for public safety radio services to protect the safety of life, health, or property, and the services must not be made commercially available to the public. 47 U.S.C. § 309(j)(2)(A).

³⁴ See *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427, para. 7 (1974) (*Wallace*); *South Florida Broad. Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842, para. 3 (1984). Although an applicant does not need to have a binding agreement or absolute assurance of a proposed site, a mere possibility that the site will be available is not sufficient. See *Wallace*, 49 FCC 2d at 1427, para. 6.

³⁵ See Schedule 318, Technical Certifications – Reasonable Site Assurance.

³⁶ See, e.g., *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Notice of Proposed Rulemaking, 34 FCC Rcd 851, 881, para. 74 (2019) (noting that during the past NCE and LPFM filing windows “applicants routinely and successfully filed petitions to deny against competing applicants for lack of site assurance, a potentially decisional allegation because the failure to obtain such assurance prior to application filing is not a curable application defect”).

applicants to carefully review the channel and antenna location coordinates, and all data specified in these sections, to ensure the information is accurate and contains no typographical errors. Bureau staff will make technical evaluations based on the channel specified in the “Channel and Facility Information” section and the antenna location coordinates specified in the “Antenna Location Data” section and will *not* review attachments or information specified elsewhere in the application to resolve discrepancies caused by typographical or other applicant errors.³⁷

Comparative Consideration of Applications. Given the finite nature of and high demand for spectrum, the Commission cannot authorize an LPFM station to every qualified applicant in the upcoming window. Conflicting LPFM applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive.³⁸ A mutually exclusive (MX) group consists of all applications which are MX to at least one other in the group. MX groups are generally compared under the LPFM point system,³⁹ described below.

Point System Selection Criteria. Each LPFM applicant must complete the “Point System Factors/Tie-Breakers” section of the LPFM Application by the Application Deadline. If MX LPFM applications proceed to a point system analysis, the Commission will review the point submissions to compare the MX applications and tentatively select the application(s) with the highest point total from each MX group for grant.⁴⁰ The LPFM point system awards a maximum of six merit points, based on six criteria, with one point awarded under each criterion: (1) established community presence of at least two years; (2) commitment to originate local programming; (3) commitment to maintain a main studio; (4) commitment both to originate local programming and to maintain a main studio; (5) diversity of ownership; and (6) Tribal applicants serving Tribal lands. These criteria, along with documentation which must be submitted to support point claims, are described in more detail below.⁴¹

1. **Established Community Presence.** The Commission awards one point to an applicant that has had an established community presence, for a period of at least two years immediately prior to the filing of the application, in the community that it proposes to serve. To qualify for this point, a nonprofit educational organization applicant must be able to certify that, during the two years prior to the application, (a) it has existed as a nonprofit educational organization, and (b) it has been physically headquartered, has had a campus, or has had 75% of its governing board members residing within 10

³⁷ See *Roman Catholic Diocese of Portland*, Memorandum Opinion and Order, 29 FCC Rcd 15068 (2014) (directing staff to “make any technical and legal evaluations of, and take any actions regarding, such applications based upon the stated antenna location coordinates specified in the Tech Box, without resort to any other data in the Tech Box or elsewhere in the application or attachments. Such staff actions may include, but are not limited to, dismissal of such defective applications and refusal to accept amendments where such amendments would conflict with accurate and rule-compliant window-filed applications.”).

³⁸ When the distance between two applications does not meet the minimum distance separation requirements specified in 47 CFR § 73.807, the applications are treated as MX.

³⁹ 47 CFR § 73.872.

⁴⁰ *Id.*

⁴¹ Before proceeding to a comparative analysis, MX applicants will have an opportunity to resolve conflicts through settlements, time-share agreements, and technical amendments. The Bureau will release a Public Notice to announce a time period for MX LPFM applicants to enter into and file settlement agreements and time-share agreements and to submit technical amendments to expedite the grant of applications filed in the LPFM window. See, e.g., *Media Bureau Identifies Mutually Exclusive Applications Filed in the LPFM Window and Announces 60-Day Settlement Period*, Public Notice, 28 FCC Rcd 16713 (MB 2013) (allowing applicants to resolve their mutual exclusivity prior to point selection orders).

miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside the top 50 urban markets, of the coordinates of the proposed transmitting antenna. A nonprofit educational organization awarded a point for this criterion must submit evidence of its qualifications in an application exhibit.⁴² The evidence must demonstrate the date of commencement of the applicant's existence and the location of the applicant's headquarters, campus, or governing board members' residence during the two years prior to the application filing.⁴³ While there is some flexibility in the type of documentation a nonprofit educational organization applicant may provide, no point will be awarded to an applicant that does not timely submit the required documentation.

A Tribal applicant seeking this point need only certify that it is a Tribe and that its Tribal Lands are within the service area of the proposed LPFM station; or that it is a Tribal organization whose controlling Tribe or Tribes has its/their Tribal Lands within the service area of the proposed LPFM station. Tribal organizations created by a Tribe to apply for a LPFM construction permit are not required to have been in existence for two years.⁴⁴ A public safety radio applicant must only be able to certify that during the two years prior to the application it had jurisdiction within the service area of the proposed LPFM station.⁴⁵

2. Local Program Origination. The Commission awards one point to an applicant that pledges to originate locally at least eight hours of programming per day. Locally originated programming is programming produced by the licensee within ten miles of the coordinates of the proposed transmitting antenna site. Such programming may include licensee produced call-in shows, music selected and played by a disc jockey present on site, broadcasts of events at local schools, and broadcasts of musical performances at a local studio or festival, whether recorded or live.⁴⁶

3. Main Studio. The Commission awards one point to an applicant that pledges to maintain a publicly accessible main studio that has local origination capability, is reachable by telephone, is staffed at least 20 hours per week between 7 a.m. and 10 p.m., and is located within 16.1 km (10 miles) of the station's proposed transmitting antenna site for applicants in the top 50 urban markets and within 32.1 km (20 miles) for applicants outside the top 50 urban markets. To be awarded the main studio point, the applicant must specify the proposed address and telephone number for the proposed main studio in the Schedule 318 at the time of filing the application.⁴⁷

4. Local Program Origination and Main Studio. The Commission awards one point to an applicant that can certify that it qualifies for one point under both the local program origination and the main studio criteria described in (2) and (3) above.⁴⁸

⁴² See 47 CFR §§ 73.872(b)(1); 73.853(b)(1)-(2).

⁴³ Such evidence may consist of copies of corporate charters, articles of incorporation, association, or partnership, bylaws, or other written instruments filed with the appropriate governmental agency (e.g., Secretary of State) documenting the applicant's period of existence.

⁴⁴ See 47 CFR §§ 73.872(b)(1); 73.853(b)(4).

⁴⁵ See 47 CFR §§ 73.872(b)(1); 73.853(b)(3).

⁴⁶ 47 CFR § 73.872(b)(2).

⁴⁷ 47 CFR § 73.872(b)(3).

⁴⁸ 47 CFR § 73.872(b)(4).

5. Diversity of Ownership. The Commission awards one point for diversity of ownership (the “new entrant” point) to an applicant that can certify that it holds no attributable interests in any other broadcast station.⁴⁹

Divestiture Pledges. Any applicant, including a national organization, however, can qualify for a new entrant point if it submits in its LPFM application, a commitment to divest all of its existing media interests (both owned and attributable).⁵⁰ The divestiture pledge must be submitted with the application by the close of the filing window. The applicant, however, will not be required to complete the pledged action by the close of the filing window. Rather, if the construction permit is awarded based on points, the actual divestiture must be completed by the time the new LPFM station commences program test operations.⁵¹

6. Tribal Applicants Serving Tribal Lands. The Commission awards one point to a Tribal Applicant proposing to locate its transmitting antenna site on its “Tribal Lands,” as defined in section 73.7000 of the rules.⁵²

The Commission tallies the total number of points awarded to each mutually exclusive applicant. The applicant(s) with the highest score in an MX group is designated the “tentative selectee.” Applicants tied for the highest point total in a MX group are subject to voluntary and involuntary time-sharing, discussed below.

Voluntary and Involuntary Time-Sharing Agreements. If MX applicants have the same point total, no more than three of the tied applicants may propose to share use of the frequency by electronically submitting, within 90 days of the release of a public notice announcing the tie, a time-share proposal.⁵³ Such proposals shall be treated as minor amendments to the time-share proponents’ applications and shall become part of the terms of the station authorization.

LPFM applicants may begin to communicate and collaborate immediately on aggregating their points and entering into voluntary time-sharing agreements.⁵⁴ Applicants that enter into voluntary time-

⁴⁹ 47 CFR § 73.872(b)(5). Although a broadcast interest of a national organization will not be attributed to the local chapter if the local chapter “is separately incorporated and has a distinct local presence and mission” (47 CFR § 73.858(b)), “local chapters” of larger organizations that hold broadcast interests do not qualify for a “new entrant” point. Any broadcast interests held by the “parent” organization are considered attributable for the purposes of this criterion only. Similarly, although a college or university with non-student run broadcast interests may apply for a student-run LPFM station (47 CFR § 73.860(d)), the broadcast interests of the university or college are attributable for purposes of the “new entrant” point. *See, e.g., Sixth Report and Order*, 27 FCC Rcd at 15459. Finally, although a director of an LPFM applicant may hold otherwise attributable interests in a broadcast licensee or media entity without making the LPFM applicant ineligible for a license, provided that the director recuses himself/herself from any matters affecting the LPFM station (47 CFR § 73.858(a)), the director’s broadcast interests are still considered attributable to the LPFM applicant for the purpose of the “new entrant” point.

⁵⁰ *See, e.g., Creation of Low Power Radio Service*, Sixth Order on Reconsideration, 28 FCC Rcd 14489, n.26 (2013).

⁵¹ *Id.*

⁵² 47 CFR § 73.872(b)(6); *see also* 47 CFR § 73.853(c) (defining a “Tribal Applicant” as a “Tribe or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes”); 47 CFR § 73.7000.

⁵³ 47 CFR § 73.872(c).

⁵⁴ *Id.*; *see also NCE LPFM Report and Order*, 34 FCC Rcd at 12535 (amending the rules to permit LPFM and point aggregation discussions and agreements during the application process). The Commission explained that “by (continued....)

sharing agreements prior to the tentative selectee designations, however, must condition the agreement on each applicant becoming a tentative selectee and each applicant having the basic qualifications to receive grant of its application. Although applicants may collaborate with each other at any time, any time-share proposal may *only* be electronically submitted within 90 days after the release of the Public Notice announcing the tentative selectees.⁵⁵

Following the tentative selectee designations, if the tied MX applicants do not enter into voluntary time-share agreements within the time allotted, the Commission will assign involuntary time-sharing arrangements to no more than three of the tied applicants in each MX Group.⁵⁶

Timely Documentation of Comparative Qualifications. The LPFM Application is certification-based, but requires applicants to document certain of their claims by submitting supporting information. We caution applicants that the basis for applicant point claims must be readily ascertainable from timely-filed application exhibits. Applicants, therefore, should review their supporting documentation thoroughly before filing.

Certifications which require the applicant to submit documentation, but which are not supported with any such timely documentation, will not be credited. While there is some flexibility in the type of documentation an applicant may provide, an applicant submitting no timely documentation at all cannot be found to have made a valid certification and will not receive the claimed points. The Commission will not consider documentation to support a claimed comparative point if it is submitted in an amendment after the Application Deadline.

The Commission also will not accept a showing or a comparative pledge made after the close of such filing window. For instance, if an applicant certifies that it does not qualify for a point under one of the point system factors by answering “No” to one of the questions, it cannot later amend its application to respond “Yes” to that question. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.

“Snap Shot” Date for Establishing Points and Comparing Applications. The LPFM applicant's qualifications for points will be initially determined “as of the closing of the filing window” *i.e.*, the November 8, 2023, Application Deadline. For example, nonprofit educational organizations will be considered “established” if they have operated as local entities since November 8, 2021, *i.e.*, for at least two years prior to the November 8, 2023, Application Deadline. These “snap shot” applicant characteristics establish an applicant's maximum points and its maximum position. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.

Any changes made after the Application Deadline may potentially diminish, but cannot enhance, an applicant's comparative position and point total. Therefore, the Commission will take into account any amendments that adversely affect an applicant's point total and comparative position. For example, an applicant may lose claimed points, such as the diversity of ownership point, as a result of acquiring a

allowing organizations interested in filing an LPFM application the leeway to communicate with other eligible organizations, they can maximize their chances of acquiring LPFM construction permits and explore potential time-share construction and operating efficiencies.”). *Id.*

⁵⁵ 47 CFR 73.872(c).

⁵⁶ See 47 CFR § 73.872(d). In the case of involuntary time-sharing, tied MX applicants simultaneously and confidentially submit their preferred time slots to the Commission. These procedures will be explained in detail in future Public Notices.

station after the Application Deadline. The Commission will *not* consider any amendments, filed after the Application Deadline, which improve an applicant's comparative position.

Acceptability of Applications. Following the Application Deadline, the Bureau will review applications for compliance with the relevant technical and legal rules and dismiss any application that is unacceptable for filing. A dismissed applicant will have *one* opportunity to file a minor curative amendment to its application and a petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*.⁵⁷ The amendment and petition for reconsideration must be filed within 30 days of the dismissal of the application. Please note that any such amendment must propose minor changes and comply with all relevant rules.⁵⁸ Applicants should carefully review any curative amendment to ensure the amendment corrects any and all application defects. The Bureau staff will not reinstate the application of an applicant that is unable to cure *all* the acceptability defects (including any defects not previously identified by the Bureau staff).

Petitions to Deny. Once a singleton LPFM Application is found to be legally and technically acceptable, the application will be accepted for filing, which starts a 30-day period for filing petitions to deny.⁵⁹ Similarly, once an MX LPFM Application is designated by the Commission as a tentative selectee, the LPFM Application will be simultaneously accepted for filing, triggering the 30-day petition to deny period. Petitions to deny must be filed in accordance with the procedures set forth in section 73.3584 of the rules.⁶⁰ In either the singleton or MX scenario, the Bureau will not review and consider petitions to deny, or any objections, filed prior to the designated 30-day petition to deny period.

Local Public Notice Requirements. If and when an LPFM Application is accepted for filing, the LPFM applicant must provide a public notice to inform its local community about its proposal.⁶¹ The initial filing of an LPFM Application in the window does not trigger the local public notice requirements. Rather, the Commission or Bureau's subsequent acceptance for filing of an LPFM Application starts an applicant's local public notice obligations.⁶² Specifically, once an LPFM Application is accepted for filing, the applicant must give local notice by posting notice online, either (1) on the station website or a website affiliated with the station, the applicant, or its parent entity, or (2) on a publicly accessible, locally targeted website.⁶³ The notice must be posted for 30 consecutive days following the acceptance of the LPFM Application for filing.⁶⁴

⁵⁷ See *Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications*, Public Notice, 56 RR 2d 776 (1984); 47 CFR § 1.106.

⁵⁸ Applicants may not amend their applications to increase their comparative position.

⁵⁹ The Public Notice announcing the acceptance of an application triggers the start of the 30-day petition to deny period. See 47 CFR § 73.870(d).

⁶⁰ 47 CFR § 73.3584. An applicant may file an opposition, and the petitioner may file a reply, within the times prescribed by the rules.

⁶¹ See 47 CFR § 73.3580.

⁶² Once the Bureau determines that a singleton LPFM Application is legally and technically acceptable, it will accept the application for filing by Public Notice. When the Commission designates an MX LPFM Application as a tentative selectee, it will simultaneously accept the application for filing by Public Notice.

⁶³ See 47 CFR §§ 73.3580(a), (b)(2).

⁶⁴ *Id.* The applicant must post the online notice no earlier than the date of release of the acceptance for filing public notice, and not later than five business days following release of the acceptance public notice. *Id.* at § 73.3580(b)(2)(iv).

Amendments to Applications. Following the Application Deadline, each applicant must continue to maintain the accuracy and completeness of the information in its application. Each applicant must notify the Commission, by electronically filing an amendment, of any substantial change that may be of decisional significance to the application.⁶⁵

Filing Freeze. A limited application filing freeze will commence at 12:01 a.m on Friday, September 1, 2023, and continue until the close of the window. The freeze will include all LPFM and FM translator minor change applications. This freeze is necessary to promote transparency and predictability for window filers. It also is designed to provide sufficient time for applicants and consulting engineers to verify the availability of spectrum and perfect applications, while minimizing expenditures on facility proposals that otherwise could be blocked by minor change filings immediately prior to the opening of the window.

Additional information on the LPFM service and LPFM station licensing procedures may be found at: <https://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 -

⁶⁵ See 47 CFR § 1.65.



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 23-643
Released: July 27, 2023

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF INDIRECT CONTROL OF SIUSLAW BROADBAND, LLC D/B/A HYAK TO CONCEPT COMMUNICATIONS, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-222

Comments Due: August 10, 2023
Reply Comment Due: August 17, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Siuslaw Broadband, LLC d/b/a Hyak (Hyak), and Concept Communications, LLC (Concept), (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 consummate the sale of 100% of all issued and outstanding membership interest of Hyak to Concept.²

Hyak is a limited liability company. In Oregon, Hyak is authorized as a local exchange and interexchange service provider and is designated as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider.³ Hyak provides fiber internet services, wireless internet services, VoIP services, and managed services to residential and business customers. In addition, Hyak receives high-cost universal service support through the Rural Digital Opportunity Fund (RDOF) Phase 1 (Auction 904) support mechanism.⁴ The majority owners of Hyak are two individuals, Neil Ecker and Robbie Wright, and no other individual or entity currently owns more than 10% of Hyak.

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

² See Application of Concept Communications LLC and Siuslaw Broadband LLC d/b/a Hyak for Consent to Transfer Indirect Control of Domestic Section 214 Authority Under the Communications Act of 1934, as Amended, WC Docket No. 23-222 (filed June 28, 2023) (Application). Applicants filed a supplement to the Application on July 13, 2023. Supplement to Domestic Section 214 Application Filed for the Transfer of Indirect Control of Concept Communications LLC-Siuslaw Broadband LLC d/b/a Hyak, WC Docket No. 23-222 (filed July 13, 2023) (Supplement). Applicants also filed an application for the transfer of authorizations associated with wireless licenses. Application at 9. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ Application at 2.

⁴ *Id.* at 2, 10 (confirming that the transaction “does not involve any changes to Hyak that will compromise its ability to meet its service obligations, and Applicants anticipate that Hyak will continue to meet its RDOF obligations”). Hyak also offers Lifeline and Oregon Telephone Assistance Program services to its customers. *Id.*

Concept, a Washington limited liability company, is a provider of cable service and Internet services in Washington. Concept is 95.8% owned by MiFiber Holding, LLC (MiFiber Holding), a Delaware limited liability company.⁵ MiFiber Holding's 10% or greater direct owners are: 2PS Investments II, LLC (35.61%); Valley Oak Growth Tech B, LP (11.23%); and MFB Investment, LLC (11.23%).⁶ The managers of MiFiber Holding's Board, each holding a 16.25% indirect interest in MiFiber Holding through their respective interests in 2PS Investments II, LLC and another entity with less than a 5% direct interest in MiFiber Holding, are Karnig Ross Baron Porter, a U.S. citizen, and Louis-Alexandre Pfyffer von Altishofen, a Switzerland citizen.⁷ Juan Carlos Serrano, an Ecuador citizen, indirectly holds a 19.99% interest in MiFiber Holding through interests in 2 PS Investments II, LLC and MFB Investment, LLC.⁸

Concept owns (1) NCI Data.com, LLC, a Washington limited liability company, which is a competitive local exchange provider in Washington and an FCC microwave license holder, and (2) Wind Wireless, LLC, a Washington limited liability company and an FCC microwave license holder. Neither Concept nor any of its affiliates or subsidiaries holds a 10% or greater ownership interest in any other providers of domestic telecommunications services.⁹ Additionally, neither Concept nor any of its affiliates or subsidiaries provides telecommunications services in Oregon, and thus there is no service area overlap with Hyak.¹⁰

Pursuant to the terms of an Equity Purchase Agreement, Concept will acquire 100% of the outstanding membership interests of Hyak and will then insert a holding company, Hyak Oregon Holdings, LLC (Hyak Holdings) between Concept and Hyak.¹¹ The Applicants state that, as a result of the proposed transaction, Hyak will become a wholly-owned subsidiary of Hyak Holdings and an indirect, wholly-owned subsidiary of Concept, and Concept will indirectly control Hyak.¹² Moreover, Concept will seek to optimize Hyak's existing assets to support investment in new infrastructure and to continue offering innovative and high-quality services to customers.¹³

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest, convenience, and necessity.¹⁴ 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.¹⁵

No Referral to Executive Branch Agencies: The Commission determined in the *Executive Branch Review Process Order* that it would not routinely refer to the Executive Branch "standalone

at 2. Hyak does not participate in the Affordable Connectivity Program, E-Rate or Rural Health Care funding programs. *Id.* at 11.

⁵ Neither Concept nor any of its affiliates receives USF high cost support. *Id.* at 10.

⁶ *Id.* at Exh. B.

⁷ *Id.* at 3, Exh. B.

⁸ *Id.*

⁹ *Id.* at 1, Exh. B.

¹⁰ Supplement at 1.

¹¹ Application at 3.

¹² *Id.*

¹³ *Id.* at 5-6.

¹⁴ *Id.*

¹⁵ 47 CFR § 63.03(c)(1)(v).

applications to transfer control of domestic section 214 authority.”¹⁶ The Commission, however, retains the discretion to refer a domestic-only section 214 transaction should it find that a particular application may raise national security, law enforcement, foreign policy, or trade policy concerns for which it would benefit from the advice of the Executive Branch.¹⁷ Applicants state that the Application involves the transfer of control of a carrier that holds only domestic section 214 authority and that, consistent with the decision in the *Executive Branch Review Process Order*, the Application does not require a referral to the Executive Branch.¹⁸ We do not find any special circumstances that warrant referral of this Application to the Executive Branch agencies.¹⁹ While we are not referring the Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.²⁰

Domestic Section 214 Application Filed for the Transfer of Indirect Control of Siuslaw Broadband, LLC d/b/a Hyak, to Concept Communications, LLC, WC Docket No. 23-222 (filed June. 28, 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 August 10, 2023**, and reply comments **on or before August 17, 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.²¹ All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

¹⁶ *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10936, para. 25 (2020) (*Executive Branch Review Process Order*).

¹⁷ *Id.*

¹⁸ Supplement at 1-2.

¹⁹ Applicants explain that to their “knowledge, there are no national security, law enforcement, foreign policy, and trade policy concerns associated with Hyak or Concept that would require referral to the Executive Branch” and “none of the 10% or greater owners of Concept are citizens of, or organized in, a Foreign Adversary Country as defined in 15 CFR 7.4” *Id.*

²⁰ See *Executive Branch Review Process Order*, 35 FCC Rcd at 10941, para. 36 n.99; see also *id.* at 10939, para 30 n.81.

²¹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

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

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

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

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) 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.²² A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Tracey Wilson at (202) 418-1394 or Megan Danner at (202) 418-1151.”

FCC

²² See 47 CFR § 1.45(c).



PUBLIC NOTICE

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

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

DA No. 23-644

Friday July 28, 2023

Report No. SAT-01746

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-PDR-20211104-00141	E S3103	Inmarsat Inc.	
Petition for Declaratory Ruling			
Withdrawn			Effective Date: 07/24/2023

Nature of Service: Fixed Satellite Service, Mobile Satellite Service

SAT-STA-20230406-00076	E	XM Radio LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 07/27/2023

On July 27, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority for an additional period of 180 days to XM Radio LLC to conduct telemetry, tracking, and command operations necessary for venting excess propellant and orbit raising maneuvers for the end-of-life disposal of the XM-4 spacecraft.

SAT-STA-20230707-00163	E S2382	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 07/25/2023

On July 25, 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-20230711-00164	E	BlackSky Global LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 07/27/2023

On July 27, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of BlackSky Global LLC for special temporary authority for an additional period of up to 30 days to operate 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.

SAT-STA-20230718-00176 E S2715 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 07/25/2023

On July 25, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC for an additional period of up to 30 days for Intelsat to operate the Galaxy 17 space station's Ku-band beams over a new coverage area from the 85.0° W.L. orbital location. Galaxy 17 operates in the fixed-satellite service using the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) bands, and uses the following center frequencies for telemetry, tracking, and command: 4197.125 MHz and 4198.875 MHz (space-to-Earth), and 5925.5 MHz and 6424.5 MHz (Earth-to-space).

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



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 23-645
Released: July 28, 2023

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-175

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
Atlanta Datacom, Inc., d/b/a AdCom Solutions to AppDirect, Inc.,
WC Docket No. 23-175, Public Notice, DA 23-558 (WCB 2023).

Effective Grant Date: July 28, 2023

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at dennis.johnson@fcc.gov, 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).

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

In the Matter of	)	
	)	
CROCODILE BROADCASTING CORP.	)	Facility ID No.: 203215
	)	NAL/Acct. No.: MB-202341410016
Licensee of FM Translator Station W234DH,	)	FRN: 0008354904
Baton Rouge (formerly Norco), LA	)	File No. BLFT-20190830AAN
	)	

ORDER AND NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 31, 2023

Released: July 31, 2023

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it an October 15, 2019 Petition from Radio & Investments, Inc. (R&I)¹ seeking reconsideration of our September 20, 2019 grant of the referenced application² of Crocodile Broadcasting Corp. (CBC) to license a new FM translator station, W234DH (Translator).³ The Translator's community at the time of application was Norco, LA, but it has since been changed to Baton Rouge, LA. For the reasons set forth below, we dismiss the Petition as late-filed. Nevertheless, because the allegations raise significant concerns about CBC's truthfulness, we consider the matters on our own motion and find that CBC apparently violated Commission rules (Rules) by failing to file a required form to obtain consent to change antennas, constructing and operating with an unauthorized antenna for approximately two months, and falsely certifying to construction as authorized but without an intent to deceive.⁴ Based upon our review of the facts and circumstances, we uphold the initial license grant but issue this Order and Notice of Apparent Liability for Forfeiture (*NAL*) establishing a reporting requirement for future applications and concluding that CBC is apparently liable for a monetary forfeiture in the amount of twelve thousand five hundred dollars (\$12,500).

II. BACKGROUND

2. CBC is the licensee of AM station KGLA, Norco, LA. On April 9, 2018, in connection with the Commission's AM Revitalization opportunities, CBC applied for a permit to construct a new FM translator to rebroadcast KGLA.⁵ CBC proposed therein to use a directional antenna mounted at 150 meters above ground level.⁶ The Bureau granted a construction permit on May 16, 2018, requiring completion by May 16, 2021.⁷ CBC filed the License Application on August 30, 2019, and the Bureau

¹ R&I Petition for Reconsideration (rec. Oct. 15, 2019) (Petition). R&I is the licensee of KDDK, Addis, LA and claims standing as a same-market competitor.

² File No. BNPL-20190830AAN (granted Sept. 20, 2019) (License Application).

³ CBC filed an October 25, 2019 Opposition and R&I filed a November 5, 2019 Reply. In these filings, the parties dispute whether R&I has standing.

⁴ 47 CFR §§ 74.1251, 1.17.

⁵ Application File No. BNPFT-20180409AAA (rec. Apr. 9, 2018).

⁶ The specified antenna was manufactured by PSI, model FML-2(0.75)-DA.

⁷ Application File No. File No. BNPFT-20180409AAA (granted May 16, 2018) (Construction Permit).

announced that filing by Public Notice on September 5, 2019.⁸ CBC certified therein that it had constructed as authorized and responded “yes” that it was using a properly-oriented directional antenna.⁹ Thus, when the Bureau granted the License Application on September 20, 2019, it believed that the Translator was operating with the specified directional antenna mounted at the authorized height.¹⁰

3. R&I filed its Petition on October 15, 2019 alleging that information in the License Application was false. Specifically, R&I contends that CBC substituted an omnidirectional antenna for the authorized directional antenna and mounted it at a height of about 145 meters, *i.e.*, approximately 5 meters lower than authorized. R&I argues that the Bureau should reverse the License Application’s grant because CBC did not construct as authorized, the constructed facilities would result in prohibited contour overlap,¹¹ and CBC’s false certification calls its basic character qualifications into question.¹²

4. In an Opposition to the Petition, CBC acknowledges temporary use of an omnidirectional antenna for approximately two months ending on October 24, 2019.¹³ CBC explains that the authorized directional antenna arrived damaged in August 2019 and, because CBC was eager to commence operations and believed it would receive the repaired antenna shortly, decided in the interim to share an existing omnidirectional antenna at the same site. The constructed facilities operated at a much lower power level than authorized,¹⁴ apparently in order to minimize the potential for interference from use of an omnidirectional antenna.¹⁵ CBC contends that it had no intent to deceive, but simply did not recognize the significance of the antenna substitution and, thus, did not mention it to counsel who prepared the License Application.¹⁶ CBC states that it expected to switch to use of the authorized antenna quickly upon repair, but experienced delays due to several difficulties with the tower structure. For example, CBC says that it was unable to mount the authorized antenna at the original height of 150 meters without interfering with one of the tower’s guy wires, and also discovered discrepancies in the stated height of the tower and diameter of the legs, so that the mounting brackets did not fit.¹⁷ CBC reports that on October 24, 2019, the Translator

⁸ *Broadcast Applications*, Public Notice, Rep. No. 29565 (Sept. 5, 2019).

⁹ See License Application, Section III, Quest. 4.

¹⁰ The Commission published a public notice of the grant on September 25, 2019. *Broadcast Actions*, Public Notice, Rep. No. 49579 (Sept. 25, 2019).

¹¹ See 47 CFR § 74.1204.

¹² On October 18, 2019, CBC filed a request for Special Temporary Authority (STA) to operate with parameters that are essentially those alleged in R&I’s Petition, and recounting difficulties that delayed construction of the authorized equipment. See File No. BSTA-20191018AAB (rec. Oct. 18, 2019) (STA Request). R&I opposed the STA Request. The Bureau dismissed the STA Request on May 10, 2022 without a written decision because it had become moot due to CBC’s operation with corrected facilities since February 10, 2020 pursuant to Bureau grants of subsequent modification and license applications. See *infra*, notes 19, 20. All broadcast stations in Louisiana were required to file applications to renew their licenses by February 3, 2020, three months in advance of the June 1, 2020 common expiration date for all licenses in that state. CBC filed a single consolidated application to renew the licenses of the Translator and KGLA(AM). See File No. 0000105139 (filed Feb. 3, 2020) (Renewal Application). R&I also contests the Renewal Application, which we will address separately at a later date.

¹³ Opposition at 6.

¹⁴ CBC states that the Translator’s authorized effective radiated power (ERP) was 0.25 kW, but that it operated the Translator’s “temporary” antenna with an ERP of 0.01 kW. *Id.* CBC does not specifically report the height of the “temporary” antenna but, as discussed below, states that it could not mount its authorized antenna at the permitted height due to location of a guy wire.

¹⁵ The alleged facts are supported by a declaration under penalty of perjury from CBC’s consulting engineer. *Id.*, Attachment A.

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 7-8, Attachment A.

commenced operation with a repaired, authorized antenna mounted at about 146.6 meters and was at that time investigating a possible inaccuracy in the tower height in order to resolve the issue of proper antenna height.¹⁸

5. On December 9, 2019, CBC filed an unopposed application for a minor modification to the Translator's facilities, proposing to use the authorized directional antenna mounted at 143 meters above ground level, and changing the Translator's community to Baton Rouge. The Bureau granted a construction permit for the modification on January 24, 2020.¹⁹ CBC filed an unopposed application to license the modified facilities on January 30, 2020, which the Bureau granted on February 10, 2020.²⁰ It thus appears that CBC is currently operating the Translator with an authorized antenna mounted at an approved height and that there have been no interference complaints. Admittedly, however, the Translator operated previously with nonconforming facilities for approximately two months.²¹

III. PROCEDURAL MATTER

6. 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.²² If the person seeking reconsideration did not previously participate in the proceeding, they must state with particularity the manner in which their interests are adversely affected and show good reason why it was not possible for them to participate earlier.²³

7. R&I did not participate in this proceeding prior to filing its Petition. It contends that the Bureau should nevertheless entertain the Petition because it is a same market competitor who had insufficient time to object earlier due to the Bureau's quick grant of the License Application. We disagree. R&I does not establish that it was not possible to participate earlier. Applications for covering licenses, unlike applications for initial construction permits, are not subject to a 30-day public notice period.²⁴ Although the Commission has allowed petitions for reconsideration if expedient grant effectively precluded participation, in each such case the period between filing of the application and grant was less than a week.²⁵ Here, there were 15 days between License Application's public notice of

¹⁸ *Id.* at 8.

¹⁹ Application File No. 0000092898 (granted Jan. 24, 2020).

²⁰ Application File No. 0000103923 (granted Feb. 10, 2020).

²¹ The License Application for the previously authorized facilities remains relevant because CBC obtained its current authorization as a modification of the license grant that R&I challenges.

²² See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

²³ 47 U.S.C. § 405(a); 47 CFR § 1.106(b)(1).

²⁴ In reviewing applications for licenses to cover construction, the Commission presumes that the public interest determination made during the construction permit proceeding continues in effect unless circumstances have arisen that would make operation of the station against the public interest. See 47 U.S.C. § 319(c); *Focus Cable of Oakland, Inc.*, Memorandum Opinion and Order, 65 FCC 2d 35, 39-40, para. 11 (1977). The Commission, in most instances, considers the grant of a license application to follow almost automatically from the issuance of a construction permit and the completion of construction in accordance therewith. See, e.g., *Meyer Broad. Co.*, Memorandum Opinion and Order, 65 FCC 2d 438, 441, para. 9 (1977). The Bureau's grant of the License Application 20 days after filing followed this practice because it appeared at the time that CBC had completed construction as authorized in its Construction Permit.

²⁵ See, e.g., *Robert P. Sanborn III*, Letter Decision, 30 FCC Rcd 38, 39 (MB 2015); *Marissa G. Repp, Esq.*, Letter Decision, 32 FCC Rcd 7538, 7541-42 (MB 2017).

acceptance and its grant.²⁶ This is ample time to file an informal objection.²⁷ Although we have accepted petitions for reconsideration from non-parties when special equitable considerations were at issue, no such considerations exist here.²⁸ Therefore, R&I was not “effectively precluded” from filing an informal objection to the License Application prior to grant. Because R&I had adequate opportunity to participate earlier in the proceeding, but failed to do so, we dismiss the Petition as unacceptable under section 1.106(b) of the Rules. Nevertheless, we will consider on our own motion an appropriate response to CBC’s admitted construction of facilities other than authorized and false certification.

IV. DISCUSSION

8. *False Certification.* The Commission cannot properly analyze applications without accurate and complete information from the applicant. Accordingly, section 1.17(a)(1) of the Rules states that no person shall, in any written or oral statement of fact, intentionally provide material information that is incorrect or intentionally omit material information.²⁹ A misrepresentation is a false statement of fact made with the intent to deceive the Commission.³⁰ Lack of candor is a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission.³¹ Intent to deceive is an essential element of each³² and, thus, submission of erroneous information due to carelessness or gross negligence is not misrepresentation or lack of candor.³³ Fraudulent intent can be found from “the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity.”³⁴ Intent can also be found from motive or logical desire to deceive.³⁵ False material

²⁶ Specifically, CBC filed the License Application on August 30, 2019, the Bureau published a Public Notice of its acceptance on September 5, 2019, and granted it on September 20, 2019.

²⁷ We note that a number of Commission rules allow fewer than ten days to prepare and file a pleading. *See, e.g.*, 47 CFR § 1.45(c) (a reply to an opposition to any to any motion, petition, or request must be filed within five days after the time for filing oppositions has expired); 47 CFR § 1.106(h) (a reply to an opposition for a petition for reconsideration must be filed within seven days after the opposition is filed); 47 CFR § 1.301(c)(2) (interlocutory appeals must be filed within five days from release of the relevant order).

²⁸ *See, e.g., Frank Jazzo, Esq.*, Letter, 32 FCC Rcd 5692, 5695 (MB 2017) (accepting a petition for reconsideration where petitioner had failed to object timely to a 250-mile FM translator move).

²⁹ *See* 47 CFR § 1.17(a)(1).

³⁰ *See Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983) (*Fox River*); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004) (*Discussion Radio*).

³¹ *See Fox River*, 93 FCC 2d at 129; *Discussion Radio*, 19 FCC Rcd at 7435.

³² *See Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *Discussion Radio*, 19 FCC Rcd at 7435.

³³ *KM Radio of St. Johns, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 5847, 5849, para. 5 (2004).

³⁴ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broad. Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)); *see also Discussion Radio*, 19 FCC Rcd at 7435.

³⁵ *See Discussion Radio*, 19 FCC Rcd at 7435; *Black Television Workshop of Los Angeles, Inc.*, Decision, 8 FCC Rcd 4192, 4198 n.41 (1993) (citing *California Public Broad. Forum v. FCC*, 752 F.2d 670, 679 (D.C. Cir. 1985); *Joseph Bahr*, Memorandum Opinion and Order, 10 FCC Rcd 32, 33 (Rev. Bd. 1994); *Scott & Davis Enterprises, Inc.*, Decision, 88 FCC 2d 1090, 1100 (Rev. Bd. 1982)). Intent to deceive can also be inferred when the surrounding circumstances clearly show the existence of an intent to deceive. *See Commercial Radio Service, Inc.*, Order to Show Cause, 21 FCC Rcd 9983, 9986 (2006) (citing *American Int’l Development, Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff’d sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983)).

information submitted without any intent to deceive may nevertheless be actionable under section 1.17(a)(2) if provided without a reasonable basis for believing that the information is correct.³⁶

9. CBC characterizes its nonconforming construction and incorrect certification as “unintentional” “oversights” due to “gross negligence” and an eagerness to commence operations.³⁷ The central question in any character inquiry is whether the applicant or licensee “is likely to be forthright in its dealings with the Commission and to operate its station consistent with the requirements of the Communications Act and the Commission's Rules and policies.”³⁸ Such matters are important because “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”³⁹

10. Upon reviewing the record, we find that there is no evidence of deceptive intent and, thus, no misrepresentation or lack of candor. The record does not, for example, contain facts that would suggest any motive for CBC to knowingly deceive the Bureau. When CBC filed the License Application, more than two years remained in which to construct, so it would have been in no danger of forfeiting the Construction Permit had it simply waited for the correct antenna to arrive.⁴⁰ The benefit to CBC of its nonconforming construction seems to have been its desire to commence Translator operations immediately, as opposed to waiting what it then believed to be a relatively short time for repair of the authorized antenna.

11. Although we conclude that there was no lack of candor, we do find that CBC apparently violated section 1.17(a)(2) of the Rules, which governs submission of incorrect information without deceptive intent.⁴¹ That Rule focuses on whether the licensee or applicant had a reasonable basis for believing that a false material factual statement or omission was correct and not misleading.⁴² In this case, CBC had no reasonable basis for certifying that the Translator was constructed as authorized because CBC knew at the time of application that it had not mounted the damaged, directional antenna and had used an omnidirectional antenna at a different height. CBC acted negligently by failing to communicate the variations from the Translator’s authorization to counsel who prepared the application and then failing to review the application prepared by counsel thoroughly before it was submitted to the Commission. Given the totality of the circumstances, we find it is appropriate to establish a reporting

³⁶ See 47 CFR § 1.17(a)(2).

³⁷ Opposition at 7-8.

³⁸ See *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1209, para. 55 (1986), *recons. granted in part on other grounds*, 1 FCC Rcd 421 (1986), *appeal dismissed sub nom. National Association for Better Broad. v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987), *modified*, 5 FCC Rcd 3252 (1990), *on reconsideration*, 6 FCC Rcd 3448 (1991), *modified in part*, 7 FCC Rcd 6564 (1992).

³⁹ See *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000).

⁴⁰ Permits forfeit if construction is not completed prior to permit expiration. Erecting temporary broadcast facilities or one that substitutes a nondirectional for a directional antenna does not constitute completion of construction. See *Tango Radio, LLC*, Memorandum Opinion and Order, 30 FCC Rcd 10564, 10568, para. 8 (2015); *Dan J. Alpert, Esq.*, Letter Order, 32 FCC Rcd 10072, 10074 (MB 2017) (full service FM station’s construction permit expired when the permittee did not complete construction with authorized directional antenna prior to permit expiration but, rather, substituted an omnidirectional antenna).

⁴¹ 47 CFR § 1.17(a)(2) (no person may provide, in any written statement of fact, “material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.”) Even absent an intent to deceive, a false statement may constitute an actionable violation of Section 1.17(a)(2) if it is submitted without a reasonable basis for believing that the statement is correct and not misleading.

⁴² *Id.*

requirement for CBC's future applications and to issue a Notice of Apparent Liability for a monetary forfeiture.

12. *Reporting Requirement.* Even though we have concluded that CBC's false certification was unintentional, we are sufficiently concerned about its gross negligence to require safeguards. CBC's nondisclosure of material information (*i.e.*, construction of facilities other as authorized) raises concerns about the veracity of answers it may provide in future applications. In other cases of incorrect certifications without deceptive intent, we have required applicants to alert the Commission of that history when filing additional applications within the subsequent five years.⁴³ We will establish such a reporting requirement to make Commission staff and interested parties aware of these matters in future broadcast applications by CBC, its principals, and others with attributable interests. Specifically, as set forth in the Ordering Clauses to this *NAL*, we will require CBC (Ernesto Schweikert, III, Ernesto Alejandro Schweikert, as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in section 1.2112 of the Rules or the attribution standards set forth in section 73.3555 of the Rules)⁴⁴ to submit copies of this *NAL* with every facilities application and assignment of license or transfer of control application it files with the Commission for a period of five years.

13. *Antenna Substitution.* Section 74.1251(b)(2) of the Rules requires FM translator licensees and permittees to request and receive authority prior to making any changes to their antenna systems.⁴⁵ The request must be made by formal application on Schedule 349.⁴⁶ CBC had neither applied for nor received authority to substitute antennas prior to filing the License Application. In determining the appropriate action for this apparent violation, we will consider that CBC used the nonconforming antenna for a relatively short (two month) period and completed construction with authorized equipment prior to expiration of its construction permit, but that the violation is compounded by mounting the antenna at the wrong height and substitution of an omnidirectional antenna for a directional antenna (which is typically specified to protect against interference to stations located in the other direction). We note that the reduction in the Translator's ERP⁴⁷ may have minimized the threat of interference, but in fact this was yet another unapproved variation from the Translator's authorization. Given these circumstances, we are including this matter in the proposed forfeiture.

14. *Proposed Forfeiture.* We find that CBC is apparently liable for a monetary forfeiture in the amount of \$12,500 based on apparent violations of sections 74.1251(b) by failing to file an application for authority to alter an antenna system;⁴⁸ 74.1251(b)(2)⁴⁹ by constructing and operating with an unauthorized antenna at an unauthorized height; and 1.17(a)(2)⁵⁰ by certifying inaccurately that it had constructed the Translator as authorized. 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

⁴³ See, e.g., *E-String Wireless, Ltd.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 133, 139-40, para. 18 (MB 2016) (*E-String*); see also *Michael W. Richards, Esq.*, Letter Order, File No. BLL-20180830AAW (MB Sept. 9, 2019), extended by *Bertrand Stebbins, President*, Letter Order, DA 23-483 (rel. June 23, 2023) (false certification that was unresolved due to voluntary dismissal of application).

⁴⁴ 47 CFR §§ 1.2112, 73.3555.

⁴⁵ *Id.* § 74.1251(b)(2).

⁴⁶ *Id.*

⁴⁷ See note 14 *supra*.

⁴⁸ 47 CFR § 74.1251(b).

⁴⁹ *Id.*

⁵⁰ *Id.* § 1.17(a)(2).

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.⁵¹ 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.⁵² 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,⁵³ and the Commission has so interpreted the term in the section 503(b) context.⁵⁴ 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.”⁵⁵

15. The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish base forfeiture amounts of \$3,000 for failure to file a required form and \$10,000 for construction or operation without an instrument of authorization for the service.⁵⁶ The guidelines do not enumerate a base forfeiture amount for a false certification. Thus, with respect to that certification, we must assess a forfeiture amount taking into account the relevant statutory factors in Section 503(b)(2)(D) 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.”⁵⁷ These are the same factors that the Commission considers when deciding whether it is appropriate to adjust base amounts upward or downward.⁵⁸ In previous cases of false certifications by secondary stations without intent to deceive, the Commission has found forfeitures of \$5,000 appropriate.⁵⁹

16. In determining whether to adjust the base forfeitures and what amount is appropriate for the certification violation having no base amount, we take note of CBC’s contention that it did not understand the significance of an antenna change. That explanation, however, is “at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”⁶⁰ As noted above, there are other factors in the present case that mitigate and/or exacerbate the violations. On the one hand, we accept that CBC’s false certification was gross negligence without intent to deceive, CBC used the nonconforming antenna for a relatively short (two month) period, completed construction with authorized equipment before expiration of its construction permit, and is providing only a secondary service. On the other hand, the violation was compounded by mounting the antenna at the wrong height, substitution of an omnidirectional antenna for a directional antenna (albeit at a reduced power level and with no interference complaints arising in the period of noncompliant operation), and filing of an admittedly incorrect certification with the Commission. Taking into consideration all of the factors required by

⁵¹ See 47 U.S.C. § 503(b)(1)(B); see also 47 CFR § 1.80(a)(2).

⁵² 47 U.S.C. § 312(f)(1).

⁵³ See H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

⁵⁴ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (*Southern California*), recon. denied, 7 FCC Rcd 3454 (1992).

⁵⁵ 47 U.S.C. § 312(f)(2).

⁵⁶ 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.

⁵⁷ 47 U.S.C. § 503(b)(2)(E).

⁵⁸ *Id.* 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.

⁵⁹ *E.g., E-String*, 31 FCC Rcd. at 139, paras. 15-16, n.50 and cases cited therein (MB 2016).

⁶⁰ *Southern California*, 6 FCC Rcd at 4387, para. 3.

section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,⁶¹ and especially that the Translator is providing secondary service, we will reduce the combined forfeiture for the failure to file an application and unauthorized operation from the \$13,000 (\$ 3,000 + \$10,000) base amount to \$7,500, the same amount that the Bureau recently applied to another FM translator that substituted a nonconforming antenna.⁶² Further taking these same factors into consideration with respect to the false certification, we propose an additional forfeiture of \$5,000 for that violation, an amount that the Bureau has found appropriate for similar incorrect FM translator certifications which already take into account the secondary nature of such stations. Thus, the total proposed forfeiture is \$12,500 (\$7,500 + \$5,000).

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that the Petition for Reconsideration filed by Radio & Investments, Inc. on October 15, 2019 with respect to the grant of an application by Crocodile Broadcasting Corp. to license a new FM translator station, W234DH, Baton Rouge (formerly Norco) LA, File No. BLFT-20190830AAN, **IS DISMISSED**.

18. **IT IS FURTHER ORDERED** that Crocodile Broadcasting Corp. (Ernesto Schweikert, III, Ernesto Alejandro Schweikert, as well as any entity in which any of them holds an interest that is within the scope of the ownership and control disclosure standard set forth in 47 CFR § 1.2112 or the attribution standards set forth in 47 CFR § 73.3555) **SHALL SUBMIT** a copy of this Order and Notice of Apparent Liability for Forfeiture with every facilities application--FCC Form 301, 309, 318, 340, or 349--or any assignment of license/transfer of control application--FCC Form 314, 315, or 345--it files with the Commission for a period of five years from the date of this decision.

19. **IT IS FURTHER ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,⁶³ and sections 1.80 and 0.283(d) of the Commission's rules,⁶⁴ that Crocodile Broadcasting Corp., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of twelve thousand five hundred dollars (\$12,500)** for its apparent willful violation of sections 74.1251(b), 74.1251(b)(2), and 1.17(a)(2) of the Commission's rules.⁶⁵

20. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,⁶⁶ within thirty (30) days of the release date of this *NAL*, Crocodile 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.

21. 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),⁶⁷ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it

⁶¹ *Supra*, para. 15.

⁶² See *WIN Radio Broad. Corp.*, DA 23-552 (rel. June 27, 2023) and cases cited therein (noting that the Bureau has in past cases reduced forfeiture amounts for secondary stations and reducing a base forfeiture in this proceeding from \$13,000 to \$7,500 for an FM translator that failed to apply for consent before substituting a nonconforming antenna).

⁶³ 47 U.S.C. § 503(b).

⁶⁴ 47 CFR §§ 1.80 and 0.283.

⁶⁵ *Id.* § 74.1251(b).

⁶⁶ *Id.* § 1.80.

⁶⁷ Payments made using CORES do not require the submission of an FCC Form 159.

is requested that Licensee send notice that payment has been made to Irene.Bleiweiss@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:⁶⁸

- 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).⁶⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. 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/core/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. 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.

22. 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 20554.⁷⁰ 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.

23. 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.⁷¹ The written response must be filed with the Office of the

⁶⁸ 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.

⁶⁹ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

⁷⁰ See 47 CFR § 1.1914.

⁷¹ *Id.* §§ 1.16 and 1.80(g)(3).

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.
 - 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-19.⁷²

24. 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.⁷³

25. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ernesto Alejandro Schweikert, Vice President, Crocodile Broadcasting Corp., 3540 South I-10 Service Rd. West, Metairie, LA 70001 and by electronic mail to alejandro@kgla.tv. A copy shall also be sent to the station's representative, Francisco Montero, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th St., Arlington, VA 22209 and by electronic mail to montero@fhhlaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁷² See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

⁷³ 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, D.C. 20554

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

DA 23-647
Released: July 31, 2023

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

WC Docket No(s). 23-235 & 23-253

Comments Due: August 15, 2023

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

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

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **August 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 **August 15, 2023**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

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

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

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.⁷ Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, 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): Fusion Cloud Services, LLC, Fusion CSI, LLC, Fusion Communications, LLC and Fusion Telecom of Texas, Ltd., L.L.P. (Fusion)**
WC Docket No. 23-235, Comp. Pol. File No. 1853
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-235%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-235%22)))
Affected Service(s) – copper-based T-1 and Ethernet-Over-DSL services
Service Area(s) – Alabama, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Washington, Wisconsin and the District of Columbia
Authorized Date(s) – on or after September 1, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: Fusion plans to discontinue the affected services on September 28, 2023 in the District of Columbia and November 29, 2023 in Michigan.

- 2) **Applicant(s): CallTower, Inc., on behalf of its subsidiaries, Appia Communications, Inc. and BroadRiver Communication Corporation**
WC Docket No. 23-253, Comp. Pol. File No. 1854
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-253%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-253%22)))
Affected Service(s) – domestic interstate service, including interstate long distance service
Service Area(s) – Alabama, Georgia, Illinois, and Indiana
Authorized Date(s) – on or after August 31, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

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

In the Matter of	)	
	)	
Connect America Fund—Alaska Plan	)	WC Docket No. 16-271
	)	
GCI Communication Corp. Petition for Limited,	)	
Expedited Waiver in the Alaska Plan for Drive-	)	
Test Data Collection	)	

ORDER

Adopted: July 31, 2023

Released: July 31, 2023

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau) affirms that a speed of at least 15 mph is, in general, a necessary floor for in-motion drive testing for Alaska Plan participants, grants GCI's Petition for Limited, Expedited Waiver (Petition)¹ with a modification, and partially grants the Supplement to Petition, as specified below.² Specifically, for all 45 grid cells in the initial Petition and three additional grid cells in the Supplement to Petition, where GCI seeks a waiver of the 15 mph threshold for in-motion drive tests and asks that the original drive tests be accepted, we waive the 15 mph threshold for those grid cells.³ We do not take action at this time on the additional 107 grid cells where GCI sought waiver of the 15 mph threshold on the grounds that those grid cells are roadless.⁴ We also grant an extension of GCI's deadline for completing all drive retesting until October 2, 2023.

II. BACKGROUND

2. The *Alaska Plan Order* required mobile-provider participants receiving more than \$5 million annually to support their year five and year ten "minimum upload and download speed certifications" with "data from drive tests showing mobile transmissions to and from the network meeting

¹ GCI Communication Corp. Petition for Limited, Expedited Waiver, WC Docket No. 16-271 (filed June 26, 2023) (Petition); GCI Communications Corp. Supplemental Waiver Petition, WC Docket No. 16-271 (filed July 18, 2023) (Supplement to Petition).

² Letter from Garnet Hanly, Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023) (Letter), *attached to* Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI, Attach. 2 (June 2, 2023 11:38 ET).

³ *See infra*, Appendix.

⁴ GCI initially sought waiver of the 15 mph threshold for 45 grid cells, based on the individual circumstances of those grid cells. *See* Petition. GCI filed the Supplement to Petition seeking relief for 3 grid cells where such testing would be unsafe and for another 107 grid cells because they did not have roads. *See* Supplement to Petition. We grant the waiver for the 3 grid cells where GCI demonstrated it is unsafe to test at 15 mph in the Supplement to Petition, but we do not yet make a determination on the other 107 grid cells where waiver of the 15 mph threshold is sought on the grounds that those grid cells do not have roads. *See infra*, para. 13.

or exceeding the speeds delineated in the approved performance plans.”⁵ The *Alaska Drive Test Order* provided the following requirements: “Within each selected grid cell, a carrier must conduct a minimum of 20 tests, no less than 50% of which are to be conducted while in motion from a vehicle. . . . A mobile test should initiate when moving away from the location of a stationary test after having reached the speed of the surrounding traffic, or a safe and reasonable operating speed in the event no traffic is present.”⁶ Under the drive-test methodology, if a grid cell does not meet the requirements set forth in the *Alaska Drive Test Order* (including the 50% threshold for in-motion drive tests), the grid cell does not “pass,” and the population in that grid cell would not be counted toward population coverage commitments.⁷

3. In response to GCI’s drive-test submission for its five-year certification, Commission staff sent a letter regarding GCI’s use of low in-motion driving speeds (Letter).⁸ The Letter stated that the low driving speeds of some of the in-motion tests were inconsistent with the requirements of the *Alaska Plan Order* and the *Alaska Drive Test Order*.⁹ Specifically, the Letter stated that, “[i]n a significant number of grid cells, most of GCI’s in-motion drive tests were performed at extremely low speeds that do not approximate reasonable operating speeds or the ‘speed of the surrounding traffic’”; that “[m]any of GCI’s mobile tests were performed at speeds between 0-14 mph”; and that with respect to those tests performed at speeds between 0 and 14 mph, “a large number of tests were performed at 2 mph or less.”¹⁰ The Letter also stated that, “[a]s a result, many of GCI’s grid cells ‘fail’ because the grid cells do not have 50% or more in-motion drive tests.”¹¹ Because a minimum speed was not specifically enumerated in the rules, however, the Letter offered GCI the option to retest grid cells where GCI’s in-motion testing speed was too low (i.e., below 15 mph) or where GCI skipped testing the grid cell initially.¹² The Letter explicitly noted that GCI could seek a waiver where performing in-motion tests at 15 mph or above might be unsafe or illegal in a particular grid cell.¹³ If GCI accepted the offer,¹⁴ GCI was to complete the drive testing by August 2.¹⁵ Accompanying the Bureau letter was a list of 465 grid cells that could be retested.¹⁶

⁵ *Connect America Fund et al.*, WC Docket Nos. 10-90 and 16-271, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10173, para. 103 (2016) (*Alaska Plan Order*); accord 47 CFR § 54.321.

⁶ See *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order and Request for Comment, DA 22-484, at 47-48, Appx. B (WTB May 5, 2022) (*Alaska Drive Test Order*).

⁷ See *Alaska Drive Test Order* at 43-49, Appx. B.

⁸ Letter from Garnet Hanly, Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023) (Letter), attached to Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023, 11:38 ET).

⁹ Letter at 1.

¹⁰ Letter at 1.

¹¹ Letter at 1.

¹² Letter at 1-2. We are allowing GCI to retest the grid cells it skipped the first time in case the reasons or analysis that it used in its determination to skip them have changed upon retesting.

¹³ Letter at 2 n.3.

¹⁴ Letter at 2 (“If GCI wants to avail itself of this option, GCI must reply within seven (7) days from the date of this letter, stating whether it would be interested in retesting the grid cells where it did not have a sufficient percentage of mobile tests and/or skipped grid cells.”).

¹⁵ Letter at 2 (“If GCI accepts, it will have two (2) months to retest the specified grid cells (attached)—in those grid cells, it must completely redo testing (i.e., stationary and mobile tests).”). GCI was sent the Letter on June 2, 2023. Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless

(continued....)

4. After accepting the offer to retest these grid cells, GCI filed a Petition for Limited, Expedited Waiver on June 26, 2023.¹⁷ GCI argues that the “speed specification was first provided to GCI . . . nine months after GCI completed its drive testing”¹⁸ and asks the Bureau to “carefully consider whether a 15 MPH requirement is truly necessary” for the grid cells specified in its Petition¹⁹ as the Letter “does not explain the basis for concluding that 15 MPH is the lowest speed that would be considered a ‘safe and reasonable operating speed’ or ‘the speed of the surrounding traffic.’”²⁰ From the list of grid cells the Competition and Infrastructure Policy Division (Division) sent to GCI for retesting, GCI identifies 45 grid cells that it claims would be unsafe to drive at 15 mph or faster; would have limited accessibility; would be too costly to retest; or would have initial drive tests that were conducted at speeds close to 15 mph.²¹ For these 45 grid cells, GCI seeks to waive the 15 mph threshold and requests that Commission staff analyze the initial data that were submitted for those grid cells.²² GCI further identifies 90 additional grid cells that are likely affected by a recent outage of Quintillion’s fiber cable.²³ For these 90 grid cells, GCI requests two additional consecutive months—within May to October—to retest after the cable is repaired.²⁴ For all remaining grid cells that GCI is retesting, GCI requests that the deadline to submit results be October 2, 2023, rather than August 2.²⁵

(Continued from previous page)

Telecommunications Bureau, FCC, to Chris Niernan, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023, 11:38 ET).

¹⁶ Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division of the Wireless Telecommunications Bureau, FCC, to Chris Niernan, Vice President & Senior Counsel, Federal Affairs, GCI, Attach. 2 (June 2, 2023 11:38 ET).

¹⁷ Petition.

¹⁸ Petition at 1.

¹⁹ Petition at 1.

²⁰ Petition at 3.

²¹ Petition at 5-15.

²² Petition at 1-15. The Commission sent GCI two lists of grid cells for re-testing. The first list contained the grid cells where it did not complete a sufficient number of mobile tests; the second list contained the grid cells where it did not complete enough tests in total (i.e., it performed fewer than 20 stationary and mobile tests in a grid cell). *See* Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division of the Wireless Telecommunications Bureau, FCC, to Chris Niernan, Vice President & Senior Counsel, Federal Affairs, GCI, Attach. 2 (June 2, 2023 11:38 ET). The second list likely includes those grid cells that GCI chose not to drive test at all the first time. It is unclear from GCI’s Petition whether it seeks any alternative relief for those grid cells where GCI seeks a waiver but it did not have sufficient data in the first round of testing. For example, GCI seeks a waiver for grid cell G22650342 in Kodiak. *See* Petition at 1, 4, 5, Attach. A. GCI notes that this grid cell is inaccessible for testing, so it does not have previous drive test data for this grid cell, but GCI has not sought a proxy cell for this grid cell or other relief. *See* Letter from Julie A. Veach, Counsel to GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271 (filed June 13, 2022); Petition at 12; *see also Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, DA 22-755 (WTB Jul. 13, 2022). To address this potential discrepancy, we allow GCI to choose to re-test any of the grid cells for which GCI sought a waiver of the 15 mph threshold, as described more fully below. *See infra*, para. 12.

²³ Petition at 16-20; *see also* Greg Knight & Chris Klint, Cut Cable Causes Internet and Cellphone Outages in Arctic Alaska, *Alaska Public Media* (June 12, 2023) (noting long-term outage of likely six to eight weeks from Quintillion’s cut fiber cable off of the Northern Alaska coast), <https://alaskapublic.org/2023/06/12/cut-cable-causes-weeks-long-north-slope-northwest-alaska-internet-and-cellphone-outages/>.

²⁴ Petition at 18.

²⁵ Petition at 2.

5. GCI filed a supplement to its Petition on July 18, 2023 (Supplement to Petition).²⁶ In this supplement, GCI seeks to waive the 15 mph threshold for an additional 110 grid cells. GCI asserts that three of these grid cells present circumstances similar to those identified in its Petition and are unsafe to drive at 15 mph.²⁷ GCI asserts that the remaining 107 grid cells should not be subject to the minimum speed requirement where “the adopted Alaska Population-Distribution Model indicates that the grid cell has no road.”²⁸ According to GCI, a 15 mph minimum speed threshold is unsuited to areas without roads and would not reflect actual consumer use in these areas.²⁹ Additionally, GCI clarifies that references to grid cell numbers in its initial Petition should reflect proxy cells where one was assigned.³⁰

III. DISCUSSION

6. We affirm that 15 mph is, in general, a necessary floor for the in-motion drive testing required for the Alaska Plan drive testing. We waive this requirement and will analyze the initial drive test data with respect to the 48 grid cells GCI claims would be unsafe to drive at 15 mph or faster, would have limited accessibility, would be too costly to retest, or would have original drive test data collected at speeds close to the in-motion 15 mph threshold. We also extend the drive test deadline to October 2, 2023, for submission of all retested data.

7. The Commission may waive any provision of the rules on its own motion or on petition “for good cause shown.”³¹ The “good cause shown” standard can be met when the Commission finds that (1) “special circumstances warrant a deviation from the general rule”; and (2) “such deviation will serve the public interest.”³² A rule waiver may serve the public interest when the relief would not undermine the policy objectives of the rule.³³ In this case, granting a limited waiver of the 15 mph threshold for the specified grid cells and extending the submission date for all of the retested data to October 2, 2023, meets both prongs of the test.

8. As an initial matter, we affirm that, in general, a speed of at least 15 mph is necessary to be considered a reasonable operating speed for the Alaska Plan in-motion drive testing. GCI asks the Bureau to consider carefully whether a 15 mph threshold is truly necessary for the grid cells it specifies in its Petition and notes that we did not explain the basis for the 15 mph threshold in the Letter.³⁴ While we recognize that the *Alaska Drive Test Order* did not specify a particular driving speed, it did require GCI to conduct tests at “the speed of the surrounding traffic” or at “a safe and reasonable operating speed.”³⁵ Common sense dictates that drive tests in general should be performed at a driving speed, rather than at a walking or running speed. Because so many of GCI’s in-motion drive tests were performed at speeds

²⁶ Supplement to Petition at 1.

²⁷ Supplement to Petition at 2-3.

²⁸ Supplement to Petition at 3-5.

²⁹ Supplement to Petition at 3-5.

³⁰ Supplement to Petition at 5-6.

³¹ 47 CFR § 1.3.

³² *E.g., Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) (*WAIT Radio*).

³³ *See WAIT Radio*, 418 F.2d at 1157.

³⁴ Petition at 1, 3. GCI does not seek a waiver of the 15 mph threshold for 310 of the 465 grid cells that the Commission staff sent back for retesting for failing the in-motion threshold. *See generally* Petition; Supplement to Petition.

³⁵ *Alaska Drive Test Order* at 48, Appx. B; *see also Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103 (requiring drive tests); *Alaska Drive Test Order* at 18-20, paras. 34-36.

more associated with walking speeds rather than reasonable driving speeds,³⁶ Division staff found it necessary to specify a driving speed threshold to clarify the requirement of performing tests at “the speed of surrounding traffic, or a safe and reasonable operating speed.”³⁷ We have given GCI a second opportunity to perform its drive tests at this threshold so that we can have an accurate understanding of whether GCI has met its commitments.

9. For the 36 grid cells where GCI claims that it would be unsafe to test at 15 mph or that it has limited ability to access, we waive the 15 mph threshold and will analyze the initially submitted data. While 15 mph or greater is consistent with a drive test of a mobile service, the Letter recognized that a waiver may be warranted in certain grid cells “where speeds of 15 mph or above may be unsafe or illegal” in that particular grid cell.³⁸ GCI has demonstrated that 36 grid cells would be unsafe to test at 15 mph or greater because they involve boardwalks (11 grid cells),³⁹ water hazards (14 grid cells),⁴⁰ short roads and unpaved paths (7 grid cells),⁴¹ and grid cells with limited access (4 grid cells).⁴² As GCI has shown that testing these grid cells above 15 mph could pose safety risks, we find that the hazards in these particular grid cells are special circumstances that warrant a deviation from the 15 mph threshold. Moreover, waiver of the 15 mph threshold here is in the public interest as the hazards suggest that consumers would likely use their mobile service at less than 15 mph in these particular grid cells, and the objective of the 15 mph threshold is to reflect how the mobile network performs when the user is moving.

10. For the ten grid cells that GCI indicates are extremely costly to retest, we grant GCI’s petition, waive the 15 mph threshold, and will analyze the initial data.⁴³ GCI explains that these grid cells are hard to reach, require charter of a helicopter, and in any event, most would not have “traffic” at speeds of 15 mph “because the speed[] . . . tested reflect[s] the speed at which it is customary to move or travel within that grid cell.”⁴⁴ We find that these circumstances are special circumstances that warrant a deviation from the 15 mph threshold, and the public interest is served by relying on the initially submitted data, as it would be unduly burdensome to retest the *de minimis* number of grid cells at issue that were originally tested at speeds which are customary to move or travel within the specified grids.

³⁶ Many of GCI’s tests were conducted at less than 3 mph, which is considered to be a walking speed. *See, e.g.,* Elizabeth Millard, *Slow Walkers Might Age Faster than People Who Pick Up the Pace*, Runners World (Oct. 11, 2019) (reporting on a study indicating that slow walkers walk at 2.7 mph and faster walkers, 3.9 mph), <https://www.runnersworld.com/news/a29429593/walking-speed-affects-aging/>. 15 mph is the lowest recognized vehicle speed limit in Alaska and is the speed limit reserved for driving down an alley, which is not the type of driving that GCI is concerned with in its Petition or Supplement to Petition. 13 Alaska Admin. Code § 02.275 (Basic Rule and Maximum Limits), <https://www.akleg.gov/basis/aac.asp#13.02.275>; *see also* Petition; Supplement to Petition. Business districts have a speed limit of 20 mph, and residential areas have a speed limit of 25 mph, which are higher than the minimum driving threshold.

³⁷ *See Alaska Drive Test Order* at 48, Appx. B. We note that a threshold of 15 mph for in-motion tests is a generous threshold for such testing. For example, for the drive tests required as part of the conditions of the T-Mobile/Sprint transaction, T-Mobile must perform drive tests at “vehicular speeds varying generally between 25-60 mph.” T-Mobile USA, Inc., Methodology for T-Mobile Drive Tests to Verify Compliance with T-Mobile/Sprint Merger Commitments at 4 (Jan. 8, 2020), <https://www.fcc.gov/sites/default/files/t-mobile-drive-test-methodology-01082021.pdf>.

³⁸ Letter at 2 n.3; *see also Alaska Drive Test Order* at 47-48, Appx. B.

³⁹ Petition at 6-8, 30-40; Supplement to Petition at 2.

⁴⁰ Petition at 8-9, 41-54; Supplement to Petition at 2.

⁴¹ Petition at 9-10, 55-62. Four of these grid cells are also on oil field property. Petition at 10-11, 63-67.

⁴² Petition at 11-12, 68-71; Supplement to Petition at 2.

⁴³ *See* Petition at 12-14.

⁴⁴ Petition at 12-13.

11. Finally, for the two grid cells for which the initial drive tests were conducted at speeds close to 15 mph for the in-motion tests, we grant GCI's petition, waive the 15 mph threshold, and will analyze the initial data.⁴⁵ The 15 mph threshold is intended to ensure that GCI's in-motion drive tests occur at the speed of surrounding traffic or at a reasonable and safe operating speed. For the two identified grid cells where GCI came within 2 mph of 15 mph, retesting these grid cells at speeds of at least 15 mph is unlikely to change the outcome of the tests and, thus, does not undermine the policy objectives behind the requirement. Accordingly, we find it unnecessary for GCI to incur the cost of retesting these grid cells.

12. Despite the waiver of the retesting requirement for the 48 grid cells, we will allow GCI to voluntarily retest any of those grid cells should it so choose.⁴⁶ Because so many of GCI's in-motion drive tests were performed at such low moving speeds, however, we find it necessary to specify a threshold to ensure that the same issue does not arise if GCI chooses to retest any of these grid cells. Based on GCI's demonstration in its Petition, we recognize that 15 mph may not be a "safe and reasonable operating speed" for these particular grid cells. Accordingly, for any voluntary retest of the 48 grid cells specified in GCI's Petition and Supplement to Petition, a test will be considered in-motion if conducted at speeds of at least the second-fastest speed from its initial testing for that grid cell (defined as the average speed for an uplink and downlink paired test) rounded down to the nearest mile per hour. For example, in grid cell G17360788, where the second-fastest speed was 4.13 mph, a test would be considered in motion if it were at least 4 mph in that grid cell. We choose the second-fastest speed, as this is a speed that has been demonstrated as safe to be tested in that grid cell while eliminating the top speed as a potential outlier. For the two grid cells in which the test was performed at just under the 15 mph threshold, any re-test must meet the threshold for the in-motion portion of those tests.

13. We do not act on the Supplement to Petition for the remaining 107 grid cells in this Order. Commission staff met with GCI on July 26, 2023 asking GCI to provide more information regarding these grid cells. We anticipate addressing the 107 roadless grid cells after receipt of this information.

14. For all remaining grid cells for retesting—including those 90 additional grid cells affected by the Quintillion outage and the 107 roadless grid cells in the Supplement to Petition—and not subject to other waiver treatment in this Order, we grant GCI's Petition, with a modification, and extend the deadline for all retested grid cells to October 2, 2023. For those grid cells affected by the Quintillion fiber cut—which will cause service disruption for a predicted minimum of 6-8 weeks after it occurred about June 11, 2023⁴⁷—GCI requests two additional consecutive months to retest after the fiber outage is repaired⁴⁸ and that the testing months be between May and October,⁴⁹ allowing for the possibility that

⁴⁵ See Petition at 14-15.

⁴⁶ For example, GCI may not have performed a sufficient number of tests for some of the grid cells in its original drive testing, or may have entirely skipped some grid cells the first time around. See Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division of the Wireless Telecommunications Bureau, FCC, to Chris Niernan, Vice President & Senior Counsel, Federal Affairs, GCI, Attach. 2 (June 2, 2023 11:38 ET). Where GCI does not submit new drive test data as part of its retesting, Commission staff will have to rely on the data that were submitted in the initial testing, which includes some grid cells where GCI did not have a sufficient number of drive tests to pass. While we are granting the waiver as requested, GCI may want to consider the implications of choosing not to re-test certain grid cells, such as those where there were not a sufficient number of tests performed.

⁴⁷ See Petition at 16-17.

⁴⁸ Petition at 17-18.

⁴⁹ Petition at 18.

testing these areas would occur in 2024.⁵⁰ GCI separately asks that the deadline for submission of the grid cells that were not listed in the Petition be due on October 2, 2023, instead of August 2, to “provide a more realistic opportunity to test in these remote areas.”⁵¹ In response to both requests for more time, we extend the deadline for all retested grid cells to October 2, 2023. The untimely cut of the Quintillion fiber line is a special circumstance that warrants an extension of the deadline for those data, and the 6-8 week prediction of service disruption aligns with the requested October 2, 2023 date for other grid cells. Further, aligning the timelines allows GCI to submit all of its data in one batch to make efficient use of any quality check efforts it will give the data before submission. If the Quintillion fiber cut persists far beyond the predicted repair date, allowing inadequate time for testing before the October 2 deadline, then the onset of the Alaskan winter could cause further delays until next year. GCI must therefore complete what testing it can before the October 2 deadline and submit another request for waiver, with sufficient justification, to seek relief for any grid cells for which it could not complete testing.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1-4, 201, 254, 301, 303, 308, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 254, 301, 303, 308, 309, 332, and sections 0.131, 0.311, 1.3, 54.317, 54.320, and 54.321 of the Commission’s rules, 47 CFR §§ 0.131, 0.311, 1.3, 54.317, 54.320, 54.321, and the delegated authority contained in the *Alaska Plan Order*, 31 FCC Rcd 10139, 10160, 10166-67, paras. 67, 85, that these waivers ARE ADOPTED.

16. 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

Joel Taubenblatt
Chief,
Wireless Telecommunications Bureau

⁵⁰ If Quintillion releases a statement in the last week of August indicating that the fiber is repaired, for example, this scenario would not allow for two consecutive months before October 2 to test these 90 grid cells, which means that the testing would be delayed until May 2024 and would not conclude until July 2024 at the earliest.

⁵¹ Petition at 2, 15-16.

APPENDIX:
List of 48 Grid Cells For Which A Waiver of 15 MPH is Granted

G13820092	Akutan
G13830092	Akutan
G13820091	Akutan
G16500992	Nunam Iqua (Sheldon Point)
G16500991	Nunam Iqua (Sheldon Point)
G16520993	Nunam Iqua (Sheldon Point)
G17370786	Nunapitchuk
G17370787	Nunapitchuk
G19631397	Selawik
G19641397	Selawik
G19130576	Aleknagik
G17330788	Kasigluk
G17330790	Kasigluk
G35520262	Ketchikan
G35560261	Ketchikan
G31960634	Klukwan
G16230815	Newtok
G17360788	Nunapitchuk
G22660391	Ouzinkie
G34270400	Petersburg
G24531774	Prudhoe Bay
G33220424	Sitka
G23990795	Valley
G32790543	Juneau
G35650235	Metlakatla
G34280398	Petersburg
G24031773	Prudhoe Bay
G24251794	Prudhoe Bay
G24261789	Prudhoe Bay
G24681773	Prudhoe Bay
G32750549	Juneau
G32760549	Juneau
G22650342	Kodiak
G13780092	Akutan
G15521392	Diomedes
G19750450	Egegik
G19740446	Egegik
G24411150	Nenana
G24881774	Prudhoe Bay
G15860782	Toksook Bay
G19791393	Selawik
G19801392	Selawik
G19801393	Selawik
G26360691	Cordova
G27401016	Tok
G16300699	Kipnuk
G20821172	Galena
G24020770	Valley

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

In the Matter of	)	
	)	
Shortwave Modernization Coalition Petition for	)	RM-11953
Rulemaking to Amend the Commission's Rules to	)	
Allow Fixed, Long-Distance, Non-Voice	)	
Communications Above 2 MHz and Below 25	)	
MHz	)	

ORDER

Adopted: July 31, 2023

Released: July 31, 2023

By the Chief, Wireless Telecommunications Bureau:

1. On June 30, 2023, the Office of Managing Director released a Public Notice¹ seeking comment on a Petition filed by Shortwave Modernization Coalition (“SMC”) requesting that the Commission initiate a rulemaking to amend its rules to allow fixed, long-distance non-voice communications above 2 MHz and below 25 MHz.² The Public Notice was published in the Daily Digest on July 3, 2023.

2. On July 24, 2023, Skywave Networks LLC (“Skywave”) filed a motion to extend the comment deadline on the SMC Petition by 30 days.³ Skywave claims that given the breadth of the impact of the proposal, it needs additional time to analyze spectrum availability and optimal usage, as well as impact on the industry.⁴ On July 26, 2023, FlexRadio Systems (“FlexRadio”) also filed a motion to extend the comment deadline by 30 days.⁵ FlexRadio requests more time to “study the experiments and model the proposed emissions and anti-interference mechanisms.”⁶ According to FlexRadio, a 30-day extension to the comment period will allow it to provide an analysis of the Petition and properly file a response.⁷ On July 27, 2023, SMC filed a motion opposing the motions for extension of time.⁸ SMC states that the Commission’s rules and precedent make it clear that such extensions shall not be routinely granted.⁹ SMC argues that Skywave and FlexRadio do not provide valid reasons that would justify late

¹ *Office of Managing Director Reference Information Center Petition for Rulemakings Filed*, RM-11953, Public Notice, Report No. 3198 (2023).

² Petition for Rulemaking of the Shortwave Modernization Coalition, RM-11953 (filed April 28, 2023), <https://www.fcc.gov/ecfs/document/1042840187330/1> (SMC Petition).

³ Motion for Extension of Time, RM-11953, at 1 (filed July 25, 2023), <https://www.fcc.gov/ecfs/document/10724138643054/1> (Skywave Motion for Extension of Time).

⁴ *Id.* at 3.

⁵ Motion for Extension of Time, RM-11953 (filed July 26, 2023), <https://www.fcc.gov/ecfs/document/107260562510210/1> (FlexRadio Motion for Extension of Time).

⁶ *Id.* at 1.

⁷ *Id.*

⁸ Motion Opposing Motions for Extension of Time to File Comments, RM-11953 (filed July 27, 2023), <https://www.fcc.gov/ecfs/document/1072785891875/1>.

⁹ *Id.* at 1.

submission on substantive grounds¹⁰ and states that FlexRadio's motion is also procedurally deficient.¹¹ On July 28, 2023, Skywave filed a reply to SMC's opposition reaffirming its interest in having more time to fully assess the assertions in the SMC Petition.¹²

3. With this order, the Wireless Telecommunications Bureau denies both motions for extension of time to file comments in response to SMC's Petition. As set forth in section 1.46 of the Commission's rules, extensions of time shall not be routinely granted.¹³ Here, we are considering a threshold question of how to act on a petition for rulemaking, as opposed to making substantive changes to our rules or procedures.¹⁴ It is premature to anticipate that the Commission will determine that it should proceed to initiate a Notice of Proposed Rulemaking. Even under such a scenario, parties would have ample opportunity under our notice-and-comment procedures to fully participate prior to the adoption of final rules.¹⁵ We further note that Commission proceedings involving technical rules, such as those pertaining to 2-25 MHz band use, can be expected to contain complex filings of a detailed nature, and the SMC Petition is consistent with that expectation. We find nothing sufficiently unique or unusual that would warrant extension of time in this instance.¹⁶

4. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.131, 0.331, and 1.46 of the Commission's rules, 47 CFR §§ 0.131, 0.331, and 1.46, the Skywave Motion for Extension of Time filed on July 24, 2023 and the FlexRadio Motion for Extension of Time filed on July 26, 2023, ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt

Chief, Wireless Telecommunications Bureau

¹⁰ See, e.g., *id.* at 3 ("The fact that the Motions come at the eleventh hour – days before the conclusion of a 30-day comment period on a rulemaking petition that has been publicly available for three months – undercuts Movants' claims that the breadth and impact of the SMC Petition, and the need for additional information to evaluate the proposal, warrant an extension of time to submit comments.").

¹¹ See *id.* at 2 ("The FlexRadio Motion, which was filed after the July 24, 2023 deadline for seeking an extension of time to file comments on the Petition, is untimely and procedurally defective. The Commission's rules require that motions for extension of time to file comments on the SMC Petition must be filed "at least 7 days before" comment deadline.").

¹² See generally Reply to Opposition to Motion for Extension of Time, RM-11953 (filed July 28, 2023), <https://www.fcc.gov/ecfs/document/107281403124777/1>.

¹³ 47 CFR § 1.46(a).

¹⁴ See *Amendment of Rules Governing Ultra-Wideband Devices and Systems*, RM-11844, Order Denying Extension of Time to File Comments and Reply Comments, 34 FCC Rcd 7176, 7177 at para. 3 (OET 2019) (*Ultra-Wideband Denial Order*).

¹⁵ See *id.*

¹⁶ See 47 CFR § 1.46(a); *Ultra-Wideband Denial Order*, 34 FCC Rcd at 7177, para. 3 (OET 2019).

**Before the
Federal Communications Commission
Washington, D.C. 205541**

In the Matter of	)	
	)	
Geophysical Survey Systems, Inc.	)	ET Docket No. 22-458
	)	
Request for Waiver of Sections 15.503(d), 15.31(c),	)	
and 15.521(d) of the Commission's Rules	)	

ORDER

Adopted: July 31, 2023**Released: July 31, 2023**

By the Chief, Office of Engineering and Technology:

I. INTRODUCTION

1. By this Order we grant a request for waiver of Sections 15.503(d), 15.31(c) and 15.521(d) of the Commission's rules filed by Geophysical Survey Systems, Inc. (GSSI) so that it can apply for FCC certification to market a new ultra-wideband (UWB) ground penetrating radar (GPR) device that does not comply with the requirements in those sections.¹ For the reasons discussed below, we find that there is good cause to grant GSSI's waiver request.

II. BACKGROUND

2. GSSI states that its new device is a stepped frequency, continuous wave (CW) modulated GPR transmitter that closely resembles its previously approved GPR handheld analyzer device.² GSSI states that its new device's technical characteristics are nearly identical to those of a device for which the Office of Engineering and Technology (OET) granted waivers of the same rules that GSSI requests be waived for its device.³ GSSI requests that any waiver granted in response to its petition include the same conditions OET previously included in a similar waiver grant.⁴

3. Section 15.503(d) of the Commission's rules defines an ultra-wideband transmitter as an intentional radiator that, at any point in time, has a fractional bandwidth equal to or greater than 0.20, or that has a UWB bandwidth equal to or greater than 500 megahertz, regardless of the fractional

¹ Petition for Waiver of Geophysical Survey Systems, Inc. (filed Dec. 2, 2022) (GSSI Waiver Request).

² GSSI Waiver Request at 1.

³ *Id.* at 1-2, 9. See also *Proceq USA Inc. Request for Waiver of Part 15 of the Commission's Rules Applicable to Ultra-Wideband Devices*, Order, 33 FCC Rcd 2258 (2018) (*Proceq Waiver Order*); Letter from Julius Knapp, Chief, Office of Engineering and Technology to Terry G. Mahn; DA 19-892 (rel. Sep. 11, 2019) (*Proceq Waiver First Modification*); *Request for Modification of Waiver Granted to Proceq USA Inc.*, Order, ET Docket No. 20-127, DA 22-1158 (rel. Nov. 4, 2022) (*Proceq Waiver Second Modification*).

⁴ GSSI Waiver Request at 11-12. The waiver conditions were designed to prevent any potential interference from operation of Proceq's device.

bandwidth.⁵ GSSI states that it is not possible for a frequency-hopping UWB transmitter such as its new device to meet this definition, so a waiver of this section is needed.⁶

4. Sections 15.31(c) and 15.521(d) require UWB device emissions to be measured with the transmitter operating with the stepping function stopped.⁷ GSSI states that a waiver of these rules is necessary because the GSSI GPR device will use frequency-hopping modulation to achieve improved performance characteristics and the device would not comply with the technical requirements with the stepping function stopped.⁸ It states that measuring emissions with the stepping function active will not increase the interference potential of the device.⁹

5. No parties filed comments in response to the OET request for comment on the GSSI waiver request.¹⁰

III. DISCUSSION

6. We are authorized to grant a waiver under Section 1.3 of the Commission's rules if the petitioner demonstrates good cause for such action.¹¹ Good cause, in turn, may be found and a waiver granted "where particular facts would make strict compliance inconsistent with the public interest."¹² To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule.¹³

7. We find that the GSSI device promises to deliver strong public interest benefits. GSSI's device will provide significant economic, technological, and social value by providing users with real-time data, measurements, imaging, information, and analysis they need to more safely, efficiently, and effectively complete construction projects, serve clients, and benefit the public at large.¹⁴ The newly developed device hardware and software will improve image quality, speed, and flexibility, giving professionals trained in concrete safety a better tool for evaluating structural risk.¹⁵ The device's multichannel antennas allow users to simultaneously see beneath a dense rebar mesh and determine important differences between subsurface targets in ways that have not been possible with previous

⁵ 47 C.F.R. § 15.503(d).

⁶ GSSI Waiver Request at 5.

⁷ 47 C.F.R. §§ 15.31(c), 15.521(d).

⁸ GSSI Waiver Request at 7.

⁹ *Id.* at 10-11.

¹⁰ *Office of Engineering and Technology Seeks Comment on Geophysical Survey Systems, Inc. Request for Waiver of Sections 15.503(d), 15.31(c), and 15.521(d) of the Commission's Part 15 Ultra-Wideband (UWB) Rules*, ET Docket No. 22-458, Public Notice, DA 22-1354 (OET Dec. 22, 2022).

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

¹² *Northeast Cellular*, 897 F.2d at 1166; *see also* *ICO Global Communications*, 428 F.3d at 269 (quoting *Northeast Cellular*); *WAIT Radio*, 418 F.2d at 1157-59.

¹³ *See, e.g., WAIT Radio*, 418 F.2d at 1157 (stating that even though the overall objectives of a general rule have been adjudged to be in the public interest, it is possible that application of the rule to a specific case may not serve the public interest if an applicant's proposal does not undermine the public interest policy served by the rule); *Northeast Cellular*, 897 F.2d at 1166 (stating that in granting a waiver, an agency must explain why deviation from the general rule better serves the public interest than would strict adherence to the rule).

¹⁴ GSSI Waiver Request at 10.

¹⁵ *Id.*

generations of sensors.¹⁶ In addition, the new system will allow users easily to operate multiple antennas to focus on the task at hand rather than on equipment limitations, and new 3D visualization capabilities will provide experts with better real-time data for making decisions that minimize mistaken interpretations that risk life and limb.¹⁷

8. We also conclude that, with appropriate operational and technical restrictions to prevent harmful interference to authorized services, granting GSSI's request for waiver does not undermine the purpose of the rules, i.e., to prevent harmful interference to authorized communication services. In this case, the authorized services in the frequency band where the device will operate include Global Positioning System (GPS) and Global Navigation Satellite Systems (GNSS) devices.¹⁸ GSSI has designed its device to operate in line with the parameters of previously waived devices, and notes that its technical parameters are "virtually identical" to those parameters.¹⁹ The Commission determined, and has continued to find, that a device operating with these parameters does not have any greater potential for causing harmful interference than a device that operates in accordance with the UWB rules.²⁰ These previous findings support the determination that the GSSI device likewise will have no greater potential for causing harmful interference than a device operating in accordance with the UWB rules.

9. The GSSI device uses stepped frequency CW modulation alone, whereas the Commission has granted waivers for other UWB GPR devices that include Orthogonal Frequency Division Multiplexing (OFDM) as well.²¹ However, we determine that this singular distinction does not affect our conclusion. First, we have previously found that a waiver could be justified for a similarly designed GPR handheld analyzer device that does not include OFDM. Second, because we are not waiving the emission limits for the GSSI device, the use of OFDM or lack thereof has no bearing on the interference potential of the device when in operation.

10. We make the GSSI waiver subject to a number of conditions similar to those the Commission has imposed on other UWB GPR waivers to further reduce the likelihood of harmful interference to authorized services.²² We specify the technical requirements that the GSSI device must meet, including the operating frequency range, modulation type (i.e., stepped frequency CW), dwell time on each frequency, and measurement procedure. We also require that the GSSI device be certified by an authorized Telecommunication Certification Body (TCB) and that a copy of this Order be submitted with the application for certification to ensure that the TCB is aware of this waiver.²³

11. Accordingly, pursuant to the delegated authority in Sections 0.31 and 0.241 of the Commission's rules, 47 C.F.R. §§ 0.31 and 0.241, we waive the requirements of Sections 15.503(d), 15.31(c) and 15.521(d) to permit the certification and marketing of the Geophysical Survey Systems, Inc.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ GSSI Waiver Request at 11.

¹⁹ GSSI Waiver Request at 10-11.

²⁰ *Proceq Waiver Order*, 33 FCC Rcd at 2260, para. 8-9; *Proceq Waiver Second Modification* at 4-5.

²¹ *Proceq Waiver Second Modification* at 4-6. See also GSSI Waiver Request at 10, footnote 28.

²² *Proceq Waiver Order*, 33 FCC Rcd at 2261, para. 11; *Proceq Waiver First Modification* at 2; *Proceq Waiver Second Modification* at 5-6.

²³ All requests for equipment authorization must be submitted in writing to a Telecommunication Certification Body (TCB). 47 CFR § 2.911(a). TCBs are not permitted to waive the rules and therefore may only certify a non-compliant device if the Commission has granted a waiver of those rules with which the device does not comply. 47 CFR § 2.62(f)(10)(i).

ultra-wideband ground penetrating radar that does not comply with the fractional bandwidth and measurement procedures in those sections. This waiver is subject to the following conditions:

- 1) The GSSI GPR device shall be certified by an authorized Telecommunications Certification Body. A copy of this Order must be submitted with the application for certification.
- 2) The GSSI GPR device shall operate with stepped frequency CW modulation in 1-40 megahertz steps between 30-6000 MHz.
- 3) The GSSI GPR device dwell time on any one frequency shall not exceed 2 microseconds.
- 4) The dwell time during any step of the GSSI GPR shall not exceed 0.04 percent of the devices minimum scan/cycle rate.
- 5) For certification testing, the measurement of emissions from the GSSI GPR device shall be conducted with the stepping function active for all possible frequency step sizes.
- 6) The GSSI GPR device will comply with all other technical and operational requirements applicable to UWB GPR devices under Part 15, Subpart F of the Commission's rules.
- 7) The entities permitted to operate the GSSI GPR device are limited to those specified in Section 15.509(b) of the Commission's rules.
- 8) Sales of the GSSI GPR device authorized under this waiver are subject to an annual limit of 5,000 devices for each of the first two years and 10,000 devices each year thereafter.

IV. ORDERING CLAUSES

12. Accordingly, pursuant to authority delegated in Sections 0.31 and 0.241 of the Commission's rules, 47 CFR §§ 0.31, 0.241, and Section 1.3 of the Commission's rules, 47 CFR § 1.3, IT IS ORDERED that the Request for Waiver filed by Geophysical Survey Systems, Inc. on December 2, 2022 IS GRANTED consistent with the terms of this Order. This action is taken pursuant to Sections 4(i), 302, 303(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), and 303(r). This action is effective upon release of this Order.

13. IT IS FURTHER ORDERED that, if no applications for review are timely filed, this proceeding SHALL BE TERMINATED and the docket CLOSED.

FEDERAL COMMUNICATIONS COMMISSION

Ronald T. Repasi
Chief
Office of Engineering and Technology



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 23-651
Released: July 31, 2023

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE ACQUISITION OF
CERTAIN ASSETS OF ORIGIN NETWORKS, LLC D/B/A INFOSTRUCTURE BY
HUNTER COMMUNICATIONS & TECHNOLOGIES LLC**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-251

Comments Due: August 14, 2023

Reply Comment Due: August 21, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Origin Networks, LLC d/b/a Infostructure (Infostructure) and Hunter Communications & Technologies LLC (Hunter Communications) (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 for the acquisition of certain assets of Infostructure by Hunter Communication.²

Infostructure, an Oregon limited liability company, provides resold competitive local exchange carrier (LEC) and interexchange services to business and enterprise customers primarily in Oregon and also provides telecommunications services to a handful of business and enterprise customers in California and Washington.³

Hunter Communications, a Delaware limited liability company, is authorized to provide telecommunications services in California and Oregon. Hunter Communications is an indirect, wholly owned subsidiary of Hunter Communications Holdings LLC (Hunter Holdings), which is

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

² Application of Origin Networks LLC d/b/a Infostructure and Hunter Communications and Technologies LLC, for Consent to Assign Assts and Customers of Origin Networks LLC d/b/a Infostructure, Pursuant to Section 213 of the Communications Act of 1934, as Amended, WC Docket No. 23-251 (filed July 19, 2023) (Application). On July 26, 2023, Applicants filed a supplement to their Application. Letter from Matthew S. DelNero, Counsel for Hunter Communications and Technologies LLC, and Henry Kelly, Counsel for Origin Networks, LLC d/b/a Infostructure, to Marlene H. Dortch, FCC, WC Docket No. 23-251 (filed July 26, 2023).

³ Infostructure also provides unregulated communications services in Alaska, Arizona, Florida, Idaho, Nevada, South Carolina, Texas, Utah, and Virginia.

ultimately managed by Grain Management, LLC (Grain Management), a U.S. private equity firm that invests in and manages communications businesses in North America and South America.⁴

Pursuant to the terms of the proposed transaction, Hunter Communications will acquire certain assets of Infostructure, including all customer contracts and customer relationships used in or necessary for Infostructure's provision of resold voice and IP data services and, thus, Hunter Communications will become the telecommunications service provider for Infostructure's California, Oregon, and Washington customers.

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.⁵ We accept the application for streamlined filing under section 63.03(b)(2)(iii) of the Commission's rules.⁶

Domestic Section 214 Application Filed for the Acquisition of Certain Assets of
Origin Networks, LLC d/b/a Infostructure by Hunter Communications & Technologies
LLC, WC Docket No. 23-251 (filed July 19, 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

⁴ Applicants state that Hunter Communications is owned by Grain Communications Opportunity Fund II, L.P. (GCO Fund II) (70.39%) and RWR Hunter Holdco Inc. (RWR) (24.49%). The general partner for the GCO Fund II is Grain GP IV, LLC, and its only managing member is Grain Capital II, LLC. Each of these entities are incorporated in the United States. Grain Capital LLC is indirectly wholly owned by David J. Grain, a U.S. citizen. RWR is wholly owned by Richard W. Ryan, also a U.S. citizen. Applicants state that the GCO Fund II indirectly holds a 10% or greater interest in the following providers of domestic telecommunications services: E. Ritter Telephone Company, LLC and Tri-County Telephone Company, LLC, both of which operate as incumbent LECs in Arkansas; Millington Telephone Company, LLC, which operates as an incumbent LEC in Tennessee; E. Ritter Communications, LLC, which operates as a competitive LEC in Arkansas, Tennessee, and Texas; Orlando Telephone Company, Inc., which operates as a competitive LEC to commercial and residential customers located in Central and Southwest Florida; Great Plains Communications LLC, which operates as an incumbent LEC in Nebraska and in a few areas of Colorado, Kansas, and South Dakota; Great Plains Communications Long Distance LLC, which provides competitive resold long distance services in Nebraska; Great Plains Broadband LLC, which provides facilities-based competitive LEC services in Nebraska; InterCarrier Networks, LLC, which operates as a competitive LEC in Illinois and Indiana, and has received authority to operate in Kentucky, although it currently provides only dark fiber and backhaul to a limited number of wireless sites; Sunman Telecommunications LLC, which operates as an incumbent LEC in southeast Indiana; Sunman Telecommunications Long Distance, LLC, which provides competitive resold long-distance services in Indiana; and Miles Communications, which operates as a competitive LEC in southeast Indiana. Applicants further state that Grain Management, as a result of its management of other funds, is also affiliated with Spectrotel Holding Company LLC, which wholly owns numerous Spectrotel entities providing competitive LEC and interexchange services in multiple states.

⁵ Applicants state that although Hunter Communications and its affiliates provide telecommunications services in Infostructure's service areas, Infostructure operates as a pure reseller and does not own any telecommunications facilities. Applicants further state that Infostructure has "a relatively modest customer base in the markets that overlap with the service areas of Hunter Communications and its affiliates, and assert there is no risk of anticompetitive concentration in any telecommunications markets."

⁶ 47 CFR § 63.03(b)(2)(iii).

Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before August 14, 2023**, and reply comments **on or before August 21, 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) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov; and
- 2) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.⁷ 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 at (202) 418-1191.

FCC

⁷ 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 23-652

Released: August 1, 2023

ROBOCALL ENFORCEMENT NOTICE TO ALL U.S.-BASED VOICE SERVICE PROVIDERS

FCC Enforcement Bureau Notifies All U.S.-Based Providers of Rules Permitting Them to Block Robocalls Transmitting from One Owl Telecom Inc.

File No. EB-TCD-20-00031678

By the Chief, Enforcement Bureau:

The Enforcement Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) issues this Public Notice to notify all U.S.-based voice service providers about substantial amounts of apparently unlawful robocalls originating from or transmitted by One Owl Telecom Inc. (One Owl).

Pursuant to section 64.1200(k)(4) of the Commission's Rules, we hereby notify all U.S.-based voice service providers that if One Owl fails to mitigate the identified traffic described in the cease-and-desist letter listed below, U.S.-based voice service providers may block voice calls or cease to accept traffic from One Owl, without liability under the Communications Act or the Commission's rules.¹

Contemporaneous with this *Public Notice*, the Bureau is issuing a cease-and-desist letter to the following voice service provider:²

- **One Owl**

USTelecom's Industry Traceback Group (Traceback Consortium)³ identified One Owl as an originating or gateway provider for substantial volumes of apparently unlawful robocalls, including calls related to fictitious purchase orders.⁴ Pursuant to the cease-and-desist letter, One Owl must: (1) immediately investigate the traffic identified in the letter; (2) effectively mitigate the identified traffic; (3) implement effective safeguards to prevent customers from using One Owl's network to implement illegal calls; (4) notify the Bureau and the Traceback Consortium, within 48 hours, of the steps taken to mitigate the

¹ 47 CFR § 64.1200(k)(4) (permitting downstream providers to block calls from a notified provider that fails to either (a) mitigate the identified traffic within 48 hours or (b) implement effective measures to prevent new and renewing customers from using its network to originate illegal calls).

² Letter from Loyaan A. Egal, Chief, Enforcement Bureau, to Aashay Khandelwal, CEO, One Owl Telecom Inc. (Aug. 1, 2023) (One Owl Letter). This letter is available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

³ USTelecom's Industry Traceback Group is the registered industry consortium selected pursuant to the TRACED Act, to conduct tracebacks to identify suspected bad actors. *Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act*, Pub. L. No. 116-105 § 13(d), 133 Stat. 3274 (2019); *see also Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act*, 35 FCC Rcd 3113, 3113, para. 1 (2020).

⁴ *See* ITG Subpoena Response on file at EB-TCD-20-00030805 (Mar. 3, 2023) (March ITG Subpoena Response); ITG Subpoena Response on file at EB-TCD-20-00030805 (Apr. 17, 2023) (April ITG Subpoena Response); ITG Subpoena Response on file at EB-TCD-20-00030805 (June 22, 2023) (June ITG Subpoena Response).

identified traffic; and (5) inform the Bureau and the Traceback Consortium, within 14 days, of the steps that One Owl has taken to prevent new or renewing customers from using its network to transmit illegal robocalls.⁵ As a gateway provider, One Owl is subject to additional obligations identified in the One Owl Letter.⁶ If One Owl fails to comply with those requirements, it may be subject to mandatory blocking by downstream voice service providers.⁷

Purpose. Protecting individuals and entities from the dangers of unwanted and illegal robocalls is the Commission's top consumer protection priority.⁸ As part of the Commission's multi-pronged approach to combatting illegal robocalls, the Commission has taken steps to encourage voice service providers to block suspected illegal robocalls.⁹ The Commission permits voice service providers to block traffic from other voice providers that the Bureau has warned are transmitting suspected illegal robocalls.¹⁰ The Bureau has issued numerous "cease-and-desist" letters, warning voice providers that they were originating or transmitting suspected illegal robocalls and could be subject to blocking.¹¹ The Commission placed additional obligations on gateway providers in May 2022 by requiring they block illegal traffic when the Bureau has notified them of such traffic.¹² Failure to do so may require the gateway provider's immediate downstream providers to block all of its traffic if the gateway provider continues to transmit substantially similar traffic or fails to respond to the Bureau's cease-and-desist letter.¹³

Nature of Apparently Unlawful Robocall Traffic. One Owl is originating and transmitting unlawful calls, apparently without the requisite consent from called parties,¹⁴ including many apparently related to

⁵ One Owl Letter at 5; *see also* 47 CFR § 64.1200(k)(4); *see also id.* § 64.1200(f)(18) ("The term effectively mitigate means identifying the source of the traffic and preventing that source from continuing to originate traffic of the same or similar nature.").

⁶ One Owl Letter at 3-5.

⁷ *See* 47 CFR § 64.1200(n)(5)-(6) (requiring blocking).

⁸ *Consumer Guide: Stop Unwanted Robocalls and Texts*, Fed. Comm'n Comm'n, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited July 7, 2023) ("Unwanted calls – including illegal and spoofed robocalls – are the FCC's top consumer complaint and our top consumer protection priority.").

⁹ *See* 47 CFR § 64.1200(k); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 7614, 7622, para. 19 (2020) (*July 2020 Call Blocking Order*) (establishing safe harbor for blocking traffic from bad-actor upstream voice service providers); *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, 34 FCC Rcd 4876, 4887-88, paras. 34-46 (2019) (blocking based on reasonable analytics with consumer opt-out and consumer whitelists); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9709, para. 9 (2017) (blocking of certain categories of calls highly likely to be illegal).

¹⁰ *July 2020 Call Blocking Order*, at 7628-29, paras. 36-39; *see* 47 CFR § 64.1200(k)(4).

¹¹ These letters are available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

¹² 47 CFR § 64.1200(n)(5); *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 17-59, Fifth Report and Order in WC Docket No. 17-97, Order on Reconsideration in WC Docket No. 17-97, Order, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59, and Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, FCC 22-37, para. 74 (2022) (*Gateway Provider Order*).

¹³ 47 CFR § 64.1200(n)(6) (requiring downstream providers to block a gateway provider's traffic if the Bureau issues a Final Determination Order finding that the gateway provider has failed to block illegal traffic as required by section 64.1200(n)(5)); *Gateway Provider Order*, FCC 22-37 at para. 74.

¹⁴ *See* 47 U.S.C. § 227(b); 47 CFR § 64.1200(a).

fictitious orders.¹⁵ Some calls purported to be from “AMC Trading LLC” and stated that “your product is ready to ship.”¹⁶ The calls asked consumers to confirm the order.¹⁷ Other calls stated that a “pre-authorized order” had been “placed on your name.”¹⁸ The call did not state what the order was for or where the order was placed.¹⁹ Between February 3, 2023 and May 31, 2023, One Owl appeared in over 40 tracebacks as an originating or gateway provider for suspected illegal robocalls pertaining to fictitious orders.²⁰

Nature of One Owl’s Operations. One Owl is closely linked to One Eye LLC (One Eye) and Illum Telecommunication Limited (Illum), both of which have been the subject of FCC enforcement actions for transmitting illegal traffic.²¹

In response to the FCC’s enforcement action against Illum in October 2021, the CEO and Director of Illum, Prince Anand (Anand), who sometimes uses the alias “Frank Murphy,”²² created One Eye.²³ To deflect the FCC’s scrutiny, Anand intended to keep his name off One Eye’s corporate documents.²⁴ Kaushal Bhavsar, a director of Illum, became One Eye’s CEO.²⁵ Aashay Khandelwal, the Human Resource Representative for Illum, subsequently formed One Owl and became the CEO.²⁶ Julia Barros,

¹⁵ See March ITG Subpoena Response, *supra* note 4; April ITG Subpoena Response, *supra* note 4; June ITG Subpoena Response, *supra* note 4.

¹⁶ See March ITG Subpoena Response, *supra* note 4.

¹⁷ See *id.*; April ITG Subpoena Response, *supra* note 4; June ITG Subpoena Response, *supra* note 4.

¹⁸ See March ITG Subpoena Response, *supra* note 4; April ITG Subpoena Response, *supra* note 4; June ITG Subpoena Response, *supra* note 4.

¹⁹ See March ITG Subpoena Response, *supra* note 4; April ITG Subpoena Response, *supra* note 4; June ITG Subpoena Response, *supra* note 4.

²⁰ See March ITG Subpoena Response, *supra* note 4; April ITG Subpoena Response, *supra* note 4; June ITG Subpoena Response, *supra* note 4.

²¹ Letter from Rosemary C. Harold, Chief, Enforcement Bureau, to Prince Anand, CEO, PZ/Illum Telecommunication (Oct. 21, 2021); Letter from Loyaan A. Egal, Chief, Enforcement Bureau, to Kaushal Bhavsar, CEO, One Eye LLC (Feb. 15, 2023). These letters are available on the Commission’s website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

²² Prince Anand Skype Chat, June 10, 2021 at 8:18:53 AM (“Frank Murphy” introduces himself as Prince Anand) (on file at EB-TCD-20-00030805) (Anand Skype Chat).

²³ *Id.* at October 24, 2021 at 8:16:14 AM and 8:16:21 AM (Anand telling Great Choice Telecom to expect a new sign up under the name “One Eye” that day).

²⁴ *Id.* at 7:40:25 AM, 8:11:13 AM, 8:13:20 AM, 8:14:48 AM, 8:14:55 AM, 8:15:04 AM, 8:16:14 AM, 8:55:50 AM, 9:01:49 AM, 9:02:21 AM, and 9:02:26 AM (Anand explains that due to the Commission’s cease-and-desist letter he will “not be included in any companies” but will work “on the backend [sic]”).

²⁵ One Eye LLC Listing, Fed. Commc’ns Comm’n, Robocall Mitigation Database (Oct. 26, 2021), https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=9e1373b31b53b0107ccf20ecac4bcb3b&view=sp (showing Bhavsar as CEO of One Eye); Illum Telecommunication, <https://www.illumtelecommunication.com/> (last visited July 14, 2023).

²⁶ See Illum Telecommunication, <https://www.illumtelecommunication.com/> (last visited July 14, 2023); *see also* One Owl Telecom Inc. Listing, Fed. Commc’ns Comm’n, Robocall Mitigation Database (Apr. 25, 2022), https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=b1ab8b061bcb4110823a419ae54bcb64&view=sp (showing Khandelwal as the CEO of One Owl).

a seemingly close acquaintance of Anand,²⁷ became Vice President of Sales and Marketing at One Owl.²⁸ One Owl and One Eye used the same IP address to conduct their business.²⁹ One Owl and One Eye communicated under the same email domain, @oneeyetelecom.com.³⁰ The personnel connections between One Owl, One Eye, and Illum are summarized in the table below.

INDIVIDUALS	COMPANIES
Aashay Khandelwal , resident of Maryland ³¹ , with a presence in Las Vegas, Nevada, ³² and Mumbai, India ³³	CEO at One Owl ³⁴ Human Resources Representative at Illum ³⁵
Julya Barros , resident of Mumbai, India ³⁶ and Dubai, United Arab Emirates ³⁷	Vice President of Sales and Marketing at One Owl ³⁸
Prince Anand, also known as Frank Murphy , ³⁹ with a presence in Mumbai, India ⁴⁰ and Dubai, United Arab Emirates ⁴¹	CEO & Director at Illum ⁴² De facto Founder of One Eye ⁴³

²⁷ Compare @illum_telecom, Twitter, https://twitter.com/illum_telecom?lang=hi (as archived by Google and last visited May 16, 2023) (screenshots on file at EB-TCD-20-00030805), with Julya Barros (@julyabarross), Instagram, <http://www.instagram.com/julyabarross> (last visited July 14, 2023).

²⁸ See Julya Barros, LinkedIn, <https://ae.linkedin.com/in/julya-barros-928008245> (last visited July 14, 2023) (screenshots on file at EB-TCD-20-00030805).

²⁹ March ITG Subpoena Response, *supra* note 4.

³⁰ Compare Incorp Services Interrogatories Response at para. 15 (on file at EB-TCD-20-00030805) (Incorp Services Interrog.) (showing One Eye used the @oneeyetelecom.com domain), with *id.* at para. 3 and Ex. A (on file at EB-TCD-20-00030805) (showing One Owl used the @oneeyetelecom.com domain).

³¹ See Aashay Khandelwal, LinkedIn, <https://www.linkedin.com/in/aashay-khandelwal-ab6179238> (last visited July 13, 2023) (screenshots on file at EB-TCD-20-00030805).

³² See *id.*

³³ See Incorp Services Interrog. at para. 3.

³⁴ One Owl Telecom Inc. Listing, Fed. Comm'n's Comm'n, Robocall Mitigation Database (Apr. 25, 2022), https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=b1ab8b061bcb4110823a419ae54bcb64&view=sp (last visited July 17, 2023) (showing Khandelwal as the CEO of One Owl).

³⁵ Illum Telecommunication, <https://www.illumtelecommunication.com/> (last visited July 14, 2023).

³⁶ See Julya Barros (@julyabarross), Instagram, <http://www.instagram.com/julyabarross/> (last visited July 14, 2023) (screenshots on file at EB-TCD-20-00030805).

³⁷ See Julya Barros, LinkedIn, <https://ae.linkedin.com/in/julya-barros-928008245> (last visited July 13, 2023) (screenshots on file at EB-TCD-20-00030805).

³⁸ See *id.*

³⁹ Anand Skype Chat, *supra* note 22, at June 10, 2021 at 8:18:53 PM.

⁴⁰ *Id.* at June 17, 2021 at 3:26:34 PM.

⁴¹ *Id.* at November 30, 2021 at 3:53:35 AM.

⁴² See Illum Telecommunication, <https://www.illumtelecommunication.com/> (last visited July 14, 2023).

⁴³ Anand Skype Chat, *supra* note 22, at October 24, 2021 at 9:02:21 AM.

INDIVIDUALS	COMPANIES
Kaushal Bhavsar , resident of Ahmedabad, Gujarat, India, ⁴⁴ with a presence in Delaware ⁴⁵	Director at Illum ⁴⁶ CEO at One Eye ⁴⁷

Follow-Up Orders. The Bureau will issue an Initial Determination Order in the event that either: (a) One Owl fails to respond to the cease-and-desist letter with respect to the calls for which One Owl is the gateway provider; (b) the Bureau determines that the response is insufficient or that the traffic is illegal despite the provider's assertions; or (c) the Bureau determines that One Owl is continuing to allow substantially similar traffic onto the U.S. network.⁴⁸ One Owl will have at least 14 days to respond to the Initial Determination Order.⁴⁹ If One Owl's response to that order is insufficient or One Owl continues to allow substantially similar traffic onto the U.S. network, then the Bureau will publish a Final Determination Order in EB Docket No. 22-174 finding that One Owl is not in compliance with section 64.1200(n)(5).⁵⁰ **In the event that the Bureau issues a Final Determination Order in this matter, pursuant to section 64.1200(n)(6) of the Commission's Rules, all U.S.-based voice service providers shall be required to block One Owl's traffic.**⁵¹

Contact Information. For further information, please contact Kristi Thompson, Division Chief, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-1318 or by email at Kristi.Thompson@fcc.gov; or Daniel Stepanicich, Assistant Division Chief, Enforcement Bureau, Telecommunications Consumers Division, at 202-418-7451 or by email at Daniel.Stepanicich@fcc.gov.

ENFORCEMENT BUREAU
Loyaan A. Egal
Chief

⁴⁴ See Kaushal Bhavsar, LinkedIn, <https://in.linkedin.com/in/kaushal-bhavsar-a69a3a255> (last visited July 13, 2023) (screenshots on file at EB-TCD-20-00030805).

⁴⁵ See One Eye LLC, Fed. Commc'ns Comm'n, Form 499 Filer Database, Detailed Information, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=834729> (last visited July 14, 2023).

⁴⁶ Illum Telecommunication, <https://www.illumtelecommunication.com/> (last visited July 14, 2023).

⁴⁷ One Eye LLC Listing, Fed. Commc'ns Comm'n, Robocall Mitigation Database (Oct. 26, 2021), https://fccprod.servicenow.services.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robotcall_mitigation_database&sys_id=9e1373b31b53b0107ccf20ecac4bcb3b&view=sp.

⁴⁸ 47 CFR § 64.1200(n)(5)(ii).

⁴⁹ *Id.* § 64.1200(n)(5)(ii)-(iii).

⁵⁰ *Id.* § 64.1200(n)(5)(iii).

⁵¹ *Id.* § 64.1200(n)(6). Providers must monitor EB Docket No. 22-174 and initiate blocking beginning 30 days from the release date of the Final Determination Order. *Id.*



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-653
Released: August 3, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES NATIONWIDE TESTS OF THE EMERGENCY ALERT SYSTEM (EAS) AND WIRELESS EMERGENCY ALERTS (WEA) ON OCTOBER 4, 2023

PS Docket Nos. 15-91, 15-94

Today, the Public Safety and Homeland Security Bureau (Bureau) of the Federal Communications Commission (FCC or Commission) provides notice to all Emergency Alert System (EAS) Participants,¹ Participating Commercial Mobile Service (CMS) Providers,² and the public that the Federal Emergency Management Agency (FEMA), in coordination with the FCC, will conduct nationwide tests of the EAS and Wireless Emergency Alerts (WEA) on October 4, 2023.³ If conditions on that date require the rescheduling of the tests, they will be conducted on October 11, 2023.⁴

I. Nationwide EAS and WEA Tests

FEMA will initiate the test of WEA at 2:18 pm EDT on October 4, 2023, using the National Alert classification of Alert Message.⁵ The test will be sent to the entire United States and its territories. Members of the public with mobile device service from a CMS provider that participates in WEA in their areas will receive the test message,⁶ which will read “THIS IS A TEST of the National Wireless Emergency Alert System. No action is needed.” The WEA alert will be transmitted in both English and Spanish in both 90 and 360 character sets.⁷ All wireless providers that have elected to participate in WEA

¹ EAS Participants are those entities that are required to comply with the Commission’s EAS rules, including analog radio and television stations, wired and wireless cable television systems, digital broadcast systems, digital television broadcast stations, Satellite Digital Audio Radio Service, digital cable and digital audio broadcasting systems, and wireline video systems. 47 CFR §§ 11.2(b), 11.11(a).

² Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. See 47 CFR §§ 10.10(d), (f).

³ This *Public Notice* satisfies the requirement that the Commission provide notice to EAS Participants at least two months prior to the conduct of a national test. See 47 CFR § 11.61(a)(3)(iii).

⁴ See Letter from Ward Hagood, Engineering Manager, Testing and Evaluation, IPAWS Program Office, National Continuity Programs, Department of Homeland Security – FEMA, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission (Aug. 2, 2023) (on file in PS Docket No. 15-91 *et al.*) <https://www.fcc.gov/ecfs/document/1080115722424/1>.

⁵ See 47 CFR § 10.400(a). *Wireless Emergency Alerts; Amendments to Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91 and 15-94, Order, DA 23-654 (PSHSB Aug. 3, 2023).

⁶ See 47 CFR §§ 10.10(k), (l).

⁷ See FCC, *WEA Enhancements FAQs for Authorized Alert Originators*, <https://www.fcc.gov/wireless-emergency-alert-enhancements-faqs-authorized-alert-originators> (last visited Aug. 3, 2023).

are required to participate in this nationwide test.⁸

FEMA will transmit the nationwide test of the EAS at 2:20 pm EDT on October 4, 2023 using the Integrated Public Alert and Warning System (IPAWS). The test will be disseminated in English and Spanish as a Common Alerting Protocol (CAP) message using the Nationwide Test of the Emergency Alert System (NPT) code. The EAS test will be similar to regular monthly EAS test messages with which the public is familiar. The test message audio and text, which is designed to be identical to the greatest extent possible, is as follows: “This is a nationwide test of the Emergency Alert System, issued by the Federal Emergency Management Agency, covering the United States from 14:20 to 14:50 hours ET. This is only a test. No action is required by the public.”

The Bureau encourages EAS Participants to take steps, in coordination with their State Emergency Communications Committees, in preparation for this test, such as:

- Ensuring that a copy of the EAS Operating Handbook is located at normal duty positions, or EAS equipment locations, and is otherwise immediately available to operators;⁹
- Reviewing the EAS Operating Handbook for the actions to be taken by operators upon receipt of the test alert, and tailoring any actions as necessary that are specific to the EAS Participants’ facilities;
- Reviewing their State EAS Plan for monitoring assignments and ensuring that EAS equipment is accurately configured to monitor those sources;¹⁰
- Upgrading EAS equipment software and firmware to the most recent version;¹¹ and
- Manually synchronizing EAS equipment clocks to the official time provided by the National Institute of Standards and Technology¹² if an EAS Participant’s equipment does not automatically synchronize to an Internet time source.

Members of the public and interested stakeholder organizations that are in a position to observe test results in their communities can provide useful feedback on the nationwide test, including any problems observed or any complications in the delivery of the EAS message during the nationwide test or any feedback concerning the receipt of or failure to receive the WEA test alert by reporting their observations to the Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

A. EAS Test Reporting System Filing Deadlines

All EAS Participants are required to participate in the nationwide EAS test and make required filings in the Commission’s EAS Test Reporting System (ETRS).¹³ EAS Participants were required to

⁸ Participating CMS Providers are required to receive and transmit any WEA messages using the National Alert classification. See 47 CFR § 10.400. National Alerts must always be presented, regardless of subscriber opt-out selections. See 47 CFR § 10.500(f).

⁹ See 47 CFR § 11.15. A writeable PDF version of the EAS Operating Handbook can be found on the Bureau’s web site at <https://www.fcc.gov/general/eas-test-reporting-system>.

¹⁰ See 47 CFR § 11.52(d)(1) (with respect to EAS messages that are formatted in accordance with the EAS Protocol, EAS Participants must monitor two EAS sources).

¹¹ An EAS Participant’s failure to receive or transmit an EAS message during a national test or actual emergency because of an equipment failure may subject the EAS Participant to enforcement action. See *Enforcement Bureau Reminds Emergency Alert System (EAS) Participants of Compliance Obligations*, FCC Enforcement Advisory, 36 FCC Rcd 44 (EB 2021) (*EAS Enforcement Advisory*).

¹² National Institute of Standards and Technology, The Official NIST US Time, <http://www.time.gov>.

¹³ See 47 CFR § 11.61(a)(3)(i); *EAS Enforcement Advisory*.

make their 2023 ETRS Form One filings on or before February 28, 2023.¹⁴

- Any EAS Participant that must update ETRS Form One to ensure its accuracy (including changes resulting from transfers of control, updates to EAS equipment or software, or as required by any revision of its State EAS Plan filed pursuant to 47 CFR § 11.21) must submit an updated ETRS Form One on or before September 15, 2023.
- All EAS Participants must file ETRS Form Two to provide “day of test” data on or before October 5, 2023.¹⁵
- All EAS Participants must file ETRS Form Three to provide detailed post-test data on or before November 20, 2023.¹⁶

ETRS Forms Two and Three will become available in ETRS on October 4, 2023, at the time of initiation of the 2023 nationwide test.

B. Who Must File

All EAS Participants – including Low Power FM stations (LPFM), Class D non-commercial educational FM stations, and EAS Participants that are silent pursuant to a grant of Special Temporary Authority – are required to register and file in ETRS, with the following exceptions:

- Analog and digital low power television (LPTV) stations that operate as television broadcast translator stations are not required to register and file in ETRS.¹⁷
- FM broadcast booster stations and FM translator stations which entirely rebroadcast the programming of other local FM broadcast stations are not required to register and file in ETRS.¹⁸
- International broadcast stations are not required to register and file in ETRS.¹⁹
- Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) are not required to register and file in ETRS. However, the hub station (or common studio or control point) is required to register and file in ETRS.²⁰

C. Accessing ETRS

Filers can access ETRS by visiting the ETRS page of the Commission’s website at <https://www.fcc.gov/general/eas-test-reporting-system>.²¹ Filers must use their registered FCC Username (Username) that is associated with the FCC Registration Numbers (FRNs) for which they will file. Filers that have already created a Username for use with another FCC system may access the ETRS with that Username. Filers that do not remember the password that corresponds with their Username may reset it at

¹⁴ *Public Safety and Homeland Security Bureau Opens the EAS Test Reporting System for Filings*, PS Docket No. 15-94, Public Notice, DA 23-1 (PSHSB Jan. 3, 2023).

¹⁵ 47 CFR § 11.61(a)(3)(iv)(B).

¹⁶ 47 CFR § 11.61(a)(3)(iv)(C).

¹⁷ See 47 CFR § 11.11(b).

¹⁸ See *id.*

¹⁹ See *id.* (citing 47 CFR § 73.701’s definition of “international broadcast stations”).

²⁰ See *id.*

²¹ Instructional videos, a user manual and answers to frequently asked questions regarding registration and completion of ETRS filings are also available on the ETRS website.

<https://apps2.fcc.gov/fccUserReg/pages/reset-passwd-identify.htm>. Filers that have not previously created a Username may do so by visiting the User Registration System at <https://apps2.fcc.gov/fccUserReg/pages/createAccount.htm>. Filers can associate their Username to an FRN by logging in at <https://apps.fcc.gov/cores/userLogin.do> and clicking on the appropriate option. Additional information regarding creating and associating FRNs with a Username can be found on the CORES FAQs page at <https://apps.fcc.gov/coresWeb/publicHome.do?faq=true>.

II. FURTHER INFORMATION

Filers may contact Bureau staff for assistance with ETRS filings via ETRS@fcc.gov.

For further information regarding the nationwide EAS or WEA tests, contact Austin Randazzo, Associate Chief, Public Safety and Homeland Security Bureau, at (202) 418-1462 or Austin.Randazzo@fcc.gov.

Filers may contact FCC Licensing Support for assistance with creating a Username or other CORES troubleshooting via the web at <https://www.fcc.gov/wireless/available-support-services>, or by telephone at 1-877-480-3201. The support hours of operation are 8 a.m. to 6 p.m. Eastern Time, Monday through Friday (except Federal holidays).

-FCC-

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

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

ORDER

Adopted: August 3, 2023**Released: August 3, 2023**

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission's (Commission) Public Safety and Homeland Security Bureau (Bureau) grants a limited waiver of the Commission's Wireless Emergency Alert (WEA) rules,¹ to permit Participating Commercial Mobile Service (CMS) Providers² to participate in a nationwide end-to-end WEA test to be conducted by the Federal Emergency Management Agency (FEMA).³ This will be the third end-to-end nationwide test of WEA, and will be delivered using the National Alert class of Alert Message.⁴ As proposed by FEMA, the test would originate at 2:18 p.m. Eastern Daylight Time (EDT) on Wednesday, October 4, 2023, with a back-up date of Wednesday, October 11, 2023 at the same time, and would involve sending a WEA message to mobile devices throughout the entire United States and United States territories.⁵ The WEA test would be conducted in coordination with a nationwide test of the Emergency Alert System (EAS) that would follow two minutes after the WEA test.⁶

2. Based on the special circumstances presented in FEMA's waiver requests, and for the reasons discussed below, we find that waiver of the Commission's rules would serve the public interest.

¹ See 47 CFR §§ 10.400, 10.520(d), 10.530(b).

² Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR § 10.10(d), (f). Cf. 47 CFR § 10.350 (Commission's rules requiring Participating CMS Providers to participate in monthly tests initiated by FEMA and in periodic tests of WEA's C-Interface).

³ See Letter from Ward Hagood, Engineering Manager, Testing and Evaluation, IPAWS Program Office, National Continuity Programs, Department of Homeland Security – FEMA, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission (Aug. 1, 2023) (on file in PS Docket No. 15-91 *et al.*) (FEMA Letter).

⁴ FEMA Letter at 1. See 47 CFR § 10.400(a) ("A National Alert is an alert issued by the President of the United States or the President's authorized designee, or by the Administrator of FEMA. National Alerts may be either nationwide or regional in distribution.")

⁵ FEMA Letter at 1.

⁶ *Id.* at 1-2.

Accordingly, we grant FEMA's waiver request to conduct an end-to-end WEA test using a National Alert.⁷

II. BACKGROUND

3. WEA allows authorized government entities to send geographically-targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial mobile service providers are Participating CMS Providers.⁸ The Commission's rules prohibit use of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.⁹ The Commission's rules allow WEA end-to-end tests that reach the public only when the test is conducted using the State/Local WEA Test category.¹⁰ Consumers will not receive State/Local WEA Tests by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.¹¹ Further, tests conducted using the State/Local WEA Test category must include conspicuous language sufficient to make it clear to the public that the WEA alert message is only a test.¹² As of December 19, 2019, alert originators wishing to conduct end-to-end WEA tests using the State/Local WEA Tests category do not need to request a waiver from the Commission to permit WEA test alerts using the State/Local WEA Test category to be transmitted to the public.¹³

4. FEMA requests a limited waiver to use the WEA to send a test message to WEA-capable wireless devices nationwide using the National Alert category rather than the State/Local WEA Test category to determine "if carrier WEA configuration, systems, and networks can and will process a National [Alert class of message] delivering the message via all WEA enabled cell sites with minimal latency."¹⁴ FEMA writes that "[p]ublic safety officials need to be sure that in times of an emergency or disaster, they have methods and systems that will deliver urgent alerts and warnings to the public when needed."¹⁵ FEMA notes that the "IPAWS Modernization Act of 2015 (Public Law 114-143) requires FEMA to conduct nationwide tests of the public alert and warning system."¹⁶ Further, FEMA writes,

⁷ See 47 CFR § 10.400(a). National Alerts must always be presented. See 47 CFR § 10.500(f). Subscribers cannot opt-out of National Alerts.

⁸ *Commercial Mobile Alert System*, PS Docket No. 07-287, Third Report and Order, 23 FCC Rcd 12561, 12575, para. 32 (2008) (stating the requirements for wireless providers volunteering to participate in WEA).

⁹ 47 CFR § 10.520(d). The Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the attention signal used by the EAS. Compare 47 CFR § 10.520 with 47 CFR § 11.31(a)(2). The Commission recently proposed to "authorize Participating CMS Providers to support up to two end-to-end WEA tests...per alerting authority each year." See *Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Further Notice of Proposed Rulemaking, FCC 22-30, 2023 WL 3152054, at *13 (Apr. 21, 2023) (*WEA Presentation and Performance NPRM*). This proposal is still under consideration.

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

¹¹ *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65 (requiring Participating CMS Providers to provide their subscribers with the option to receive State/Local WEA Tests).

¹² *Id.*

¹³ *Id.*

¹⁴ FEMA Letter at 1.

¹⁵ *Id.*

¹⁶ *Id.*

“[p]eriodic testing of public alert and warning systems is a way to assess the operational readiness of the infrastructure for distribution of a national message and determine what technological improvements need to be made. The test will also help to assess the effectiveness of WEA message delivery overall.”¹⁷

5. FEMA’s request proposes to use an 87-character WEA test message that would state: “THIS IS A TEST of the National Wireless Emergency Alert System. No action is needed.”¹⁸ FEMA’s request indicates that two minutes after issuing the WEA end-to-end test, it would conduct its seventh nationwide EAS test at 2:20 p.m. EDT on Wednesday October 4, 2023, with a back-up date of Wednesday, October 11, 2023.¹⁹

6. FEMA’s request describes a pre-test outreach and coordination plan, which includes developing multimedia public announcements and assigning roles to stakeholders within their area of operation and expertise.²⁰ FEMA represents that its IPAWS Program Management Office has categorized its test partners into five major functional groups,²¹ and established a timeline to provide each with information on the test and its purpose.²²

7. According to FEMA’s request, it “is planning to conduct a public survey in conjunction with the nationwide test. The survey will help FEMA capture information about the geographic reach of the WEA alert message along with additional key parameters outlined in the IPAWS Modernization Act of 2015 (P.L. 114-143).”²³ FEMA believes the data collected from the survey will help them, the Commission, and public safety officials to “enhance and expand WEA and thus further improve emergency alerting capabilities.”²⁴ FEMA also notes that it “will review any survey of test observation which may be published by states or other organizations.”²⁵

III. DISCUSSION

8. A provision of the Commission’s rules “may be waived by the Commission on its own motion or on petition if good cause therefor is shown.”²⁶ The Commission may find good cause to extend a waiver, “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”²⁷ Based on its request, we conclude there is good cause to grant FEMA’s request for a limited waiver so that it can conduct the WEA end-to-end test described in its petition.

9. We find that a nationwide test of the WEA’s capability to deliver a message utilizing a National Alert class of Alert Message presents special circumstances that justifies a waiver of the Commission’s rules. We agree with FEMA that it is important to “determine if carrier WEA configuration, systems, and networks can and will process a National [Alert] WEA delivering the

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 1-2.

²⁰ *Id.*

²¹ FEMA Letter at 2 (stating that the five major functional groups are: “(1) the American people; (2) Federal governance; (3) Federal, State, territorial, tribal, and local alerting authorities, or ‘alerting authorities’ including 911 public safety answering positions; (4) private sector industry; and (5) nonprofit and advocacy organizations”).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ 47 CFR § 1.3.

²⁷ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

message via all WEA enabled cell sites with minimal latency.”²⁸ Ensuring the delivery of a National Alert WEA message serves a primary national public safety policy goal.²⁹ Accordingly, we find that it would serve the public interest to grant FEMA’s request for a one-time waiver to conduct a nationwide end-to-end test of the WEA system’s capability of delivering a National Alert message.

10. There are other compelling reasons for granting FEMA’s waiver request. FEMA’s proposed test will help ensure that WEA can be deployed effectively during any emergency. FEMA’s proposed test also will help educate the public on what WEA alerts are, how they will appear on their mobile device, and how to respond to it. Finally, FEMA’s request to conduct a test of the two systems together mimics what could happen during an actual emergency, where the two systems are likely to be used together.

11. We observe, however, that the WEA test would not be in the public interest if it were presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or would otherwise confuse the public.³⁰ We therefore condition the grant of this waiver upon FEMA complying with the following conditions:

- The test may only be conducted for the purposes and as otherwise described in the FEMA Letter.
- FEMA must fully implement the outreach and coordination plan described in the FEMA Letter.
- The WEA test must originate at 2:18 p.m. EDT on Wednesday, October 4, 2023, with a back-up date of Wednesday, October 11, 2023 at the same time.

12. We also require that the tests and any post-test analysis and reports that FEMA chooses to conduct or cause to be produced, are done in a manner consistent with customers’ expectations of privacy, confidentiality of Participating CMS Providers’ network information, and the overall security of the WEA systems and infrastructure.³¹ We encourage FEMA to file appropriate data, test results, and test reports in PS Docket 15-91.

13. Finally, we encourage members of the public who experience anomalous WEA test performance to report their experience to PSHSB by submitting a brief description of the issue to the FCC’s Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center>.

IV. ORDERING CLAUSE

14. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission’s rules, 47 CFR § 1.3, Sections 10.400, 10.520(d), and 10.530(b) of the Commission’s rules, 47 CFR §§ 10.400, 10.520(d), and 10.530(b), of the Commission’s rules, ARE WAIVED, to allow a one-time nationwide end-to-end test of the WEA system, conducted subject to the conditions described herein.

²⁸ FEMA Letter at 1.

²⁹ See IPAWS Modernization Act of 2015, 6 U.S.C. § 321o(a)(1) (The Department of Homeland Security Administrator shall “help ensure that under all conditions the President . . . can alert and warn the civilian population in areas endangered by natural disasters, acts of terrorism, and other man-made disasters or threats to public safety”). See also Executive Order No. 13407, Public Alert and Warning System, Sec. 2(a)(iv), 71 Fed. Reg. 36975 (June 28, 2006) (“It is the policy of the United States . . . to ensure that under all conditions the President can communicate with the American people”).

³⁰ For example, transmitting a WEA test message without first informing emergency responders (*e.g.*, 911 call centers) and the public about the test could predictably result in confusion or panic.

³¹ See 47 U.S.C. § 222.

15. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security 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. 23-655

Report No. TEL-02294

Thursday August 3, 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-214-20221222-00157 E Call.Net, LLC
International Telecommunications Certificate
Service(s): Global or Limited Global Resale Service
Grant of Authority

Date of Action: 08/01/2023

Call.Net, LLC (Call.Net) 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).

Call.Net, a Washington limited liability company, is owned by Sasi Mandava (51%) and Sravani Musunuri (49%), both citizens of India.

Pursuant to Commission practice, the application for international section 214 authority was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicant. On August 1, 2023, the National Telecommunications and Information Administration notified the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) "has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."

ITC-214-20230612-00071	E	MYTALK USA 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: 07/28/2023
Mytalk USA LLC (Mytalk) 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). Mytalk, a Delaware limited liability company, is owned by the following three individuals, all U.S. citizens: Humberto Galvan (33.3%), Harold Perez (33.3%), and Mahmud Haque (33.3%).		
ITC-214-20230615-00072	E	Wavly Inc
International Telecommunications Certificate		
Service(s):	Global or Limited Global Resale Service	
Grant of Authority		Date of Action: 07/28/2023
Wavly Inc. (Wavly) 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). Wavly, a California corporation, is owned by two individuals, both U.S. citizens: Jonathan M. Li (51.80%) and Phong M. Ho (48.20%).		
ITC-ASG-20230717-00074	E	Marquette-Adams Telephone Cooperative, Inc.
Assignment		
Grant of Authority		Date of Action: 08/02/2023
Current Licensee:	Marquette Adams Communications, LLC	
FROM:	Marquette Adams Communications, LLC	
TO:	Marquette-Adams Telephone Cooperative, Inc.	
On July 17, 2023, Marquette-Adams Telephone Cooperative, Inc. (MATC), filed a notification of the pro forma assignment of international section 214 authorization ITC-214-19970225-00117 from Marquette-Adams Communications, LLC (MAC) to MATC, effective July 1, 2023. MAC is a wholly owned subsidiary of MATC. In a corporate reorganization, MAC assigned all of its assets including its customer base and its international section 214 authorization (ITC-214-19970225-00117) to MATC.		

ITC-T/C-20221202-00143 E

Valstar, Inc.

Transfer of Control

Grant of Authority

Date of Action: 08/01/2023

Current Licensee: Valstar, Inc.

FROM: Germantown Telephone Company

TO: Archtop Fiber LLC

Valstar, Inc. (Valstar), a New York entity that holds an international section 214 authorization (ITC-214-20000313-00141), filed an application for the transfer of control of Valstar from Germantown Telephone Company, Inc. (GTel) to Archtop Fiber LLC (Archtop). Valstar is a wholly owned subsidiary of GTel, a New York entity. The Applicants filed supplements on January 13, 2023 and February 13, 2023.

Pursuant to a November 10, 2022, stock purchase agreement, Archtop will acquire 100% of the interests in GTel. Upon consummation, GTel will be a direct wholly owned subsidiary of Archtop, and Valstar will be an indirect wholly owned subsidiary of Archtop.

Archtop is wholly owned by Archtop Fiber Intermediate LLC, which, in turn, is wholly owned by Archtop Fiber Holdings LLC (Archtop Holdings), all Delaware entities. Archtop Holdings is controlled by Post Road Digital Infrastructure Fund I LLC (98.7% voting and equity), which, in turn, is wholly owned by Post Road Digital Infrastructure Fund I, LP (Post Road), both Delaware entities.

The voting interests in Post Road are held by Post Road DIF I GP LLC (Post Road DIF GP) (50.5%), a Delaware entity, and OPTrust Infrastructure Direct N.A. VII Inc. (OP Trust Infrastructure) (49.5%), a Canadian entity. The OPSEU Pension Plan Trust Fund (OPSEU Pension Plan), a Canadian entity, wholly owns OP Trust Infrastructure. Post Road DIF GP is wholly owned by PRG Investment Holdings LP (Investment Holdings), a Delaware entity. Post Road Group Holdings LP (PRG Holdings), a Delaware entity, holds 100% voting and 80% equity interests in Investment Holdings. Post Road Group GP LLC (Post Road GP), a Delaware entity, holds all the voting general partner interest in PRG Holdings. Michael Bogdan, a U.S. citizen, wholly owns Birch Hill Capital LLC, a Delaware entity, which, in turn, holds 50% voting and equity in Post Road GP and 45% of the equity of PRG Holdings. Kevin Davis, a U.S. citizen, wholly owns Seventh Avenue Capital Group LLC (Seventh Avenue) and Seventh Avenue Capital Group II LLC (Seventh Avenue II, with Seventh Avenue, Seventh Avenue Capital Group), both Delaware entities. Seventh Avenue holds 50% of the voting and equity interests in Post Road GP while Seventh Avenue II holds 45% of the equity in PRG Holdings.

The 10% or greater equity interests in Post Road are held by: (1) OP Trust Infrastructure (direct 49.5%); and (2) Post Road SOF GP II, a Delaware entity (indirect 12.73% as General Partner of Post Road Special Opportunity Fund II, a Delaware entity (direct 7.81% equity interest in Post Road) and Post Road Special Opportunity Fund II Offshore LP, a Cayman Island entity (direct 4.92% equity interest in Post Road)). Michael Bogdan and Kevin Davis control Post Road SOF GP II through Birch Hill Capital LLC and Seventh Avenue Capital Group, respectively.

According to the Applicants, no other individual or entity will hold a 10% or greater direct equity or voting interest in Archtop or Valstar.

Pursuant to Commission practice, the application was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicant. On August 1, 2023, the National Telecommunications and Information Administration notified the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) "has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."

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

ITC-T/C-20230113-00002 E

Hancock Long Distance, Inc.

Transfer of Control

Grant of Authority

Date of Action: 08/01/2023

Current Licensee: Hancock Long Distance, Inc.

FROM: Hancock Telephone Company

TO: Archtop Fiber LLC

Hancock Long Distance, Inc. (Hancock LD), a New York entity that holds an international section 214 authorization (ITC-214-20070517-00194), filed an application for the transfer of control of Hancock LD from Hancock Telephone Company, Inc. (Hancock) to Archtop Fiber LLC (Archtop). Hancock LD is a wholly owned subsidiary of Hancock, a New York entity. The Applicants filed a supplement on February 13, 2023.

Pursuant to a December 22, 2022 stock purchase agreement, Archtop will acquire 100% of the interests in Hancock. Upon consummation, Hancock will be a direct wholly owned subsidiary of Archtop, and Hancock LD will be an indirect wholly owned subsidiary of Archtop.

Archtop is wholly owned by Archtop Fiber Intermediate LLC, which, in turn, is wholly owned by Archtop Fiber Holdings LLC (Archtop Holdings), all Delaware entities. Archtop Holdings is controlled by Post Road Digital Infrastructure Fund I LLC (98.7% voting and equity), which, in turn, is wholly owned by Post Road Digital Infrastructure Fund I, LP (Post Road), both Delaware entities.

The voting interests in Post Road are held by Post Road DIF I GP LLC (Post Road DIF GP) (50.5%), a Delaware entity, and OPTrust Infrastructure Direct N.A. VII Inc. (OP Trust Infrastructure) (49.5%), a Canadian entity. The OPSEU Pension Plan Trust Fund (OPSEU Pension Plan), a Canadian entity, wholly owns OP Trust Infrastructure. Post Road DIF GP is wholly owned by PRG Investment Holdings LP (Investment Holdings), a Delaware entity. Post Road Group Holdings LP (PRG Holdings), a Delaware entity, holds 100% voting and 80% equity interests in Investment Holdings. Post Road Group GP LLC (Post Road GP), a Delaware entity, holds all the voting general partner interest in PRG Holdings. Michael Bogdan, a U.S. citizen, wholly owns Birch Hill Capital LLC, a Delaware entity, which, in turn, holds 50% voting and equity in Post Road GP and 45% of the equity of PRG Holdings. Kevin Davis, a U.S. citizen, wholly owns Seventh Avenue Capital Group LLC (Seventh Avenue) and Seventh Avenue Capital Group II LLC (Seventh Avenue II, with Seventh Avenue, Seventh Avenue Capital Group), both Delaware entities. Seventh Avenue holds 50% of the voting and equity interests in Post Road GP while Seventh Avenue II holds 45% of the equity of PRG Holdings.

The 10% or greater equity interests in Post Road are held by: (1) OP Trust Infrastructure (direct 49.5%); and (2) Post Road SOF GP II, a Delaware entity (indirect 12.73% as General Partner of Post Road Special Opportunity Fund II, a Delaware entity (direct 7.81% equity interest in Post Road) and Post Road Special Opportunity Fund II Offshore LP, a Cayman Island entity (direct 4.92% equity interest in Post Road)). Michael Bogdan and Kevin Davis control Post Road SOF GP II through Birch Hill Capital LLC and Seventh Avenue Capital Group, respectively.

According to the Applicants, no other individual or entity will hold a 10% or greater direct equity or voting interest in Archtop or Hancock LD.

Pursuant to Commission practice, the application was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicant. On August 1, 2023, the National Telecommunications and Information Administration notified the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) "has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."

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

INFORMATIVE

ITC-214-19900713-00004 Lingo Telecom, LLC

By letter dated July 20, 2023, the Commission was notified that Matrix Telecom, LLC has changed its name to Lingo Telecom, LLC.

ITC-214-19930330-00053 Lingo Telecom, LLC

By letter dated July 20, 2023, the Commission was notified that Matrix Telecom, LLC has changed its name to Lingo Telecom, LLC.

ITC-214-19940830-00266 Lingo Telecom, LLC

By letter dated July 20, 2023, the Commission was notified that Matrix Telecom, LLC has changed its name to Lingo Telecom, LLC.

ITC-214-19970415-00212 Lingo Telecom, LLC

By letter dated July 20, 2023, the Commission was notified that Matrix Telecom, LLC has changed its name to Lingo Telecom, LLC.

ITC-214-19980507-00300 Lingo Telecom, LLC

By letter dated July 20, 2023, the Commission was notified that Matrix Telecom, LLC has changed its name to Lingo Telecom, LLC.

ITC-214-19980915-00644 Lingo Telecom, LLC

By letter dated July 20, 2023, the Commission was notified that Matrix Telecom, LLC has changed its name to Lingo Telecom, LLC.

ITC-214-20220714-00082 Content Guru Inc.

On July 26, 2023, Content Guru, Inc. notified the Commission of the withdrawal of its international section 214 application.

SURRENDER

ITC-214-20070718-00280

VoIPInvite Inc.

By letter dated July 19, 2023, VoIPInvite Inc. notified the Commission that it surrendered its international section 214 authorization effective July 19, 2023.

ITC-214-20130118-00015

GetGo Communications LLC

By letter dated August 1, 2023, GetGo Communications LLC notified the Commission that it surrendered its international section 214 authorization effective August 1, 2023.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

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

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

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

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

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

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

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

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

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

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

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

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

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

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

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

(15) Each carrier shall notify the Commission of any change in its contact information. Such notification shall be filed in the file number(s) for the international section 214 authorization(s) through the International Communications Filing System (ICFS).

Exclusion List for International Section 214 Authorizations

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

Countries:

None.

Facilities:

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

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

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-656

Released: August 3, 2023

WIRELINE COMPETITION BUREAU AND CONSUMER GOVERNMENTAL AFFAIRS BUREAU SEEK COMMENT ON REVISIONS TO PROVIDERS' ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS

WC Docket Nos. 23-62, 12-375

Comment Date: [30 days after publication in the Federal Register]

Reply Comment Date: [45 days after publication in the Federal Register]

By this Public Notice, the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (collectively, the Bureaus) seek comment on proposed revisions to the instructions and templates for the Annual Reports and Annual Certifications that the Commission requires certain providers of incarcerated people's communications services (IPCS) to submit.¹ IPCS providers that are classified as inmate calling services (ICS) providers under the Commission's rules are required to make these filings to enable the Commission to monitor and track trends in the IPCS marketplace, increase provider transparency, and ensure compliance with the Commission's rules.² In issuing this Public Notice, we propose changes to reflect expanded reporting requirements regarding access to IPCS by persons with communication disabilities, including Telecommunications Relay Service (TRS) access,³ and the addition of video IPCS data necessary to help implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act).⁴

¹ 47 CFR § 64.6060(a)-(b); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76, Appx. B (Final Rules), at 80, § 64.6060(a)(5)-(7) (Sept. 30, 2022) (*2022 ICS Order*). Amendments to section 64.6060(a)(5)-(7) will not become effective until the Office of Management and Budget (OMB) completes any review that the Bureaus determine is required under the Paperwork Reduction Act (PRA), and the Bureaus provide an effective date by subsequent Public Notice.

² With the Martha Wright-Reed Act's expansion of the Commission's authority beyond calling services to include all audio and video communications services used by incarcerated people, the Commission no longer uses the phrase "inmate calling services" and instead uses the term "incarcerated people's communications services" or "IPCS" to refer to these broader service offerings. *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking, at 32, para. 80 (2023); Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act or Act); 47 CFR § 64.6000(s); *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12769, 12891-92, paras. 9, 267-68 (2015) (*2015 ICS Order*); see also 47 CFR §§ 64.6000(j), 64.6060(a). For ease of reference, we refer to carriers required to make these filings as "providers" throughout this Public Notice.

³ See *2022 ICS Order* at 24-26, paras. 47-52. The ICS communication disabilities access rules adopted in the *2022 ICS Order* did not become effective in time to implement changes to the 2023 Annual Report and Certifications.

⁴ Martha Wright-Reed Act; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

In 2015, pursuant to delegated authority,⁵ WCB created standardized reporting templates (FCC Form 2301(a))⁶ for the Annual Report and a related certification of accuracy (FCC Form 2301(b)), as well as instructions to guide providers through the reporting process.⁷ WCB amended the instructions, reporting templates, and certification form in 2020 in order to improve the type and quality of the information collected.⁸ In 2022, WCB again amended the instructions, reporting templates, and certification form to reflect significant reforms to the ICS rules adopted in the *2021 ICS Order*, including lower interim rate caps for interstate ICS calls, new interim rate caps for international ICS calls, and a rate cap structure that requires ICS providers to differentiate between legally mandated and contractually required site commissions.⁹

Subsequent developments now require additional changes to the instructions, reporting templates, and certification form. In the *2022 ICS Order*, the Commission adopted requirements to improve access to communications services for incarcerated people with communication disabilities and expanded the scope of the Annual Reports to reflect those new requirements.¹⁰ Specifically, the Commission required ICS providers to list, at a minimum, for each facility served, the types of TRS that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, American Sign Language (ASL) point-to-point video calls, and each type of TRS for which access is provided.¹¹ The Commission also eliminated the safe harbor, adopted in 2015, that had exempted providers from any TRS-related reporting requirements if they either (1) operated in a facility that allowed the offering of additional forms of TRS beyond those mandated by the Commission or (2) had not received any

⁵ *2015 ICS Order*, 30 FCC Rcd at 12891-92, paras. 267-68.

⁶ FCC Form 2301(a) is comprised of an Excel template and a Word template.

⁷ See generally ICS Annual Reporting Form Word Template (Appx. A) (Current), WC Docket No. 12-375 <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (Word Template); ICS Annual Reporting Form Excel Template (Appx. B) (Current), WC Docket No. 12-375, <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (Excel Template); ICS Annual Reporting and Certification Instructions (Current), WC Docket No. 12-375 <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (Instructions) (Certification Instructions); ICS Annual Report Certification Form (Appx. C) (Current), WC Docket No. 12-375, <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (Certification Form).

⁸ See *Wireline Competition Bureau Announces OMB Renewal of Information Collection Concerning Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 1456 (WCB Feb. 19, 2020).

⁹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, 36 FCC Rcd 9519 (2021) (*2021 ICS Order*). The reforms also included expanded consumer disclosure requirements, as well as new reporting requirements for ICS providers seeking waiver of the Commission's interstate and international rates. On December 15, 2021, WCB released a Public Notice proposing to implement the reforms adopted in the *2021 ICS Order*. See *Wireline Competition Bureau Seeks Comment on Revisions to Annual Reporting and Certification Requirements for ICS Providers*, WC Docket No. 12-375, Public Notice, DA 21-1583 (WCB Dec. 15, 2021). After considering the comments and replies submitted in response to the Public Notice, WCB released the *Annual Reports Adoption Order* on June 24, 2022, revising the instructions, reporting template, and certification of accuracy. *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, DA 22-676 (WCB June 24, 2022).

¹⁰ See *2022 ICS Order passim*; 47 CFR § 64.6040(b) (adopting expanded access requirements for incarcerated persons with communication disabilities). Among the numerous reforms, the Commission required all ICS providers to provide access to all relay services eligible for TRS Fund support in any facility where broadband is available and where the average daily population incarcerated in that jurisdiction (i.e., in that city, county, state, or the United States) totals 50 or more persons. See *2022 ICS Order* at 3, para. 3. The Commission also adopted targeted reforms to lessen the financial burden on incarcerated people and their loved ones when using calling services. *Id.* at 3, para. 4.

¹¹ *2022 ICS Order* at 24, para. 48.

complaints related to TRS calls.¹² The Commission found that the safe harbor was no longer appropriate given the expanded reporting requirement for additional forms of TRS, and the importance of transparency regarding the state of accessible communications in incarceration settings.¹³ The Commission delegated authority to the Bureaus to implement the expanded reporting obligations and to develop a reporting form that will most efficiently and effectively elicit the required information.¹⁴

On January 5, 2023, the President signed into law the Martha Wright-Reed Act, which expanded the Commission's statutory authority over communications between incarcerated people and the non-incarcerated, including "any audio or video communications service used by inmates . . . regardless of technology used."¹⁵ The new Act also amends section 2(b) of the Communications Act of 1934, as amended (the Communications Act), to make clear that the Commission's authority extends to intrastate as well as interstate and international communications services used by incarcerated people.¹⁶

The Act directs the Commission to "promulgate any regulations necessary to implement" the Act, including its mandate that the Commission establish a "compensation plan" ensuring that all rates and charges for IPCS "are just and reasonable," not earlier than 18 months and not later than 24 months after the Act's January 5, 2023 enactment date.¹⁷ The Act also requires the Commission to consider, as part of its implementation, the costs of "necessary" safety and security measures, as well as "differences in costs" based on facility size, or "other characteristics."¹⁸ It also allows the Commission to "use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider" in determining just and reasonable rates.¹⁹

Pursuant to the directive that the Commission implement the new Act and establish just and reasonable rates for IPCS services, the Commission released the *2023 IPCS Notice*, seeking comment on how to interpret the Act's language to ensure that the Commission implements the statute in a manner that fulfills Congress's intent.²⁰ Because the Commission is now required or allowed to consider certain types of costs, the Act contemplates that it would undertake an additional data collection.²¹ To ensure that it has the data necessary to meet its substantive and procedural responsibilities under the Act, the Commission adopted the *2023 IPCS Order* delegating authority to WCB and the Office of Economics and Analytics (OEA) to modify the template and instructions for the most recent data collection to the extent appropriate to timely collect such information to cover the additional services and providers now subject

¹² *Id.* at 25, para. 51 (citing the *2015 ICS Order*, 30 FCC Rcd at 12883, para. 246). A provider that fell within the safe harbor was required to include a certification from an officer of the company stating which prong(s) of the safe harbor it had met. *2022 ICS Order* at 25, para. 51.

¹³ *2022 ICS Order* at 25, para. 51.

¹⁴ *Id.* at 26, para. 52.

¹⁵ Martha Wright-Reed Act § 2(a)(2), (b).

¹⁶ *Id.* § 2(c).

¹⁷ *Id.* §§ 2, 3(a); 47 U.S.C. § 276(b)(1)(A).

¹⁸ Martha Wright-Reed Act § 3(b)(2).

¹⁹ *Id.* § 3(b)(1).

²⁰ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act, Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking and Order, FCC 23-19 (Mar. 17, 2023) (*2023 IPCS Notice* or *2023 IPCS Order*).

²¹ *2023 IPCS Order* at 33-34, paras. 84-85; *Wireline Competition Bureau and Office of Economics and Analytics Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People's Communication Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355 at 2 (WCB/OEA Apr. 28, 2023) (*2023 IPCS Mandatory Data Collection Public Notice*).

to the Commission's authority.²² On July 26, 2023, WCB and OEA released an Order adopting instructions, a reporting template, and a certification form to implement the 2023 Mandatory Data Collection.²³

In the *2023 IPCS Order*, the Commission also reaffirmed and updated its prior delegation of authority to the Bureaus to revise the instructions and reporting templates for the Annual Reports.²⁴ Specifically, the Commission delegated to the Bureaus authority to modify, supplement, and update the instructions and templates for the Annual Reports, as appropriate to supplement the information the Commission will receive in response to the 2023 Mandatory Data Collection.²⁵

Below, we seek comment on our proposed revisions to the Annual Report instructions, templates, and certification form, which are necessary to reflect the revised disability access rules adopted in the *2022 ICS Order* and to help implement the Martha Wright-Reed Act to ensure just and reasonable rates for consumers and fair compensation for providers.²⁶

I. OVERALL STRUCTURE OF THE ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS

Pursuant to our delegated authority, we propose to revise the Annual Report instructions, templates, and certification form to be consistent with the Commission's 2022 amendments to the annual reports rule²⁷ and to include the additional services now subject to the Commission's authority under the Martha Wright-Reed Act.²⁸ We also propose minor improvements based on our experience reviewing prior Annual Reports, which has persuaded us that revised instructions would help providers better understand the requirements, making the submitted reports more useful to the Commission and consumers. As a general matter, we propose to maintain the existing Excel-format template and Word-format template for the Annual Reports to better separate individual data items from narrative responses and seek comment on this proposal. We also seek comment on these proposed revisions, generally, and on the specific structure, content, and format of the proposed templates and instructions attached hereto. We likewise propose minor revisions to the certification form. Are there other general changes or additions we should make to gather better or more accurate data or to make the instructions clearer? Is there additional information that we should require providers to submit to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Conversely, are

²² *2023 IPCS Order* at 33-34, paras. 84-85.

²³ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Order, DA 23-638 (July 26, 2023) (*2023 IPCS Mandatory Data Collection Order*).

²⁴ *2023 IPCS Order* at 34, para. 86.

²⁵ *Id.*; see *2023 IPCS Mandatory Data Collection Public Notice* (seeking comment on the proposed mandatory data collection for IPCS).

²⁶ As in the *2023 IPCS Mandatory Data Collection Order*, we do not seek comment in this proceeding on issues raised by the Commission in the *2023 IPCS Notice*. See *2023 IPCS Mandatory Data Collection Order* at 3-4, para. 9 & n.20; *2023 IPCS Mandatory Data Collection Public Notice* at 2. Comments submitted in response to this Public Notice should not contain advocacy regarding such issues, including how the Commission should interpret the language of the Martha Wright-Reed Act, the appropriate rates for video IPCS, or the appropriate treatment of site commissions. Should the Commission decide in adopting rules implementing the Martha Wright-Reed Act that future annual reports should collect different information, the Bureaus will revise the instructions and templates accordingly in future years.

²⁷ *2022 ICS Order* at 24-26, paras. 47-52; *id.*, Appx. B at 80, § 64.6060(a)(5)-(7).

²⁸ *2023 IPCS Notice*; Martha Wright-Reed Act; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d). These revised instructions and the associated templates, if adopted, will consolidate and supplant the instructions and templates for earlier iterations of the Annual Report instructions, templates, and certification forms.

there any proposed instructions, inquiries, or data fields that should be removed because they are unnecessary to ensure that providers report uniform and accurate data and other information?

As has been the case with prior Annual Reports, the reporting period is the calendar year immediately preceding the year during which the Annual Report is due.²⁹ Thus, the reporting period for the next Annual Reports due on April 1, 2024 will be January 1, 2023 through December 31, 2023.

A. General Proposals

We seek comment on whether the proposed instructions provide sufficient guidance to ensure that providers use uniform methodologies and report the required information in a consistent manner. Are there any additional changes that would help clarify the instructions, including the definitions, and increase uniformity across providers' responses? We seek comment on all aspects of the proposed instructions, including any proposed revisions not explicitly addressed in this Public Notice.

General Categories of Information Requested. The proposed instructions, like those for prior reports, require providers to submit certain types of information related to their operations, IPCS rates, ancillary service charges, site commissions, and disability access. As a result of the Martha Wright-Reed Act, our proposed instructions would require providers to submit intrastate, interstate, and international information for both audio and video IPCS. Do the proposed instructions describe these categories of data in sufficient detail? Is there additional information that we should require providers to submit in any of these categories to enable the Commission to better monitor compliance and industry trends, or increase transparency to the public? Are there any additional changes we should make to the proposed instructions and templates to make them easier for providers to understand? We seek comment generally on the benefits and burdens of our proposals, and whether additional changes to proposed or existing reporting categories are warranted.

B. Specific Instructions

Definitions. The proposed instructions contain new and revised definitions reflecting the Commission's expanded authority over IPCS. We seek comment on these definitions. Are they sufficiently clear? If not, how should they be modified? Are there any undefined terms we should define? Are there any terms that should be added to the proposed instructions that would help ensure that the Commission receives all relevant data? If so, what are they and how should they be defined? Should any proposed definitions be removed?

Facility and Contract Information. Our proposed instructions include a reference to a new Excel template that moves detailed contract and facility information already collected on multiple worksheets throughout the Excel template to a single worksheet. Collecting this granular information on a single worksheet is intended to help ensure consistent facility and contract-level reporting, and eliminate the need to repeatedly enter such detailed information on other worksheets throughout the Excel template. This change is intended to reduce the amount of duplicative information required throughout the report and consequently reduce the burden on providers. We seek comment on this proposal.

Audio and Video IPCS Rates. The proposed instructions and templates continue to require providers to submit intrastate, interstate, and international IPCS rates for audio services across a number of categories, including: (i) highest 15-minute rate; (ii) highest year-end 15-minute rate; and (iii) average per minute rate.³⁰ For interstate and international rates, we require providers to identify all rates charged

²⁹ 47 CFR § 64.6060(a). For example, for the 2023 Annual Reports and Annual Certifications, the reporting period was January 1, 2022 to December 31, 2022. *Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the April 1, 2023 Deadline for Annual Reports and Certifications*, WC Docket No. 12-375, Public Notice, DA 23-164 (WCB Mar. 1, 2023).

³⁰ Calling Services for Incarcerated People; Annual Reporting and Annual Certification Forms (FCC Forms 2301(a) and 2301(b)); Instructions, WC Docket No. 12-375, at 11-14, <https://www.fcc.gov/general/ics-data-collections> (last visited Aug. 2, 2023) (ICS Annual Reporting and Certification Instructions (Current)).

in excess of the applicable rate caps.³¹ For international rates, we clarify that reported termination charges should reflect the amount billed by the provider to the consumer for termination to each international destination. We seek comment on whether these instructions are sufficiently clear.

To assist the Commission in determining just and reasonable rates for video IPCS, consistent with the Martha Wright-Reed Act, we propose adopting a similar reporting approach for video IPCS. We propose adding new worksheets that collect the same rate information for video IPCS as that collected for audio IPCS. We do not request information on video IPCS rates that exceed a cap, since there is no rate cap for these services at this time. Is this proposed approach the best way to collect information on video IPCS rates? Are there additional rate categories for video IPCS that we should consider? Conversely, are there categories for audio IPCS that should not be included for video IPCS? For example, our proposed worksheets for international video IPCS exclude charges to terminate communications to foreign countries because while these charges apply to audio services, they may not apply to video services. Do parties agree with this adjustment?

Because providers are already familiar with these reporting categories for audio IPCS, we expect that using the same rate reporting approach for video IPCS will help minimize the burdens associated with reporting this additional information regarding their video services. We seek comment on this assessment. Are there other changes we should make to the proposed rate reporting structure that would minimize the burden on providers, without sacrificing any necessary information or transparency? We also propose new questions seeking certain narrative information about the reported rates for video IPCS and seek comment on these proposed revisions.

Our proposed worksheets for video IPCS rate information ask providers to submit information for 15-minute intervals. We propose using a 15-minute interval because this is the rate interval used for collecting data on audio IPCS and using the same interval should allow for more meaningful rate comparisons. In addition, audio call lengths are often limited to around 15 minutes. Do parties agree with use of this session interval to evaluate video IPCS rates? If not, what interval should we use instead? Our proposed Excel template also seeks rate information for both domestic and international video calls. We seek comment on the extent to which domestic video IPCS rates differ from international video IPCS rates. Do we need separate worksheets for domestic video IPCS rates and international video IPCS rates? If we decide to use separate worksheets and some providers have the same rates for domestic and international video IPCS, we propose allowing providers that charge the same rates to opt out of filing a separate worksheet for international video IPCS. We seek comment on this proposed approach.

Finally, the Word template contains questions seeking narrative information about provider operations, facilities, and services, including new questions regarding video IPCS. We seek comment on these new questions. Is there additional information the Commission should seek that would help increase transparency and compliance without imposing unwarranted burdens on providers?

Ancillary Service Charges. The current instructions require providers to report a variety of information about any ancillary service charges they have assessed, and require a narrative explanation concerning any methodologies used to allocate these charges among facilities that are covered by a single contract, where applicable. We propose adding a new worksheet that collects the same ancillary service charge information for video IPCS as that collected for audio IPCS. Do we need separate worksheets for audio and video ancillary service charges or are these charges typically the same? If we decide to use separate worksheets, we propose allowing providers that charge identical ancillary service charges for audio and video IPCS to opt out of filing a separate worksheet for video services. We seek comment on this approach. Is there any additional information we should seek regarding ancillary service charges for audio or video IPCS?

³¹ ICS Annual Reporting and Certification Instructions (Current) at 17.

Site Commissions. The current instructions require providers to report their average total monthly site commission payments on a facility-by-facility basis and to separate those payments between legally mandated and contractually prescribed site commission payments, consistent with the Commission's rules.³² The existing instructions also require providers to subdivide both types of payments between monetary and in-kind payments and, within those subdivisions, to report the portions of the payments that were either fixed or variable. We propose adding a new worksheet that collects the same site commission payment information for video IPCS as that collected for audio IPCS. We seek comment on this approach or whether a different approach should be considered. Is there any additional information we should seek related to site commission payments made in connection with audio IPCS or video IPCS?

To the extent providers pay site commissions for both audio IPCS and video IPCS on a per-provider, per-facility, or per-contract basis, and those site commissions are fixed, we propose requiring providers to allocate such site commission payments between audio IPCS and video IPCS based on their best estimate of the percentage of the total amount of their fixed site commissions attributable to each type of IPCS. We also propose to direct providers to explain, document, and justify, in the Word template, any alternative methodology used to allocate fixed site commission payments between audio IPCS and video IPCS. Do commenters agree with this approach? Why or why not? Should we require a different allocation methodology to help ensure more consistent reporting of fixed site commission payments that apply to multiple services? If so, what methodology should we require and why?

Disability Access and Related Considerations. Our proposed instructions modify providers' reporting obligations regarding the provision of TTY-based TRS and TTY-to-TTY calling for incarcerated people with hearing and speech disabilities, including any ancillary service charges that providers have assessed for or in connection with TTY-based calls. Providers would no longer be required to report the number of dropped calls for TTY-based TRS or TTY-to-TTY calls, but would still be required to report the number of calls and number of complaints related to TTY-based TRS and TTY-to-TTY calls. We also propose updates to the instructions and the Excel template to reflect the 2022 reforms to the Commission's rules.³³ Under the proposed changes to the "Disability Access" worksheet of the Excel template, providers would report, on a facility-by-facility basis, for each of the six kinds of TRS authorized by the Commission,³⁴ (1) whether the service was available for use at the facility during the reporting period, (2) the number of calls made using the service, and (3) the number of complaints regarding the service. The same information would be collected for point-to-point video service and for TTY-to-TTY calling. We seek comment on whether these proposed changes capture all of the information now required by the revised rules.³⁵ If not, what additional changes should we make?

Miscellaneous. The proposed Excel template includes minor changes designed to help reduce burdens and minimize provider error when completing the worksheets. For instance, the proposed template includes "drop-down" menus for data entry when there are only a few answer options. It also includes new cell formatting that restricts the data that can be entered (e.g., numbers vs. text). For the worksheets that include rates paid for IPCS calls to international destinations, we propose to require providers to enter their international destinations only once for each worksheet, instead of repeating this

³² 47 CFR § 64.6030(d).

³³ See 2022 ICS Order, Appx. B at 80, § 64.6060(a)(5)-(7); 47 CFR § 64.6040(b).

³⁴ TRS and the various kinds of TRS are defined in section 64.601 of the Commission's rules. 47 CFR § 64.601. The six kinds of TRS are: Internet Protocol Captioned Telephone Service (IP CTS); Internet Protocol Relay Service (IP Relay); Speech-to-Speech Relay Service (STS); Traditional (TTY-Based) TRS; Video Relay Service (VRS); and Non-Internet Protocol Captioned Telephone Service (Non-IP CTS). *Id.* § 64.601(a)(23), (24), (41), (43), (53); *Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16122, para. 3 (2003).

³⁵ 2022 ICS Order, Appx. B at 80, § 64.6060(a)(5)-(7).

information multiple times on each worksheet. We seek comment on these minor modifications. We also seek comment on our proposed minor updates to the certification form (e.g., inserting the word “Authorized” before “Officer”).³⁶ Finally, we ask for suggestions on additional modifications to the instructions, Excel and Word templates, and certification form that would make them clearer and easier to use.

II. PROCEDURAL MATTERS

Filing of 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. *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).³⁷

- 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-19.³⁸

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission’s rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in this Public Notice and the instructions in order to facilitate our internal review process.

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.

³⁶ *See infra* Appx. A.

³⁷ The Protective Order issued in this proceeding permits parties to designate certain material as confidential. *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Protective Order, DA 23-298 (WCB Apr. 5, 2023). Filings that contain confidential information should be appropriately redacted and filed pursuant to the procedure described in that Order. *See also Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB Sept. 1, 2020) (clarifying non-confidential treatment for certain information).

³⁸ *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS Mar. 19, 2020).

Ex Parte Presentations. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁹ 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) of the Commission’s rules.⁴⁰ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Regulatory Flexibility Act. As required by the Regulatory Flexibility Act,⁴¹ the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Public Notice. The Supplemental IRFA supplements the Commission’s Regulatory Flexibility Analyses included in both the 2022 *ICS Order*, and in the 2023 *IPCS Order* and serves to further the process of implementing the revised disability access rules requirements adopted in the 2022 *ICS Order* and in the Martha Wright-Reed Act. The Supplemental IRFA is set forth in Appendix B. The Commission requests written public comments on the Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided in this Public Notice. The Commission will send a copy of this Public Notice, including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁴² In addition, summaries of this Public Notice and the Supplemental IRFA will be published in the Federal Register.⁴³

Initial Paperwork Reduction Act Analysis. The Public Notice, and the attached instructions and templates, contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.⁴⁴ In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; see 44 U.S.C. § 3506(4), we seek comment on how the Commission will further reduce the information collection burden for small business concerns with fewer than 25 employees.

³⁹ 47 CFR § 1.1200 *et seq.*

⁴⁰ *Id.* § 1.1206(b).

⁴¹ See 5 U.S.C. § 603.

⁴² See *id.* § 603(a).

⁴³ *Id.*

⁴⁴ Pursuant to the Paperwork Reduction Act (PRA), we will publish a 60-Day Notice in the Federal Register seeking comment on the proposed annual reporting and certification requirements set forth herein. See 44 U.S.C. § 3507. We note that the PRA paperwork for this collection also seeks Office of Management and Budget (OMB) approval for certain rules adopted in the 2022 *ICS Order*. See 2022 *ICS Order* at 68, paras. 166-67. We will consider comments submitted in response to both of these Federal Register notices in finalizing this information collection for submission to OMB.

Additional Information. For further information, please contact Amy Goodman, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1549 or via e-mail at Amy.Goodman@fcc.gov or Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418-1264 or via email at Michael.Scott@fcc.gov.

- FCC -

APPENDIX A

Proposed Instructions and Templates

The draft instructions, templates, and certification form for the Annual Reports are available at this link: <https://www.fcc.gov/proposed-2023-ipcs-annual-reports>.

APPENDIX B

Supplemental Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Wireline Competition Bureau (WCB) and the Consumer and Governmental Affairs Bureau (CGB) (collectively, the Bureaus) have prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Public Notice to supplement the Commission's Regulatory Flexibility Analyses contained in the *Rates for Interstate Inmate Calling Services*, Order and Notice of Proposed Rulemaking,² and in the *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking and Order.³ We request written public comment on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the deadlines for comments provided on the first page of the Public Notice.

A. Need for, and Objectives of, the Proposed Rules

2. In the Public Notice, the Bureaus seek comment regarding proposed revisions to the instructions, templates, and certification form for the Annual Reports submitted by providers of incarcerated people's communications services (IPCS).⁴ In issuing the Public Notice, we act pursuant to the Commission's delegation of authority to the Bureaus to modify, supplement, and update the Annual Report instructions, templates, and certification form, as appropriate, to reflect revised rules adopted in the *2022 ICS Order*⁵ and to provide additional information the Commission will need to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act or Act).⁶

3. In the *2022 ICS Order*, the Commission adopted requirements to improve access to communications services for incarcerated people with communication disabilities and expanded the scope of the Annual Reports to reflect these changes.⁷ Under the proposed, expanded reporting requirements, providers would be required to list, at a minimum, for each facility served, the types of Telecommunications Relay Service (TRS) that can be accessed from the facility and the number of completed calls and complaints for TTY-to-TTY calls, American Sign Language (ASL) point-to-point

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 *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, Appx. C, FCC 22-76, at 82-92 (2022) (*2022 ICS Order*).

³ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Notice of Proposed Rulemaking and Order, Appx. A, FCC 23-19 (2023) (*2023 IPCS Notice* or *2023 IPCS Order*).

⁴ These revised instructions, the associated templates, and certification form, if adopted, will consolidate and supplant the instructions, templates, and certification form for earlier iterations of the IPCS Annual Reporting and Certification requirements.

⁵ *2022 ICS Order* at 24-26, paras. 47-52.

⁶ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d); see *2023 IPCS Notice*.

⁷ See *2022 ICS Order* at 24-26, paras. 47-52. Among the numerous reforms, the Commission required all providers to provide access to all relay services eligible for Telecommunications Relay Services (TRS) Fund support in any facility where broadband is available and where the average daily population incarcerated in that jurisdiction (i.e., in that city, county, state, or the United States) totals 50 or more persons. See *id.* at 3, para. 3.

video calls, and each type of TRS for which access is provided.⁸ The Commission also eliminated the safe harbor adopted in 2015 concerning the reporting requirement for TTY-based TRS calls.⁹ Additionally, the Commission delegated authority to the Bureaus to implement the expanded reporting obligations contained in the 2022 *ICS Order* and to develop a reporting form that will most efficiently and effectively elicit the required information.¹⁰

4. On January 5, 2023, the President signed the Martha Wright-Reed Act into law, thereby expanding the Commission's statutory authority over communications between incarcerated people and the non-incarcerated to include "any audio or video communications service used by inmates . . . regardless of technology used."¹¹ The new Act also amends section 2(b) of the Communications Act of 1934, as amended (the Communications Act), to make clear that the Commission's authority extends to intrastate as well as interstate and international communications services used by incarcerated people.¹² Further, the Martha Wright-Reed Act also directs the Commission to "promulgate any regulations necessary to implement" the Act, including its mandate that the Commission establish a "compensation plan" ensuring that all rates and charges for IPCS "are just and reasonable," not earlier than 18 months and not later than 24 months after the Act's January 5, 2023 enactment.¹³

5. In accordance with the Martha Wright-Reed Act's directive, the Commission released the 2023 *IPCS Notice*, which sought comment on how to best interpret the Act's language in order to ensure the Commission implemented the statute in a manner that fulfills Congress's intent.¹⁴ In the 2023 *IPCS Order*, the Commission reaffirmed and updated its prior delegation of authority to the Bureaus to revise the instructions and reporting template for the Annual Reports.¹⁵ Specifically, the Commission delegated authority to the Bureaus to modify, supplement, and update those instructions and templates as appropriate to supplement information WCB will be receiving in response to the 2023 Mandatory Data Collection.¹⁶

6. Pursuant to their delegated authority, the Bureaus have proposed revisions to the instructions, templates, and certification form for the Annual Reports and are issuing the Public Notice to seek comment on all aspects of these proposed changes.

B. Legal Basis

7. The proposed action is authorized pursuant to sections 1, 2, 4(i)-(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151,

⁸ *Id.* at 24, para. 48.

⁹ *Id.* at 25, para. 51.

¹⁰ *Id.* at 26, para. 52.

¹¹ Martha Wright-Reed Act § 2(a)(2), (b).

¹² *Id.* § 2(c).

¹³ *Id.* § 3(a); 47 U.S.C. § 276(b)(1)(A).

¹⁴ See generally 2023 *IPCS Notice*. On April 28, 2023, WCB and the Office of Economics and Analytics (OEA) released a Public Notice initiating a new data collection (2023 *IPCS Mandatory Data Collection*) intended to help implement the Martha Wright-Reed Act. *Wireline Competition Bureau and Office of Economics and Analytics Seek Comment on Proposed 2023 Mandatory Data Collection for Incarcerated People's Communications Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-355 (WCB April 28, 2023) (seeking comment on the proposed mandatory data collection for IPCS).

¹⁵ 2023 *IPCS Order* at 34, para. 86.

¹⁶ *Id.* at 33-34, paras. 84-85; see *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act, Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Order, DA 23-638 (WCB/OEA July 26, 2023) (2023 *IPCS Mandatory Data Collection Order*).

152, 154(i)-(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 617, and the Martha Wright-Reed Act, Pub. L. No. 117-338, 136 Stat. 6156 (2022).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed Annual Reports data collection. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁷ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. noted above,

9. As noted above, Regulatory Flexibility Analyses were incorporated in the *2022 ICS Order*¹⁸ and the *2023 IPCS Notice*.¹⁹ In those analyses, the Commission described in detail the small entities that might be affected. In this Supplemental IRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *2022 ICS Order*²⁰ and *2023 IPCS Notice*.²¹

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The Public Notice seeks comment on the specifics of the proposed revisions to the instructions, templates, and certification form to ensure the Commission receives the data it needs for the Annual Reports. The proposed data collection would require certain providers that are classified as inmate calling services providers under the Commission’s rules to submit, among other things, data and other information on providers’ operations, IPCS rates, ancillary services, site commissions, and disability access. The proposed data collection may subject small and other providers to modified or new reporting or other compliance obligations. In addition, we recognize that our actions in this proceeding may affect the reporting, recordkeeping, and other compliance requirements for several groups of small entities. At this time, the Bureaus do not have sufficient information to determine whether the proposed revisions to the Annual Reports data collection will require small entities to hire attorneys, engineers, or other professionals to comply with the new rules. We, however, anticipate the information we receive in comments will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the Public Notice.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such

¹⁷ See 5 U.S.C. § 601(6).

¹⁸ *2022 ICS Order*, Appx. C at 82.

¹⁹ *2023 IPCS Notice*, Appx. A at 38.

²⁰ *2022 ICS Order*, Appx. C at 83-91, paras. 7-21.

²¹ *2023 IPCS Notice*, Appx. A at 38, paras. 5-21.

small entities.”²² We will consider these factors after reviewing any substantive comment we have received from the public and potentially affected small entities.

12. In the Public Notice, the Bureaus have taken steps to minimize the economic impact on small entities and consider alternatives through its proposals that include considering different ways to revise the Annual Reports instructions, templates, and certification form without causing significant economic impact to small entities. For example, the Bureaus propose reporting and certification requirements that are similar to those used in prior Annual Reports data collections. In addition, the standardized templates and instructions simplify compliance with, and reduce the burden of, the information requirements related to submission of the Annual Reports. Further, the Bureaus have taken steps to ensure the instructions, annual reporting templates, and certification form are competitively neutral and are not unduly burdensome for all providers. Finally, the Public Notice proposes to allow providers that charge the same rates for domestic and international video IPCS to opt out of filing a separate spreadsheet for international video IPCS, thus reducing the regulatory burden to providers. We will also consider any significant economic impact to small entities that may be raised in comments filed in response to the Public Notice and Supplemental IRFA.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

13. None.

²² 5 U.S.C. § 603(c)(1)-(4).



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 23-657
Released: August 3, 2023

**DOMESTIC SECTION 214 APPLICATIONS GRANTED, SUBJECT TO CONDITION,
FOR THE TRANSFER OF CONTROL OF**

**GERMANTOWN TELEPHONE COMPANY, INC. AND VALSTAR, INC. TO
ARCHTOP FIBER LLC**

WC Docket No. 22-421

and

HANCOCK TELEPHONE COMPANY, INC. TO ARCHTOP FIBER LLC

WC Docket No. 23-29

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, as conditioned, two applications related to the same transferee, Archtop Fiber LLC (Archtop), pursuant to section 214 of the Communications Act of 1934, as amended (Act), and sections 63.03-04 of the Commission's rules.¹ The first application, filed by Donald C. and Madeline S. Bohnsack Irrevocable Trust I, Catherine B. Bohnsack, Christina N. Bohnsack, Corey A. Bohnsack Smith, Laurel Jurkowski, and Leslie Tompkins (collectively, the GTel Transferors), Germantown Telephone Company, Inc. (GTel), Valstar, Inc. (Valstar) (together, the GTel Licensees), and Archtop (collectively, with the GTel Transferors and GTel Licensees, the GTel Applicants), requests consent to transfer control of the GTel Licensees from the GTel Transferors to Archtop.²

The second application, filed by RCW Family, LLC, the Margaret J.B. Reese Credit Shelter

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. The applicants for both proposed transactions (collectively, Applicants) also filed corresponding applications for the transfer of authorizations associated with international services. See IB File Nos. ITC-T/C 20221202-00143 and ITC-T/C 20230113-00002. Any action on the domestic section 214 applications are without prejudice to Commission action on other related, pending applications.

² Application for Consent to Transfer Control of Domestic and International Section 214 Authorization Holders, WC Docket No. 22-421 (filed Dec. 1, 2022) (GTel Application). On January 13, 2023 and February 13, 2021, the GTel Applicants filed supplements to their domestic section 214 application. Letter from K.C. Halm, Counsel to Germantown Telephone Company, Inc. and Valstar, Inc., to Marlene H. Dortch, Secretary, FCC. WC Docket No. 22-421 (filed Jan. 13, 2023) (GTel Supplement); Letter from K.C. Halm, Counsel to Germantown Telephone Company, Inc. and Valstar, Inc., to Marlene H. Dortch, Secretary, FCC. WC Docket No. 22-421 (filed Feb. 13, 2023) (Applicants' Second Supplement) (providing, among other things, updated ownership information relevant to Archtop). We note that Applicants' Second Supplement was also filed in WC Docket No. 23-29 because of the relevance to that transaction.

Trust, Suzanne B. Feehan, Maureen L. Mackin, and June B. Nolan (collectively, the Hancock Transferors), the Hancock Telephone Company, Inc. (Hancock), Hancock Long Distance, Inc. (Hancock LD, together with Hancock, the Hancock Licensees), and Archtop (collectively, with the Hancock Transferors and the Hancock Licensees, the Hancock Applicants), requests consent to transfer control of the Hancock Licensees from the Hancock Transferors to Archtop.³

On February 24, 2023, the Bureau released a public notice seeking comment on the GTel Application and the Hancock Application (together, the Applications).⁴ The Bureau did not receive any comments or petitions in opposition to the Applications.

Transferee, Archtop Fiber LLC

Archtop, a Delaware limited liability company, does not currently provide any telecommunications services.⁵ 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.⁶ 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.⁷ 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.⁸

³ Application for Consent to Transfer Control of Domestic and International Section 214 Authorization Holders, WC Docket No. 23-29 (filed Jan. 12, 2023) (Hancock Application); *see also* Applicants' Second Supplement at 1-9.

⁴ *Domestic Section 214 Application 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 23-29, Public Notice, DA 23-147 (WCB 2023) (*Public Notice*).

⁵ *Id.* at 11.

⁶ Applicants' Second Supplement, Exh. C (Post-Closing Ownership Chart) at 2; *Id.* at Supplemental Narrative Description to Replace Section IV(E) (Post-close Ownership) (Supplemental Narrative) at 1.

⁷ Applicants' Second Supplement; Exh. C at 2; Supplemental Narrative at 1-3. The OPSEU Pension Plan Trust Fund (OPSEU Pension Plan), a Canadian entity, wholly owns OP Trust Infrastructure. *Id.* at Exh. C at 2; Supplemental Narrative at 3. 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. GTel Supplement at 2. 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. GTel Supplement at n.3 (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.*

⁸ Applicants' Second Supplement; Exh. C at 1-2; Supplemental Narrative at 1-2, 4. The general partner for PRG Holdings is Post Road Group GP LLC (Post Road GP), a Delaware entity. Applicants' Second Supplement, Exh. C at 1; Supplemental Narrative at 3. 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. Applicants' Second Supplement; Exh. C at 1; Supplemental Narrative at 4.

GTel Application (WC Docket No. 22-421)

GTel, a New York corporation, provides service as an incumbent local exchange carrier (LEC) in the towns of Germantown, Livingston, Clermont, Taghkanic, and Gallatin, New York.⁹ GTel directly wholly owns Valstar, also a New York corporation, which provides long distance telecommunications services in the same service area.¹⁰

Pursuant to the terms of the proposed transaction, Archtop will acquire all of the equity interests in GTel and, as a result, Archtop will acquire all of the equity and voting interest in the GTel Licensees.¹¹

Hancock Application (WC Docket No. 23-29)

Hancock, a New York corporation, provides service as an incumbent LEC in the towns of Hancock, Fish's Eddy, East Branch, Kelsey, and French Woods, New York, and Starlight, Lake Como, Preston Park, Lakewood, and Shehawken, Pennsylvania.¹² Hancock LD, also a New York corporation, provides long distance telecommunications services in Hancock's service area.¹³

Pursuant to the terms of the proposed transaction, Archtop will acquire all of the equity interests in Hancock and, as a result, Archtop will acquire all of the equity and voting interest in the Hancock Licensees.¹⁴

Discussion

The Applicants request approval to consummate transactions involving companies that receive high-cost universal service support under the different support mechanisms of fixed model-based support and cost-based support (a mixed support transaction). The Commission has found that these types of transactions could result in potential harm to its goal of ensuring that limited universal service funding is

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. Applicants' Second Supplement, Exh. C; Supplemental Narrative at 3-4. Seventh Avenue holds 50% of the voting and equity interest in Post Road GP while Seventh Avenue II holds 45% of the equity of in PRG Holdings. *Id.*

⁹ GTel Application at 2.

¹⁰ *Id.* at 3. The GTel Applicants state that both GTel and Valstar are designated as ETCs in the state of New York. *Id.* at 2-3. GTel participates in Lifeline and the Affordable Connectivity Program (ACP), and the GTel Applicants state they will continue to do so after consummation of the proposed transaction. *Id.* at 17. Valstar is authorized to participate in Lifeline, but the GTel Applicants state they do not have any Lifeline customers. *Id.* The GTel Applicants further state that GTel's affiliate Hilltop Communications, Inc. provides multichannel video services in the towns of Germantown, Livingston, Gallatin, Taghkanic, and Clermont, and Valstar provides Internet access and other communications services in these towns and also parts of the towns of Greenport, Hillsdale, and Claverack. *Id.* at 15. The GTel Applicants state that Licensees along with Hilltop provide services under the trade name, GTel Teleconnections. *Id.* at 3.

¹¹ *Id.* at 4.

¹² Hancock Application at 17. The Hancock Applicants state that Hancock was designated as an ETC in the state of New York. *Id.* at 3. The Hancock Applicants further state that Hancock participates in Lifeline and the ACP and that Hancock will continue to do so after consummation of the proposed transaction. *Id.* at 18. The Hancock Applicants note that Hancock's subsidiary, Han-cel, holds cable franchises from the Village of Hancock, New York; the Town of Hancock, New York; and the Town of Tompkins, New York and offers cable services in these markets.

¹³ *Id.* at 17.

¹⁴ *Id.* at 4-5.

distributed efficiently and effectively.¹⁵ When a company receiving a fixed level of support acquires or is acquired by a company receiving support based on its costs, the combined companies could, and in some instances might, have an economic incentive to shift certain shared or common costs from the model-based support company to the cost-based support company.¹⁶ If cost shifting were to occur, the combined company, post-transaction, could obtain more high cost universal service support than the two companies did as separate entities, not because of any new investment, expense, or buildout, but rather solely because of the application of accounting procedures.¹⁷ Such an outcome is inconsistent with the Commission's general expectation that transactions generate efficiencies that reduce the combined company's costs.¹⁸ Moreover, providing additional universal service support to a company as a result of cost shifting solely because it acquired or merged with another company is not an efficient use of limited universal service resources.¹⁹

In the *Hargray/ComSouth Order*, in which the Commission approved a mixed support transaction, it sought to prevent cost shifting and to protect the finite resources of the high-cost universal service fund by imposing a limited condition that capped high-cost universal service support based on the operating expenses of the entity receiving cost-based support.²⁰ The Commission also directed the Bureau to impose the same limited condition on future transactions between parties receiving different types of high-cost universal service support.²¹

The proposed transactions in the Applications present several layers of mixed support covered by the *Hargray/ComSouth Order*. Because Archtop's subsidiary, DTC, receives fixed A-CAM model support, while DTC's subsidiary, Lavaca, receives cost-based CAF-BLS/HCLS support, these entities are already subject to the *Hargray/ComSouth Order*.²² In addition, because Hancock receives fixed A-CAM II support, the merger of Hancock with Lavaca would create another instance of a mixed-merger.²³ Moreover, GTel receives cost based CAF-BLS/HCLS support while Valstar receives fixed Auction 903

¹⁵ *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018). (*Hargray/ComSouth Order*).

¹⁶ *Id.* at 4785-86, para. 20.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 4786, para. 21.

²⁰ *Id.* at 4788-90, paras. 26-31.

²¹ *Id.* at 4789, para. 27, n.72; *see also Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc.*, WC Docket No. 20-389, Order on Reconsideration, 36 FCC Rcd 8859, 8864, para. 14 (2021) (*Dobson Order on Reconsideration*) (reaffirming the Commission's delegation to the Bureau to continue to apply the mixed support condition where necessary).

²² *Domestic Section 214 Applications Granted Subject to Condition*, WC Docket Nos. 20-388 and 20-389, Public Notice, 36 FCC Rcd 320, 323-24 (WCB 2021); *Dobson Order on Reconsideration*, 36 FCC Rcd at 8859 (applying the condition adopted in the *Hargray/ComSouth Order* such that the combined operating expenses of Dobson Fiber's rate-of-return affiliates that receive cost-based support are capped for seven years from the date of the consummation of the transaction under which Dobson Fiber acquired Lavaca).

²³ *Hargray/ComSouth Order*, 33 FCC Rcd at 4785-86, para. 20.

support, therefore, the merger of GTel/Valstar with Archtop's affiliates, DTC and Lavaca, would also create a mixed merger scenario.²⁴ Finally, a mixed-merger would result from the merger of Hancock with GTel.²⁵

Accordingly, to mitigate the potential for cost shifting, we grant the Applications subject to the condition adopted in the *Hargray/ComSouth Order*.²⁶ The combined operating expenses of each post-consummation company's rate-of-return affiliates receiving cost-based support²⁷ shall be capped at the averaged combined operating expenses of the three calendar years preceding the transactions' closing date for which the operating expense data are available.²⁸

The cap will apply to cost recovery under both HCLS and CAF-BLS and will be applied proportionately to each affiliate's accounts used to determine the affiliate's eligible operating expenses for HCLS and CAF-BLS.²⁹ For example, if the cap requires that a post-consummation company's eligible operating expenses be reduced by 10%, then each account used to determine each rate-of-return affiliate's eligible operating expenses shall be reduced by 10%.³⁰ For purposes of this cap, operating expenses shall include maintenance, network support/network operations/general, benefits, rent expenses, and corporate operations, while depreciation, return on investment, and taxes shall be excluded.³¹

For all covered entities, the new cap shall also include an annual adjustment for inflation based on the Gross Domestic Product-Channel Price Index (GDP-CPI) for the years in which the new cap remains in effect.³² This cap shall remain in effect for seven years from the consummation of the transactions.³³

²⁴ GTel Application at 17. We note that the combination of GTel/Valstar represents companies in which the mixed support scenario predates the *Hargray/ComSouth Order*, thus, the conditions of the *Hargray/ComSouth Order* has not, to date, been applied to GTel or Valstar.

²⁵ *Hargray/ComSouth Order*, 33 FCC Rcd at 4785-86, para. 20.

²⁶ *Id.* at 4788-90, paras. 26-31.

²⁷ See 47 U.S.C. § 153(2).

²⁸ *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-89, para. 27. The result of consummation of these mergers would be that the respective previous three-year average of the operating expense would be used to set a seven-year cap for the operating expense for Hancock Telephone Company (SAC 150099), Germantown Telephone Company (SAC 150097), Lavaca Telephone Company of Arkansas (SAC 401704), and Lavaca Telephone Company of Oklahoma (SAC 431704). The cap will apply to the combined operating expenses of the post-consummation companies and any other existing rate-of-return affiliates that it may acquire during the time in which the condition is in effect (together, covered entities). To monitor compliance with the condition adopted herein, to the extent it does not already do so, we direct the covered entities to submit their relevant cost data to the National Exchange Carrier Association (NECA). We direct NECA to provide the dollar amount of the operating expense costs that will be capped pursuant to this Public Notice to the Universal Service Administrative Company (USAC) within 30 days following submission of any covered entity's cost data. We further direct NECA to provide USAC with the reductions in High-Cost Loop Support (HCLS) and CAF-BLS for any covered entity pursuant to this Public Notice for each year following the effective date of this Public Notice. USAC shall validate all calculations received from NECA before making disbursements subject to any such support reductions. We also direct all covered entities to provide USAC with an annual certification of compliance on or before December 31 of each year for the duration of the condition. With the certification, each covered entity must also submit its latest audited financial statements to USAC, including all notes and consolidating statements, on an annual basis, by December 31 of each year. *Id.* at 4790, para. 31.

²⁹ *Id.* at 4789, para. 28.

³⁰ *Id.*

³¹ *Id.*

The condition will also sunset if all of a post-consummation company's rate-of-return affiliates become model-based support companies at any point during the seven-year period.³⁴

National Security, Law Enforcement, Foreign Policy and Trade Policy Concerns

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.³⁵ As part of the public interest analysis, the Commission coordinates with the relevant Executive Branch agencies that have expertise in these particular issues.³⁶ The Commission accords deference to the expertise of these Executive Branch agencies in identifying issues related to national security, law enforcement, foreign policy, or trade policy concerns raised by the relevant Executive Branch agencies.³⁷ The Commission, however, ultimately makes an independent decision on

³² *Id.* at 4790, para. 30.

³³ The Commission has found seven years to be an appropriate period over which to monitor enforcement of the condition and to ensure that the combined entity, which will continue to receive support, does not shift costs from year-to-year. *Id.* at 4789-90, para. 29 n.78. The cap will not apply if the parties do not consummate the proposed transaction.

³⁴ *Id.* at 4789-90, para. 29.

³⁵ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913) (*Executive Branch Review Order*); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 & 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of application for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act); see also *Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

³⁶ See *Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

³⁷ *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)); see also *T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

such applications based on the record in the proceedings.³⁸

Pursuant to Commission practice, the Applications, and their corresponding international transfer of control applications, ITC-T/C 20221202-00143 and ITC-T/C 20230113-00002, were referred to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.³⁹ On March 1, 2023, the U.S. Department of Justice (DOJ), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), filed a notification with the Commission that the Committee was reviewing the Applications for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Applications.⁴⁰ We deferred action in response to these requests from the Committee. On April 26, 2023, DOJ notified the Commission that the Committee was “conducting [a 120-day] initial review to assess whether granting the Applications will pose a risk to national security or law enforcement interests of the United States.”⁴¹

On August 1, 2023, the National Telecommunications and Information Administration (NTIA) informed the Commission that “the Committee has reviewed the [Applications] and has no recommendation at this time to the Commission approving the [Applications] and no objection to the Commission granting it” and that the Committee “reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests.”⁴²

Grant of Application, Subject to Condition

We find, upon consideration of the record, that grant of the Applications, listed above, subject to compliance with the condition, will serve the public interest, convenience, and necessity.⁴³ 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

³⁸ 47 CFR § 1.40001(b) (“The Commission will consider any recommendations from the [E]xecutive [B]ranch on pending application(s) . . . that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the [E]xecutive [B]ranch and will make an independent decision concerning the pending matter.”).

³⁹ See *Public Notice* at 3.

⁴⁰ Letter from Christopher R. Clements, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-421; ITC-T/C20221202-00143, and Attach. (filed Mar. 1, 2023); Letter from Christopher R. Clements, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-29; ITC-T/C 20230113-00002, and Attach. (filed Mar. 1, 2023).

⁴¹ Letter from Christopher R. Clements, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-421; ITC-T/C20221202-00143, and Attach. (filed Apr. 26, 2023); Letter from Christopher R. Clements, Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-29; ITC-T/C 20230113-00002, and Attach. (filed Apr. 26, 2023).

⁴² Letter from Stephanie Weiner, National Telecommunications and Information Administration, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-421; ITC-T/C20221202-00143 (Aug. 1, 2023); Letter from Stephanie Weiner, National Telecommunications and Information Administration, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-29; ITC-T/C 20230113-00002 (Aug. 1, 2023).

⁴³ See 47 U.S.C. § 214(a); 47 CFR § 63.03.

Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Applications discussed in this Public Notice subject to compliance with the condition described above.⁴⁴

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

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

-FCC-

⁴⁴ We further direct Applicants to submit in the domestic section 214 docket a notice that the proposed transaction has closed with the consummation date and also provide a courtesy copy of the notice to hcinfo@usac.org.



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 23-658

Released: August 7, 2023

WIRELINE COMPETITION BUREAU RELEASES ILLUSTRATIVE RESULTS FOR ENHANCED ALTERNATIVE CONNECT AMERICA COST MODEL

WC Docket No. 10-90

The Wireline Competition Bureau (Bureau) announces the release of illustrative results for the Enhanced Alternative Connect America Cost Model (Enhanced A-CAM) (v2.6.0) program recently adopted by the Commission.¹ These results utilize three different combinations of per-location funding caps for unserved locations and funding percentages for locations already deployed by the incumbent local exchange carrier (ILEC).² These results are based on Version 2 of the Broadband Serviceable Location Fabric and incorporate currently served locations from Version 2 of the Broadband Data Collection.³ In addition, each of the three combinations is calculated in two ways: one set of estimates excludes locations subject to federal funding commitments currently included in the National Broadband Funding Map (even if those locations will not ultimately be excluded from Enhanced A-CAM offers because they are not receiving a federal subsidy that would require deconfliction) and one set does not.

Information regarding the data sources and funding calculations used to produce these illustrative results can be found at <https://docs.fcc.gov/public/attachments/DOC-395739A1.pdf>.

For additional information on this proceeding, please contact Katie King of the Wireline Competition Bureau, Telecommunications Access Policy Division, at Katie.King@fcc.gov or (202) 418-7400.

- FCC -

¹ *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60 (rel. July 24, 2023) (*Enhanced A-CAM Order*).

² These illustrative results are available at <https://docs.fcc.gov/public/attachments/DOC-395738A1.xlsx>.

³ See *Enhanced A-CAM Order*, para. 68.



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. 23-659

Friday August 4, 2023

Report No. SAT-01747

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-MPL-20220921-00115 E S2994 WorldVu Satellites Limited
Modification to PDR/PPL
Grant of Authority

Effective Date: 08/03/2023

Nature of Service: Fixed Satellite Service

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

Pursuant to Section 25.137(g) of the Commission's rules, we have determined that the transaction does not affect any of the considerations made when the space stations were granted access to the U.S. market.

SAT-MPL-20220921-00116 E S2963 WorldVu Satellites Limited
Modification to PDR/PPL
Grant of Authority

Effective Date: 08/03/2023

Nature of Service: Fixed Satellite Service

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

Pursuant to Section 25.137(g) of the Commission's rules, we have determined that the transaction does not affect any of the considerations made when the space stations were granted access to the U.S. market.

SAT-MPL-20220921-00118	E S2695	Satelites Mexicanos, S.A. de C.V.

Modification to PDR/PPL
Grant of Authority

Effective Date: 08/03/2023

Nature of Service: Direct to Home Fixed Satellite, Fixed Satellite Service

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

Pursuant to Section 25.137(g) of the Commission's rules, we have determined that the transaction does not affect any of the considerations made when the space station was granted access to the U.S. market.

SAT-MPL-20220921-00119	E S2873	Satelites Mexicanos, S.A. de C.V.

Modification to PDR/PPL
Grant of Authority

Effective Date: 08/03/2023

Nature of Service: Direct to Home Fixed Satellite, Fixed Satellite Service

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

Pursuant to Section 25.137(g) of the Commission's rules, we have determined that the transaction does not affect any of the considerations made when the space station was granted access to the U.S. market.

SAT-MPL-20220921-00120	E S2926	Satelites Mexicanos, S.A. de C.V.

Modification to PDR/PPL
Grant of Authority

Effective Date: 08/03/2023

Nature of Service: Other

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

Pursuant to Section 25.137(g) of the Commission's rules, we have determined that the transaction does not affect any of the considerations made when the space station was granted access to the U.S. market.

SAT-MPL-20220921-00121	E S2938	Satelites Mexicanos, S.A. de C.V.

Modification to PDR/PPL
Grant of Authority

Effective Date: 08/03/2023

Nature of Service: Direct to Home Fixed Satellite, Fixed Satellite Service

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

Pursuant to Section 25.137(g) of the Commission's rules, we have determined that the transaction does not affect any of the considerations made when the space station was granted access to the U.S. market.

SAT-MPL-20220922-00122	E S3055	Eutelsat S.A.

Modification to PDR/PPL
Grant of Authority

Effective Date: 08/03/2023

Nature of Service: Fixed Satellite Service, Mobile Satellite Service

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

Pursuant to Section 25.137(g) of the Commission's rules, we have determined that the transaction does not affect any of the considerations made when the space station was granted access to the U.S. market.

SAT-MPL-20220922-00123	E S3056	Eutelsat S.A.

Modification to PDR/PPL
Grant of Authority

Effective Date: 08/03/2023

Nature of Service: Fixed Satellite Service, Mobile Satellite Service

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

Pursuant to Section 25.137(g) of the Commission's rules, we have determined that the transaction does not affect any of the considerations made when the space station was granted access to the U.S. market.

SAT-STA-20230728-00186 E S2237 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 08/02/2023

On August 2, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC for a period of 60 days to operate the Intelsat 11 space station with new C-band beam coverage at the 43.0° W.L. orbital location.

SAT-T/C-20220921-00114 E ES 172 LLC

Transfer of Control

Grant of Authority

Effective Date: 08/03/2023

Current Licensee: ES 172 LLC

FROM: Eutelsat Communications S.A.

TO: Eutelsat Communications S.A.

No. of Station(s) listed: 2

Grant conditioned on Eutelsat S.A., Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), ES 172 LLC, Eutelsat Communications, Satmex International B.V., Eutelsat Asia Pte. Ltd., Eutelsat America Corp., WorldVu Satellites Limited, OneWeb Communications Limited, OneWeb Holdings Limited, and OneWeb Technologies Inc., abiding by the commitments and undertakings contained in the July 25, 2023, Letter of Agreement (LOA) from Neil Masterson, Chief Executive Officer, WorldVu Satellites Limited, Kevin Steen, Chief Executive Officer, OneWeb Technologies Inc., Eva Berneke, Chief Executive Officer, Eutelsat S.A., David Bertolotti, Manager, ES 172 LLC, Hector Manuel Fortis Sanchez, Legal Representative, Satélites Mexicanos S.A. de C.V. (d/b/a Eutelsat Americas), and Richard L. Mortellaro, Chief Executive Officer and President, Eutelsat America Corp., to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, U.S. Department of Justice National Security Division, and Director, Global Investment and Economic Security Directorate, Undersecretary for Acquisition and Sustainment, U.S. Department of Defense.

INFORMATIVE

SAT-MOD-20230424-00095 S3017 Hughes Network Systems, LLC

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective August 1, 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.

SAT-STA-20230724-00183 Hughes Network Systems, LLC

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective August 1, 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, DC 20554

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

DA 23-660

Released: August 04, 2023

WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF NATIVE AFFAIRS AND POLICY SEEK COMMENT ON TRIBAL NATION AND NATIVE HAWAIIAN ACCESS TO SPECTRUM AND RELATED DATA

GN Docket No. 23-265

Comment Date: November 30, 2023

Through this Public Notice, the Wireless Telecommunications Bureau and Office of Native Affairs and Policy seek comment on ways in which the Commission can improve its understanding of how and the extent to which Tribal Nations and the Native Hawaiian Community are able to access wireless spectrum today.¹ This information will be used as the Commission develops and implements new and existing policy initiatives designed to increase broadband connectivity in Tribal communities.

The Commission in 2019 created the 2.5 GHz Rural Tribal Priority Window (Tribal Window) for eligible Tribal Nations and Native Hawaiian Community to gain licensed access to prime mid-band spectrum to deploy broadband and other next-generation wireless services to address the digital divide on rural Tribal lands. To date, 336 licenses covering the rural Tribal lands of more than 350 Tribal Nations based in 30 states have been granted through applications received during the Tribal Window,² and deployments using this spectrum are underway.³ In contrast to information compiled prior to the Tribal Window, the number of Tribes and Tribal entities now holding spectrum licenses has significantly increased as a result of this opportunity alone.⁴

¹ See 47 C.F.R. §73.7000 (“Tribe. Any Indian or Alaska Native tribe, band, nation, pueblo, village or community which is acknowledged by the federal government to constitute a government-to-government relationship with the United States and eligible for the programs and services established by the United States for Indians.”). See also Standard Operating Procedures Definitions, US Department of the Interior, Office of Native Hawaiian Relations, available at <https://www.doi.gov/hawaiian/standard-operating-procedures-definitions> (“Native Hawaiian Community (NHC) means the distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship.”).

² This number includes five licenses granted to the Department of Hawaiian Homelands, a state agency in Hawaii, on behalf of the Native Hawaiian Community covering eligible Hawaiian Homelands. See call signs WRJS854, WRJS855, WRJS856, WRKV805, and WRKV806.

³ See, e.g., Emma Gautier, *Rural Southeast Alaskan Tribes Leverage Spectrum for a Pilot Connecting Hard-to-Reach Communities* (Aug. 24, 2022), available at <https://muninetworks.org/content/rural-southeast-alaskan-tribes-leverage-spectrum-pilot-connecting-hard-reach-communities>; Fabian Martinez, *Membership Receives Annual Update From Tribal Entities*, The Southern Ute Drum (Apr. 28, 2022), available at <https://www.sudrum.com/top-stories/2022/04/28/membership-receives-annual-update-from-tribal-entities/>; Karl Bode, *Spurred by COVID-19, Colville Tribes Expand Free Wireless Service in Washington State* (Feb. 16, 2022), available at <https://muninetworks.org/content/spurred-covid-19-colville-tribes-expand-free-wireless-service-washington-state>.

⁴ See U.S. Government Accountability Office, *Tribal Broadband: FCC Should Undertake Efforts to Better Promote Tribal Access to Spectrum*, GAO 19-75 at 1 (2018) (GAO 19-75).

While this represents progress, we nonetheless recognize the long-standing connectivity challenges facing Tribal Nations and the Native Hawaiian Community and remain committed to addressing this digital divide. In order to assess current and future policy efforts relating to spectrum designed to achieve this goal, we seek additional information about how Tribal Nations and the Native Hawaiian Community are accessing spectrum, whether it be through direct licensing or other means.

With respect to traditionally licensed spectrum, while we have compiled information about the licenses granted thus far through the Tribal Window at a dedicated webpage,⁵ we recognize that Tribal Nations and the Native Hawaiian Community hold spectrum licenses in other wireless bands. Our wireless licensing application forms do not currently collect demographic or other identifying information from Tribal or Native Hawaiian applicants, and as a result, our Universal Licensing System (ULS) cannot identify license records based on this type of applicant or demographic criteria.⁶

We therefore seek comment on the potential addition of legal entity categories or demographic questions to our wireless licensing forms to more readily identify Tribal or Native Hawaiian applicants seeking to obtain, or currently holding, spectrum licenses. We seek comment on whether collection of this information should be mandatory or optional. We also seek comment on what the resulting impacts on applicants or our licensing records would be depending on which approach we choose. For example, if we added one or more Tribal or Native Hawaiian categories to the Legal Entity Type questions on our licensing forms as mandatory questions, would that potentially complicate our application processes and/or frustrate applicants?⁷ To the extent we utilized an optional approach, such as by adding one or more Tribal and Native Hawaiian-focused demographics questions to our forms, would that lead to a more or less robust response and data set?⁸ Under either approach, we seek comment on the appropriate categories, questions, and terminology that will recognize both the sovereign status of Tribal Nations, as well as the broad diversity of Tribal Nations and the Native Hawaiian Community. For example, should we only collect identifying information from Tribal Nations or government entities, or should we also solicit responses from non-governmental Tribal entities, such as businesses, or individual Tribal citizens? If we solicit responses from non-governmental Tribal entities, what criteria should we use to identify those entities (e.g., some minimum amount of Tribal control)? How should we best collect applicant and licensing information from the Native Hawaiian Community, which does not currently have a government-to-government relationship with the United States?⁹

We also seek comment on the extent to which Tribal Nations and the Native Hawaiian Community have been able to successfully access licensed spectrum through secondary market transactions in the recent past, including leasing arrangements and the partitioning or disaggregation of licenses held by carriers or other non-Tribal entities. Our new Enhanced Competition Incentive Program, which we anticipate launching later this year, is designed to provide incentives that should spur greater

⁵ See 2.5 GHz Rural Tribal Application Details, available at <https://www.fcc.gov/25-ghz-rural-tribal-application-details>.

⁶ See GAO 19-75 at 29.

⁷ See e.g., FCC Form 601, FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau at Question 14, Applicant/Licensee Legal Entity Type, available at <https://www.fcc.gov/sites/default/files/fcc-form-601-main.pdf>. See also Appendix A.

⁸ See e.g., FCC Form 601, FCC Application for Radio Service Authorization: Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau at Question 27, Demographics (Optional), available at <https://www.fcc.gov/sites/default/files/fcc-form-601-main.pdf>. See also Appendix A.

⁹ We note that during the Tribal Window, the Department of Hawaiian Homelands, a state agency in Hawaii, was granted a waiver to apply for 2.5 GHz licenses covering eligible Hawaiian Homelands on behalf of the Native Hawaiian Community. See *In the Matter of Department of Hawaiian Homelands, Request for Waiver to File as an Eligible Entity in the 2.5 GHz Rural Tribal Priority Window*, 35 FCC Rcd 2820 (WTB 2020).

activity in this secondary market to the benefit of both Tribes and existing licensees.¹⁰ We plan to monitor the effectiveness of this program for Tribal Nations on a going forward basis,¹¹ and seek comment here on the status quo in order to develop a baseline for future comparison.

We also note that there are a number of opportunities by which spectrum can be accessed without applying for a license, such as the General Authorized Access Tier of the Citizen's Broadband Radio Service, and unlicensed use in White Spaces (470-614 MHz and 657-663 MHz band) and the 5 GHz band.¹² We seek comment on how we can evaluate the extent to which Tribal Nations and the Native Hawaiian Community are accessing spectrum through these opportunities as part of their network planning to enhance connectivity in their communities. For example, should the Commission ask our Native Nations Communications Task Force to assist in compiling use case studies or lessons learned from existing and potential deployments? Are there ways in which the Commission can expand awareness among Native communities about these services, or otherwise promote greater use thereof?

In addition to soliciting written comments through this Public Notice, the Office of Native Affairs and Policy, with support from the Wireless Telecommunications Bureau, will conduct a contemporaneous outreach program seeking feedback from Tribal Nations and the Native Hawaiian Community. We expect to make information available about related events and dates in the near future.

Filing Requirements. Interested parties may file comments on or before the date indicated on the first page of this document.¹³ All filings must refer to GN Docket No. 23-265. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁴

- 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-19.¹⁵

¹⁰ *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 22-53 (Jul. 18, 2022).

¹¹ *Id.* at para. 100.

¹² See e.g., 3.5 GHz Band Overview, available at <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/35-ghz-band/35-ghz-band-overview>; White Space, available at <https://www.fcc.gov/general/white-space>.

¹³ See 47 CFR §§ 1.2, 1.405, and 1.419.

¹⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121-01 (1998).

¹⁵ 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>.

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

Ex Parte Rules. This document is being released as part of a proceeding considered to be “exempt” for purposes of the Commission’s *ex parte* rules.¹⁶ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.¹⁷

For further information regarding this proceeding, please contact Susan Mort, Wireless Telecommunications Bureau at Susan.Mort@fcc.gov or Bambi Kraus, Office of Native Affairs and Policy at Bambi.Kraus@fcc.gov.

- FCC -

¹⁶ See 47 CFR § 1.1204(b).

¹⁷ 47 CFR §§ 1.1200 *et seq.*

APPENDIX A

CURRENT FCC FORM 601 QUESTIONS

Question 14:

14) Applicant/Licensee Legal Entity Type: (Select One)		
☐ Individual	☐ Unincorporated Association	☐ Trust ☐ Government Entity ☐ Corporation ☐ Limited Liability Company
☐ General Partnership	☐ Limited Partnership	☐ Limited Liability Partnership ☐ Consortium
☐ Other: _____		

Question 27:

27) Demographics (Optional)

Race:	Ethnicity:	Gender:
☐ American Indian or Alaska Native	☐ Hispanic or Latino	☐ Male
☐ Asian	☐ Not Hispanic or Latino	☐ Female
☐ Black or African-American		
☐ Native Hawaiian or Other Pacific Islander		
☐ White		



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 23-662

Released: August 4, 2023

COMMENT SOUGHT ON T-MOBILE ACCESSIBILITY PETITION FOR LIMITED WAIVER

CG Docket No. 03-123
RM-11931

Comments Due: August 21, 2023

Reply Comments Due: August 31, 2023

The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) seeks comment on a Petition for Limited Waiver filed by T-Mobile Accessibility (T-Mobile) seeking waiver of the requirement that the TTY-based relay service be capable of communicating with the American Standard Code for Information Interchange (ASCII) format.¹ T-Mobile contends that the ASCII format is now obsolete and has very few users. Additionally, T-Mobile states that continued compliance with the requirement inhibits innovation and imposes significant near-term costs on T-Mobile. T-Mobile seeks a time-limited waiver pending the outcome of Commission action on T-Mobile's Petition for Rulemaking to amend the Commission's rules to eliminate the ASCII requirement.²

T-Mobile has redacted portions of its petition for which it requests confidential treatment. Access to the redacted material is governed by the Third Protective Order in this docket.³

Filing Requirements. Interested parties may file comments on T-Mobile's petition on or before the dates indicated on the first page of this document.⁴ All filings must reference CG Docket No. 03-123

¹ T-Mobile Accessibility, Petition for Limited Waiver of T-Mobile Accessibility, CG Docket No. 03-123 and RM-11931 (filed June 16, 2023) (T-Mobile Petition for Waiver), <https://www.fcc.gov/ecfs/search/search-filings/filing/106161618223758>; see 47 CFR § 64.604(b)(1) ("TTY-based relay service shall be capable of communicating with ASCII and Baudot format, at any speed generally in use."), The T-Mobile Petition for Waiver does not request waiver of the Baudot compatibility requirement.

² See Petition for Rulemaking by T-Mobile Accessibility, RM-11931 (filed Aug. 24, 2022); *Request for Comment on Petition for Rulemaking by T-Mobile USA, Inc., Regarding Continued Use of ASCII Format for TTY-Based Relay Service*, CG Docket No. 03-123 and RM-11931, DA 22-996 (Sept. 22, 2022).

³ See *Misuse of Internet Protocol (IP) Captioned Telephone Service; Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (CGB 2018).

⁴ See 47 CFR §§ 1.1, 1.45, 1.49.

and RM-11931. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁵

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers:
 - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, Maryland 20701.⁶
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.

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

Accessible Materials. To request materials in accessible formats for people with disabilities

⁵ *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

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

⁷ 47 CFR §§ 1.1200 *et seq.*

(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.

Additional Information. For further information, please contact Ike Ofobike at (202) 418-1028, (202) 744-3916, or by e-mail at Ike.Ofobike@fcc.gov. Individuals who use videophones and are fluent in American Sign Language (ASL) may call the FCC's ASL Consumer Support Line at (844) 432-2275.

-FCC-

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

In re Application of	)	
	)	
Oklahoma Catholic Broadcasting, Inc.	)	NAL/Acct. No. MB-202341410017
	)	FRN: 002413611
For Renewal of License for	)	Facility ID No. 191538
Station KEUC(FM)	)	File No. 0000134956
Ringwood, Oklahoma	)	

ORDER

Adopted: August 7, 2023

Released: August 7, 2023

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Oklahoma Catholic Broadcasting, Inc. (Licensee), the licensee for Station KEUC(FM), Ringwood, Oklahoma (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 sections 73.1740(a)(4) and 73.3527 of the Commission's rules (Rules).¹ The Bureau's Audio Division suspended processing of the Application because Licensee discontinued Station operation without timely requesting special temporary authority and did not comply with its online public inspection file obligations.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.1740(a)(4) and 73.3527 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 thousand dollars (\$5,000), 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, and granting the 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 13 of the attached Consent Decree.

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

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,² and by the authority delegated by sections 0.61 and 0.283 of the Commission's rules,³ the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

¹ 47 CFR § 73.3527.

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

³ 47 CFR §§ 0.61, 0.283.

7. **IT IS FURTHER ORDERED** that the application of Oklahoma Catholic Broadcasting, Inc., for renewal of license for Station KEUC(FM), Ringwood, Oklahoma (Application File No. 0000134956) **IS GRANTED**, as conditioned herein.

8. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Oklahoma Catholic Broadcasting, Inc., c/o Jeffrey Finnell, PO Box 1612, Norman, OK 73070, and to its representative, Jason Bennett, FM Expansion Group, LLC, 7107 South Yale #444, Tulsa, OK 74136,

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	)	
	)	
Oklahoma Catholic Broadcasting, Inc.	)	NAL/Acct. No. MB-202341410017
	)	FRN: 002413611
Licensee of Station KEUC(FM)	)	Facility ID No. 191538
Ringwood, Oklahoma	)	File No. 0000134956

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Oklahoma Catholic 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 section 73.3527 of the Commission’s rules,¹ relating to the maintenance of online public inspection files. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3527.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Application” means the pending application for renewal of license for Station KEUC(FM), Ringwood, Oklahoma (Application File No. 0000134956),
 - (d) “Bureau” means the Media Bureau of the Commission.
 - (e) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Covered Employees” means all employees, volunteers, and agents of the Licensee, who are responsible for performing, supervising, overseeing, or managing activities related to the maintenance of online public inspection files, as required by the Online Public Inspection File Rule.
 - (g) “Effective Date” means the date by which both the Bureau and the Licensee have signed the Consent Decree.
 - (h) “Investigation” means the Bureau’s decision to hold and not process the Licensee’s license renewal application due to its failure to comply with sections 73.1740(a)(4) and 73.3527 of the Rules.
 - (i) “Licensee” means Oklahoma Catholic Broadcasting, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (j) “Online Public Inspection File Rule” means 47 CFR § 73.3527.
 - (k) “Parties” means the Licensee and the Bureau, each of which is a “Party.”

¹ 47 CFR § 73.3527.

- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (m) “Station” means Station KEUC(FM), Ringwood, Oklahoma
- (n) “Violations” means the Licensee’s noncompliance with sections 73.1740(a)(4) and 73.3527 of the Rules.

II. BACKGROUND

3. Section 73.3527 requires radio station licensees to maintain an online public inspection file and to upload certain documents to the Commission’s public inspection file database throughout the year.² 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. The Application disclosed that Licensee had not complied with this rule..³

4. Section 73.1740(a)(4) of the Rules require radio stations to notify the Commission within 10 days of temporarily discontinuing operations, and to obtain Commission authorization if the discontinued operations last beyond 30 days.⁴ Application disclosed that the Station was silent for a period of almost 12 months, from February 22, 2018, to January 22, 2019.⁵ Licensee should have notified the FCC of the Station’s discontinued operations no later than March 4, 2018, but did not. Additionally, Licensee should have filed request for special temporary authority for the Station to remain silent on March 24, 2018.

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 Thousand Dollars (\$5,000) 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 Application (Application File No. 0000134956). 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

² 47 CFR § 73.3527.

³ Application at Attach. “KEUC License Renewal Explanations.pdf”.

⁴ 47 CFR § 73.1740(a)(4).

⁵ Application at Attach. “KEUC License Renewal Explanations.pdf”.

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 seek Commission authorization for the Station to remain silent for more than 30 days, in violation of section 73.1740(a)(4) of the Rules, and failed to timely place records in its online public inspection file, in repeated violation of sections 73.3527 of the Rules.

12. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.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 online public inspection file and record keeping or otherwise.

13. **Civil Penalty.** Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of Five Thousand Dollars (\$5,000) 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 1996.⁸

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

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>.

- 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 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.

16. **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 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 the Station. 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 13 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, 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).

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 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

¹² 47 CFR § 1.16.

its obligations, the Bureau may, within its 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 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 Act¹³ 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.

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

¹³ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

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



Albert Shuldiner
Chief, Audio Division

August 7, 2023

Date

Jeffrey Finnell
Oklahoma Catholic Broadcasting, Inc.

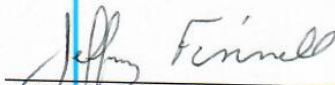
Date

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.

29. **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



Jeffrey Finnell
Oklahoma Catholic Broadcasting, Inc.

8-3-23

Date



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-665

Released: August 7, 2023

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES COMPLIANCE AND COMMENT DATES FOR THE INTEROPERABLE VIDEO CONFERENCING SERVICES PROCEEDING

CG Docket Nos. 03-123, 10-213, 23-161

Comments Due: September 6, 2023

Reply Comments Due: October 6, 2023

On June 12, 2023, the Federal Communications Commission (Commission) issued a *Report and Order, Notice of Proposed Rulemaking, and Order* regarding the definition of “interoperable video conferencing service,” determining that the Commission’s existing advanced communications service rules apply to commonly used video conferencing platforms, and seeking comment on whether to adopt specific performance objectives and how to integrate telecommunications relay services with interoperable video conferencing services, among other things.¹

The *Report and Order* set a compliance deadline of one year and 30 days after publication of a summary of the *Report and Order* in the Federal Register.² On August 1, 2023, a summary was published in the Federal Register.³ Accordingly, providers of interoperable video conferencing services must comply with the accessibility rules no later than September 3, 2024.⁴

Comments and reply comments on the *Notice of Proposed Rulemaking* (NPRM) are due 30 days and 60 days, respectively, after publication in the Federal Register.⁵ On August 7, 2023, a summary of the NPRM was published in the Federal Register.⁶

¹ *Access to Video Conferencing, 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, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule*, CG Docket Nos. 23-161, 10-213, 03-123, Report and Order, Notice of Proposed Rulemaking, and Order, FCC 23-50 (June 8, 2023), <https://www.fcc.gov/document/fcc-requires-video-conferencing-accessibility-proposes-asl-support-0> (*Report and Order*).

² *Report and Order* at 44, para. 131.

³ See Federal Communications Commission, Access to Video Conferencing, 88 Fed. Reg. 50053 (August 1, 2023).

⁴ One year and 30 days from August 1, 2023, is technically August 31, 2024. However, August 31, 2024, is a Saturday. The first business day after the one year and 30 day period is September 3, 2024.

⁵ *Report and Order* at 45, para. 134.

⁶ See Federal Communications Commission, Access to Video Conferencing, 88 Fed. Reg. 52088 (August 7, 2023).

For further information regarding advanced communications services, contact Ike Ofobike, Disability Rights Office, Consumer and Governmental Affairs Bureau, 202-418-1028, or Ike.Ofobike@fcc.gov. For further information regarding TRS, contact Bill Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, 202-418-2716, or William.Wallace@fcc.gov. Individuals who use videophones and are fluent in American Sign Language (ASL) may call the FCC's ASL Consumer Line at (844) 432-2275.

--FCC--



Federal Communications Commission
Washington, D.C. 20554

August 8, 2023

DA 23-666

In Reply Refer To:

1800B3-ARR

Released: August 8, 2023

Grand Forks Bible Study Group
c/o Dan J. Alpert, Esq.
2120 21st Rd. N
Arlington, VA 22201
(sent by electronic email to: DJA@COMMLAW.TV)

Bible Broadcasting Network, Inc.
c/o Gary S. Smithwick, Esq.
5028 Wisconsin Ave, NW
Suite 301
Washington, DC 20016
(sent by electronic email to: GSMITHWICK@FCCWORLD.COM)

In re: **NCE MX Group 122**

Grand Forks Bible Study Group
New NCE (FM), Grand Forks, North
Dakota
Facility ID No. 766460
Application File No. 0000167114

Bible Broadcasting Network, Inc.
New NCE (FM), Grand Forks, North
Dakota
Facility ID No. 762237
Application File No. 0000167299

Petition to Deny

Dear Applicants and Counsel:

We have before us two applications filed by Bible Broadcasting Network, Inc. (BBNI) and Grand Forks Bible Study Group (GFBS) for construction permits for new noncommercial educational (NCE) FM stations to serve the community of Grand Forks, North Dakota, which the Media Bureau (Bureau)

designated as NCE MX Group 122.¹ In the *Fourth Comparative Order*,² the Bureau identified the BBNI Application as the tentative selectee of NCE MX Group 122. We also have before us the Petition to Deny the BBNI Application, filed by GFBS,³ and related responsive pleadings.⁴ For the reasons set forth below, we deny the GFBS Petition, grant the BBNI Application, and dismiss the GFBS Application.

Background. The subject applications were filed during the November 2021, NCE FM filing window.⁵ In the *Second Comparative Order*,⁶ the Commission analyzed the BBNI and GFBS Applications under the point system.⁷ The Commission awarded GFBS a total of five points — three points as an established local applicant and two points for diversity of ownership.⁸ It awarded BBNI a total of two points for diversity of ownership.⁹ Thus, the Commission identified GFBS as the tentative selectee.¹⁰

BBNI filed a Petition to Deny the GFBS Application (BBNI Petition),¹¹ arguing that GFBS was not entitled to either established local applicant or diversity of ownership points because it certified in the original GFBS Application that it did not qualify for points under either criterion,¹² and the Amended GFBS Application, in which GFBS first claimed those points, cannot be considered because it was filed after the close of the filing window and enhanced GFBS's comparative status.¹³

In the *Fourth Comparative Order*,¹⁴ the Commission granted the BBNI Petition, finding that since GFBS did not certify that it qualified for established local applicant or diversity of ownership points

¹ See *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations*, Public Notice, 36 FCC Rcd 16452 at Attach. A (MB Nov. 29, 2021); see also Application File Nos. 0000167299 (BBNI Application) and 0000167114 (GFBS Application). GFBS amended its application on January 28, 2022 (Amended GFBS Application).

² *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 23-25, paras. 67-72 (Jun. 5, 2023) (*Fourth Comparative Order*).

³ Pleading File No. 0000217583 (filed July 5, 2023) (GFBS Petition).

⁴ BBNI filed an Opposition to the GFBS Petition. Pleading File No. 0000218159 (filed Jul. 19, 2023) (BBNI Opposition). BBNI filed a separate opposition on the same date, Pleading File No. 0000218150, but noted that Pleading File No. 0000218159 is the corrected version. GFBS filed a Reply to the BBNI Opposition. Pleading File No. 0000218711 (filed Jul. 31, 2023) (GFBS Reply).

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 *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 18, paras. 74-75 (Oct. 25, 2022) (*Second Comparative Order*).

⁷ *Id.* at 18, para. 74.

⁸ *Id.* at para. 75.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Pleading File No. 0000204160 (filed Nov. 22, 2022).

¹² *Id.* at 2 and Exh. A.

¹³ *Id.* at 2-4 and Exhs. B and C.

¹⁴ *Fourth Comparative Order* at 23-25, paras. 67-72.

by the close of the filing window, it was improperly awarded points under those criteria.¹⁵ The Commission reiterated the previous directive that every NCE FM applicant claiming points must certify, *at the time it files its application*, that it qualifies for those points.¹⁶ Lastly, the Commission rejected GFBS's attempt to enhance its comparative position with its post-filing window amendment.¹⁷ Without the points awarded to GFBS under those criteria, GFBS's awarded points were reduced from five to zero, and BBNI, with two points, prevailed as the new tentative selectee.¹⁸

GFBS subsequently filed its Petition, arguing that: 1) it was improperly denied localism and diversity of ownership points because, despite initially certifying that it was ineligible for those points, it included supporting exhibits in its original application;¹⁹ 2) its amended application with updated certifications should be considered because none of the cases the Commission relied on to demonstrate comparative position enhancement involved applicants, such as GFBS, that timely-filed supporting exhibits;²⁰ 3) BBNI was improperly awarded points for diversity of ownership because its contour map exhibit includes a statement that the "contour of the proposed station overlaps the principal community contour of another authorized station;"²¹ and 4) once BBNI's diversity of ownership points are rescinded, even if GFBS is not awarded any points, the parties, each with zero points, proceed to a tie breaker in which GFBS would prevail.²²

In its Opposition, BBNI counters that: 1) procedurally, the GFBS Petition should be dismissed because it repeats prior arguments, inappropriately seeks reconsideration of the interlocutory designation of BBNI as new tentative selectee, and lacks a supporting affidavit;²³ and 2) substantively, BBNI was properly awarded two points for its diversity of ownership claim because while one of its diversity of ownership exhibits includes a statement that the proposed contour overlaps with another station, that was a scrivener's error left in the exhibit, the same exhibit's contour map shows that there is no overlap, and a

¹⁵ *Id.*

¹⁶ *Id.* at para 71 (citing *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, 36 FCC Rcd 11458 (MB 2021) (NCE Procedures Public Notice)).

¹⁷ See *Fourth Comparative Order* at 23-25, paras. 67-72 (citing *Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Station Filed in the February 2010 Window*, Memorandum Opinion and Order, 30 FCC Rcd 5161, 5169-70, paras. 26-27 and n.66 (2015) (*Seven Group Order*) (finding that allowance of late submission of requested information in comparative cases "would inevitably lead to abuse of the Commission's processes, applicant gamesmanship, and unfair advantage"); *Comparative Consideration of 52 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations Filed in the October 2007 Filing Window*, Memorandum Opinion and Order, 25 FCC Rcd 8793, 8799 (2010) (finding that applicant's post-filing window amendment was a prohibited attempt to enhance, where the amendment claimed, for the first time, eligibility for a fair distribution preference)).

¹⁸ *Fourth Comparative Order* at 23-25, paras. 67-72.

¹⁹ GFBS Petition at 2-4.

²⁰ *Id.* at 4-8.

²¹ *Id.* at 8-9; BBNI Application at Attach. "Diversity of Ownership Exhibit.docx".

²² *Id.* at 9.

²³ BBNI Opposition at 2-4.

separate diversity of ownership statement clarifies that BBNI “holds no attributable interest in any radio station or pending application with overlap with the NCE FM station proposed in this application.”²⁴

In its Reply, GFBS maintains that: 1) it has established that it is eligible for points as both an established local applicant and under diversity of ownership, despite initially certifying that it is not qualified;²⁵ 2) the Commission permits the filing of petitions to deny after the tentative selection of a new application, even if indirectly related to the tentative selectee’s qualifications;²⁶ 3) the absence of a supporting affidavit is not a procedural defect where official notice may be taken of the facts alleged;²⁷ and 4) BBNI’s diversity of ownership exhibit discrepancy nullifies BBNI’s claim for two diversity points ; however, if the Bureau accepts BBNI’s claim, it must also accept GFBS’s claim.²⁸

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended,²⁹ 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.³⁰

Procedural Issues. As an initial matter, in the *Fourth Comparative Order*, the Commission explained that parties asserting that the tentative selectee should have received fewer points, or that their application should have received more points, may file a petition to deny, but not to raise matters as petitions for reconsideration.³¹ GFBS adhered to this directive and filed a petition to deny³² challenging the Commission’s finding that it was not entitled to diversity or localism points. We, therefore, reject BBNI’s allegation that the GFBS Petition was procedurally defective, and consider the merits.³³

Substantive Issues. In the *Fourth Comparative Order*, the Commission determined that GFBS is not entitled to points as either an established local applicant or for diversity of ownership. Here, GFBS

²⁴ *Id.* at 4-6 and Attach. 1, Decl. of Justin Asher; BBNI Application at Attach. “Diversity of Ownership Exhibit.docx”.

²⁵ GFBS Reply at 1.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3-4 (citing *Seven Group Order*, , 30 FCC Rcd at 5143 & n.56).

²⁸ *Id.* at 4-6.

²⁹ 47 U.S.C. § 309(d).

³⁰ 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).

³¹ *Fourth Comparative Order* at 27-28, para. 81; 47 CFR § 1.106 (a)(1). See also *Patrick J. Vaughn, Esq.*, Letter Order, 22 FCC Rcd 11165 (MB 2007)).

³² GFBS Petition at 2-8.

³³ We also find that because the facts at issue in this petition are included in the GFBS and BBNI Applications and publicly available through the Commission’s Licensing and Management System, we can take official notice of these facts. Accordingly, the absence of a supporting affidavit is not a procedural defect. See, e.g., *Seven Group Order*, 30 FCC Rcd at 5143, para. 21 (affidavit not required when petition relies on facts of which official notice may be taken). See also 47 U.S.C. § 309(d)(1)(“Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof.”).

still has not identified any case in which an applicant failed to timely certify that it qualified for points, despite submission of related exhibits, and was later allowed to amend its application to certify eligibility, thereby enhancing its comparative position.

In the *NCE Procedure Public Notice*, the Bureau repeatedly reminded applicants to carefully review their applications before filing and that each applicant “bears full responsibility for submitting an accurate, complete, and timely application.”³⁴ The Bureau also explained that “if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.”³⁵ It is undisputed that GFBS neglected to claim points under localism or diversity of ownership *at the time it filed its application*, as required.³⁶ As the Commission held, even if the exhibits in the original GFBS Application demonstrated its eligibility for localism and diversity points, GFBS’s conflicting certifications precluded reliance upon the exhibits.³⁷ For the same reasons outlined in the *Fourth Comparative Order*, we affirm that GFBS is not entitled to established local applicant or diversity of ownership points.³⁸

We also reject GFBS’s claim that BBNI is not entitled to two points for diversity of ownership because one of its supporting exhibits included a statement that the “contour of the proposed station overlaps the principal community contour of another authorized station.” To qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, a statement that the applicant holds no attributable interests in any nearby radio stations, or a certification that it holds no attributable interests in any broadcast stations.³⁹

In its original application, BBNI submitted two exhibits with affirmative written statements, explaining that it holds no attributable interest in any radio station or pending application with overlap with its proposed NCE FM station.⁴⁰ BBNI also submitted a third diversity of ownership exhibit consisting of the proposed station’s contour map, which does not show any overlap between the proposed contour and any of its existing stations’ contours (Contour Exhibit).⁴¹ While the Contour Exhibit does state that the proposed station overlaps with an existing station, the corresponding map refutes this. BBNI also subsequently submitted a declaration, signed under penalty of perjury, from the technical consultant who prepared the exhibit, Justin Asher (Asher), clarifying that the text was an error and should state that the “contour of the proposed station *does not overlap* the principal community contour of another authorized station.”⁴² We find that the contour map, which clearly illustrates no overlap, sufficiently demonstrates that BBNI is entitled to points for diversity of ownership. Additionally, BBNI’s additional two affirmative statements included with its application eliminate any ambiguity and support

³⁴ *Id.* at 11460.

³⁵ *Id.* at 11468.

³⁶ See *NCE Procedures Public Notice*, 36 FCC Rcd at 11464-65.

³⁷ *Fourth Comparative Order* at 24-25, paras. 71 and 72.

³⁸ *Id.*

³⁹ See Form 2100, Schedule 340, Attributable Interests, Other Authorizations, at 15-16.

⁴⁰ BBNI Application at Attachs. “Diversity of Ownership Exhibit.docx” and “DIVERSITY STATEMENT GRAND FORKS, ND.docx”.

⁴¹ *Id.* at Attach. “Diversity of Ownership Showing for CH202A - Grand Forks, ND.pdf”.

⁴² BBNI Opposition, Attach. 1, Decl. of Justin Asher, at 1. Asher also confirms that the Contour Exhibit accurately demonstrates the lack of overlap.

its claim for diversity of ownership.⁴³ , Accordingly, we find that BBNI timely and sufficiently demonstrated it qualified for diversity of ownership points. We, therefore, deny the GFBS Petition.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Petition to Deny filed by Grand Forks Bible Study Group, on July 5, 2023 (Pleading File No. 0000217583), **IS DENIED**.

IT IS FURTHER ORDERED that the Application filed by Bible Broadcasting Network, Inc. (Application File No. 0000167299) for a construction permit for a new NCE FM station in Grand Forks, North Dakota, **IS GRANTED CONDITIONED UPON** that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

IT IS FURTHER ORDERED that the mutually exclusive application of Grand Forks Bible Study Group (Application File No. 0000167114), **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴³ See note 40, *supra*.



Federal Communications Commission
Washington, D.C. 20554

August 8, 2023

DA 23-667
In Reply Refer to:
1800B3-RFS/TSN

Central Florida Educational Foundation, Inc.
c/o William J Getz, Consulting Engineer
Carl T. Jones Corporation
7901 Yarnwood Ct
Springfield, VA 22153
Email: wgetz@ctjc.com

Central Florida Educational Foundation, Inc.
c/o Davina S. Sashkin, Esq.
Baker & Hostetler LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036
Email: dsashkin@bakerlaw.com

Re: WCYZ(FM), Silver Springs Shore, FL
Facility ID No. 191546
File No. 0000204932

Dear Counsel:

This letter refers to the minor change application (Application) filed on behalf of Central Florida Educational Foundation, Inc. (CFEF), licensee of Station WCYZ(FM), Channel 259A, Silver Springs Shore, Florida (WCYZ). The Application proposes a community of license modification for WCYZ to relocate the sole local transmission service from Silver Springs Shore, Florida, to Ocala, Florida, as Ocala's sixth local service. For the reasons discussed below, we request that you amend the Application.

Background. The Application was filed pursuant to section 73.3573(g) of the Commission's rules, which sets forth the requirements for modifying an FM Station license to specify a new community of license without providing an opportunity for competing expressions of interest.¹ Among other requirements, an applicant for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments.² We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

¹ See 47 CFR § 73.3573(g). See also *Modification of FM and TV Authorizations to Specify a New Community of License (Community of License)*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

² 47 CFR § 73.3573(g)(1).

Applicant states that both the current community of Silver Springs Shore (2020 U.S. Census population of 24,846 persons) and proposed community of Ocala (2020 U.S. Census population of 63,591 persons) are located within the Ocala, Florida, Urbanized Area (Ocala UA). Applicant claims that pursuant to *Rural Radio*,⁴ the proposed WCYZ community of license change is considered an intra-urbanized move within the Ocala UA that represents a preferential arrangement of allotments over the current WCYZ facility. Applicant argues that although there are no technical changes, the proposal represents a preferred arrangement of allotments under Priority (4) of the four allotment priorities because, under *Rural Radio*, WCYZ is already presumed to service the Ocala UA and it would moreover provide an additional local service to Ocala, a community over 2.5 times the population of its current community of license of Silver Springs Shore.⁵

Discussion. Under Priority (4), we may take into account the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters relevant to the public interest such as the relative size of the proposed communities and their growth rate.⁶ Here, there is no change in WCYZ's transmitter site and both the move-in and move-out communities are located within the Ocala UA. A staff engineering analysis confirms that the WCYZ facilities, whether under the current or the proposed community of license, cover 72.5% of the Ocala UA. We disagree with applicant's claim that its community of license proposal represents a preferential arrangement of allotments under Priority (4) merely because the identical facilities would be labeled as a local transmission service to the larger community of Ocala, which already has five local services. CFEF argues that, under *Rural Radio*, "the applicant proposing an urban-to-urban move must demonstrate from which of the two communities the station would provide service to a greater area and population within the Urbanized Area."⁷ It then makes the unwarranted logical leap to state that "[t]his proposal presents a preferred arrangement of allotments under FM Allotment Priority (4) because WCYZ(FM) [already presumed to be radio service to the Ocala Urbanized Area pursuant to *Rural Radio*] would provide a local service to a community over 2.5 times the population of its current community of license."⁸ This misreads *Rural Radio* by confusing the Priority (3) standard (population of the community of license)

³ *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).

⁴ *Citing Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd. 2556, 2567, para. 20 (2011) (*Rural Radio*) (establishing "a rebuttable presumption that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license").

⁵ Statement of William J. Getz, attached to Application (Getz Statement) at 2-3. CFEF cites in support of its claim *Gearhart, Madras, Manzanita, and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259, 10263 (MB 2011); see also *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Order on Reconsideration, 27 FCC Rcd 12829, 12841 (*Rural Radio Second Order on Reconsideration*) (stating that an applicant proposing an urban-to-urban move must demonstrate from which of the two communities the station would provide service to a greater area and population within the Urbanized Area).

⁶ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 92 n.8.

⁷ Getz Statement at 2.

⁸ *Id.* at 2-3.

with the Priority (4) standard (area and population receiving service from the station), and we reject this argument on that basis.

Moreover, CFEF's position is self-contradictory. It argues that removing the sole local transmission service from Silver Springs Shore is allowed, because under *Rural Radio* WCYZ is presumed to serve the entire Ocala UA and thus the community change from Silver Springs Shore to Ocala is an "intra-urban" move.⁹ Having correctly stated this principle, however, CFEF then attempts to flip the coin to contend that re-labeling WCYZ as an Ocala station is preferred because Ocala is the larger community. CFEF cannot have it both ways: either WCYZ serves the entire Ocala UA, no matter what the community of license, or it serves an individual community within the UA, in which case Commission policy favors retention of the sole local transmission service at Silver Springs Shore.¹⁰ In neither case can it be said that a move to Ocala represents a preferential arrangement of allotments based solely on the relative sizes of two communities in the same Urbanized Area being served.

Finally, it bears repeating that the Application proposes no technical change in WCYZ's facilities. CFEF contends that "the proposed 'intraurban' change in the WCYZ(FM) community of license represents a preferential arrangement of allotments over the current WCYZ(FM) facility."¹¹ CFEF thus argues, nonsensically, that its current facility represent a preferential arrangement of allotments over itself. While a novel argument, it is not a convincing one. In intra-urbanized area cases where we have found such a preferential arrangement of allotments, there has been some actual service improvement under Priority (4), principally greater population coverage.¹² The mere desire to concentrate a station's programming on one community in an urbanized area over another, without more, does not satisfy this criterion.¹³

Conclusion. CFEF's Application, as submitted, seeking nothing more than to place a new label on an FM facility that would serve exactly the same area and population as it does currently. The mere re-designation of a facility as representing a different community of license, without more, does not present us with a preferential arrangement of allotments. We therefore find that the Application as submitted fails to comply with section 73.3573(g)(1) of our rules.

⁹ *Id.* at 2.

¹⁰ *Rural Radio*, 26 FCC Rcd at 2578 n.106.

¹¹ Getz Statement at 2.

¹² See, e.g., *Call Commc'ns Group, Inc.*, Letter Decision, DA 23-112, at 1 n.1 (MB rel. Feb. 8, 2023) (net service gain of 374,131 represented a preferential arrangement of allotments); *Repp*, 27 FCC Rcd at 13094 (application proposed a preferential arrangement of allotments under Priority (4) because the intra-urbanized area move would provide a net gain in reception service of 260,726 persons); *Emmis Austin Radio Broadcasting, L.P.; Educational Media Foundation; San Antonio Radio Works, LLC*, Letter Decision, 35 FCC Rcd 556, 562 (MB 2020) (stating net gain in the reception service serves the public interest); *Lawrence N. Cohn, Esq., James A. Koerner, Esq.*, Letter Decision, 29 FCC Rcd 4799, 4803 (MB 2014) (stating that the benefits of providing an additional service to more than 1.3 million listeners outweigh the identified service losses)..

¹³ See, *Southwest FM Broadcasting Co. Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7692, 7693, para. 3 (2015) (noting that the Commission explicitly stated in the *Rural Radio* proceeding that a station proposing to move within the same urbanized area is required to make a showing under Priority 4 "by demonstrating from which of the two communities the station would provide service to a greater area and population within the urbanized area.").

Pursuant to section 73.3522(c)(2) of the rules, “an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff’s deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff.”¹⁴ Additionally, section 73.3564 states that “[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment.”¹⁵ This letter constitutes your opportunity for corrective amendment pursuant to section 73.3522.

Further action on the subject application will be withheld for a period of thirty days from the date of this letter to provide the applicant an opportunity to respond. Failure to correct all tender and acceptance defects within thirty days from the date of this letter will result in the dismissal of the application with no further opportunity for corrective amendment pursuant to section 73.3564(a)(3).¹⁶ Furthermore, failure to respond within 30 days will result in the dismissal of the application pursuant to section 73.3568.¹⁷

Sincerely,

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

¹⁴ 47 CFR § 73.3522(c)(2).

¹⁵ *Id.* § 73.3564. See Appendix B in the Report and Order in MM Docket No. 91-347.

¹⁶ 47 CFR § 73.3564(a)(3).

¹⁷ *Id.* § 73.3568.



Federal Communications Commission
Washington, D.C. 20554

August 8, 2023

DA 23-668
In Reply Refer to:
1800B3-RFS/TSN

Central Florida Educational Foundation, Inc.
c/o Davina S. Sashkin, Esq.
Baker & Hostetler LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036
Email: dsashkin@bakerlaw.com

Re: WHGV(FM), La Crosse, FL
Facility ID No. 76433
File No. 0000206026

Dear Counsel:

This letter refers to the minor change application (Application) filed on behalf of Central Florida Educational Foundation, Inc. (CFEF), licensee of Station WHGV(FM), Channel 258A, La Crosse, Florida (WHGV). The Application proposes a community of license modification for WHGV to relocate the sole local transmission service from La Crosse, Florida, to Gainesville, Florida, as Gainesville's twelfth local service. For the reasons discussed below, we request that you amend the Application.

Background. The Application was filed pursuant to section 73.3573(g) of the Commission's rules, which sets forth the requirements for modifying an FM station license to specify a new community of license without providing an opportunity for competing expressions of interest.¹ Among other requirements, an applicant for such a minor modification must demonstrate that the proposed change of community constitutes a preferential arrangement of allotments.² We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

Applicant states that (1) the proposed city of license change is mutually exclusive with the current allotment; (2) the proposed arrangement of allotments is preferred under the Commission's allotment priorities;⁴ and (3) the current community of license will not be deprived of its only local service because

¹ See 47 CFR § 73.3573(g). See also *Modification of FM and TV Authorizations to Specify a New Community of License*, Report and Order, 4 FCC Rcd 4870 (1989) (*Community of License*), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

² 47 CFR § 73.3573(g)(1).

³ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 F.C.C.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).

⁴ CFEF Section 307(b) Showing, attached to Application, at 1-2. CFEF cites *Emmis Austin Radio Broadcasting, L.P., et al.*, Letter Order, 35 FCC Rcd. 556, 559 (MB 2020) (*Emmis Austin*) (citing *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Report and

WHGV is presumed to currently serve the Gainesville, Florida, Urbanized Area (Gainesville UA) instead of La Crosse, Florida, pursuant to the Commission's *Rural Radio* policy.⁵ Applicant claims that although the proposal constitutes the loss of the sole transmission service to La Crosse, a backfill is not required because WHGV is presumed to currently serve the Gainesville UA instead of the community of La Crosse.⁶

Applicant claims that the proposal serves the public interest under Priority (4) because it would incentivize the station to serve the larger community of Gainesville while continuing to serve La Crosse.⁷ CFEF argues that the Commission observed in *Rural Radio* that it does not serve the public interest to limit broadcasters to service geared toward their communities of license to the exclusion of the rest of their service area, and that it is therefore unrealistic to limit our analysis under section 307(b) of the Communications Act⁸ to that service provided to WHGV's current community of license, while ignoring the station's incentives to serve the larger coverage area.⁹ CFEF maintains that La Crosse comprises only 0.13% of the total population currently served by the station while Gainesville comprises 51.5% of the total population.¹⁰ Gainesville has a 2020 U.S. Census population of 141,085 persons that increased 13.5% over the past decade.¹¹ Applicant contends that, although there are no technical changes, the proposal represents a preferential arrangement of allotments under Priority (4) of the four allotment priorities, because WHGV is already presumed to serve the entire Gainesville UA pursuant to *Rural Radio* policy, and under CFEF's proposal it would provide a local transmission service to a community that

Order, 4 FCC Rcd. 4870 (1989), *recons. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd. 7094 (1990); and 47 CFR §§ 1.420(i) and 73.3573(g)(1)).

⁵ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd. 2556, 2567, para. 20 (2011) (*Rural Radio*) (establishing an urbanized area service presumption (UASP), defined as "a rebuttable presumption that, when the community proposed is located in an urbanized area or could, through a minor modification application, cover more than 50 percent of an urbanized area, we will treat the application, for section 307(b) purposes as proposing service to the entire urbanized area rather than the named community of license"); see also *Emmis Austin*, 35 FCC Rcd. at 561 (stating, pursuant to the Commission's decision in *Rural Radio*, that station KXAI(FM) at its current location at Refugio, Texas, provided service to the Corpus Christi Urbanized Area, which received multiple local audio services; thus, because Refugio was part of the Corpus Christi Urbanized Area, the reallocation of KXAI(FM) to Balcones Heights, Texas, did not violate the Commission's policy prohibiting the removal of a community's sole local aural service).

⁶ CFEF Section 307(b) Showing at 4. See *Emmis Austin*, 35 FCC Rcd. at 558 n.11 & 560 (community of license change granted without backfill after removal of sole local transmission service); see also *Marissa G. Repp, Esq., et al.*, Letter Order, 27 FCC Rcd. 13090, 13094 (MB 2012) (*Repp*) (community of license change granted without backfill after removal of second local transmission service) (citing *Rural Radio*, 26 FCC Rcd. at 2577-78).

⁷ CFEF Section 307(b) Showing at 3.

⁸ 47 U.S.C. § 307(b) (Section 307(b)).

⁹ See *Rural Radio*, 26 FCC Rcd. at 2570, para. 26 and 2570, para. 27 (stating that the Commission believes it is unrealistic to limit our Section 307(b) evaluation of an applicant's proposal to that service provided to its proposed community of license and ignore its incentives to serve the larger coverage area).

¹⁰ CFEF Section 307(b) Showing at 3.

¹¹ *Id.* at 4.

comprises over half the population currently served by the station's signal, vs. less than one percent as is the case now.¹² Applicant concludes that the proposed change in WGHV's community of license to Gainesville, Florida, is in the public interest and would be conducive to a "fair, efficient, and equitable distribution of service" under Section 307(b).¹³

Discussion. We are not convinced by CFEF's argument. Here, there is no change in WGHV's transmitter site and both the move-in and move-out communities are located within and are presumed to serve the entire Gainesville UA. Under Priority (4), we may take into account the number of aural services received in the proposed service area, the number of local services, the need for or lack of public radio service and other matters relevant to the public interest such as the relative size of the proposed communities and their growth rate.¹⁴ However, given that CFEF proposes an intra-urbanized area move with no change in technical facilities, comparisons between the current and proposed WGHV facility become meaningless.

We disagree with CFEF's claim that its community of license proposal serves the public interest under Priority (4) because it would "incentivize WGHV to serve the larger service area already reached by its signal."¹⁵ First, CFEF attempts to have it both ways with regard to the UASP, which among other things allows an applicant like CFEF to propose removing the sole local service from a community such as La Crosse, because a station licensed at La Crosse, in the Gainesville UA, is presumed to serve the entire Gainesville UA.¹⁶ Having correctly noted the application of the UASP to WGHV, CFEF then contends that the move represents a preferential arrangement of allotments because it would "incentivize" CFEF to serve Gainesville over La Crosse. CFEF cannot have it both ways. Either WGHV—whether licensed at La Crosse or Gainesville—serves the entire Gainesville UA, in which case the station's community of license is irrelevant to its service, or the proposed change treats Gainesville and La Crosse as separate communities, in which case Commission policy favors retaining the sole local service at La Crosse.¹⁷

Second, CFEF cites to no precedent, nor do we know of any, standing for the proposition that "incentivizing" the coverage of a different community in an urbanized area equals a preferential arrangement of allotments, especially where, as here, the station's technical facilities would not change.¹⁸

¹² *Id.* at 3.

¹³ *Id.* at 5.

¹⁴ See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 92 n.8.

¹⁵ CFEF Section 307(b) Showing at 3.

¹⁶ See *supra* note <5>; see also CFEF Section 307(b) Showing at 2-3.

¹⁷ *Rural Radio*, 26 FCC Rcd at 2578 n.106.

¹⁸ To support its "incentivization" argument, CFEF reads out of context language from paragraphs 26 and 27 of *Rural Radio*, in which the Commission stated that "it is unrealistic to limit our Section 307(b) evaluation of an applicant's proposal to that service provided to its proposed community of license and ignore its incentives to serve the larger coverage area." *Rural Radio*, 26 FCC Rcd at 2570, para. 27. This language merely recognizes that because a radio station's signal does not stop at the borders of its community of license, its service incentives likewise will extend to the larger area covered by its signal. It does not state or imply that a station located in an urbanized area must re-designate its community of license in order to serve the urbanized area it is already presumed

In intra-urbanized area cases where we have found such a preferential arrangement of allotments, there has been some actual service improvement under Priority (4), principally greater population coverage.¹⁹ The mere desire to concentrate a station's programming on one community in an urbanized area over another, without more, does not satisfy this criterion.²⁰

Conclusion. CFEF's Application, as submitted, seeks nothing more than to place a new label on an FM facility that would serve exactly the same area and population as it does currently. The mere re-designation of a facility as representing a different community of license, without more, does not present us with a preferential arrangement of allotments. We therefore find that the Application as submitted fails to comply with section 73.3573(g)(1) of our rules.²¹

Pursuant to section 73.3522(c)(2) of our rules, "an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff."²² Additionally, section 73.3564 states that "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed

to serve. In making this argument, CFEF apparently skipped over paragraph 21 of *Rural Radio*, in which the Commission made clear that "[t]he courts have long recognized that the principal goals of Section 307(b) are to 'forestall' the excessive concentration of radio service in larger cities, and to check the predictable interest of broadcasters to congregate in major markets," and further that, "[v]iewed from this perspective, it is difficult to credit commenters' arguments that Section 307(b)'s objectives are best served merely by ensuring service to urbanized areas, where populations are most concentrated." *Rural Radio*, 26 FCC Rcd at 2568, para. 21 (citing *Comm'n's Investment Corp. v. F.C.C.*, 641 F.2d 954, 963-64 (D.C. Cir. 1981), and *Pasadena Broadcasting*, 555 F.2d 1046, 1049-50 (D.C. Cir. 1977)). In other words, the Commission in *Rural Radio* recognized that broadcasters need no "incentives" to serve the largest possible community, and that Section 307(b) was passed by Congress to check that predictable impulse. While the migration of a station to an urbanized area from a rural area is not implicated in an intra-urbanized area community of license change such as CFEF proposes, as discussed below such a move from a smaller to a larger community within an urbanized area requires more than just a desire to associate the station with the larger community.

¹⁹ See, e.g., *Call Commc'ns Group, Inc.*, Letter Decision, DA 23-112, at 1 n.1 (MB rel. Feb. 8, 2023) (net service gain of 374,131 represented a preferential arrangement of allotments); *Repp*, 27 FCC Rcd at 13094 (application proposed a preferential arrangement of allotments under Priority (4) because the intra-urbanized area move would provide a net gain in reception service of 260,726 persons); *Emmis Austin Radio Broadcasting, L.P.*; *Educational Media Foundation*; *San Antonio Radio Works, LLC*, Letter Decision, 35 FCC Rcd 556, 562 (MB 2020) (stating net gain in the reception service serves the public interest); *Lawrence N. Cohn, Esq.*, *James A. Koerner, Esq.*, Letter Decision, 29 FCC Rcd 4799, 4803 (MB 2014) (stating that the benefits of providing an additional service to more than 1.3 million listeners outweigh the identified service losses)..

²⁰ See, *Southwest FM Broadcasting Co. Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 7692, 7693, para. 3 (2015) (noting that the Commission explicitly stated in the *Rural Radio* proceeding that a station proposing to move within the same urbanized area is required to make a showing under Priority 4 "by demonstrating from which of the two communities the station would provide service to a greater area and population within the urbanized area.").

²¹ 47 CFR § 73.3573(g)(1).

²² 47 CFR § 73.3522(c)(2).

with no further opportunity for amendment.”²³ This letter constitutes your opportunity for corrective amendment pursuant to section 73.3522.

Further action on the subject application will be withheld for a period of thirty days from the date of this letter to provide the applicant an opportunity to respond. Failure to correct all tender and acceptance defects within thirty days from the date of this letter will result in the dismissal of the application with no further opportunity for corrective amendment pursuant to section 73.3564(a)(3).²⁴ Furthermore, failure to respond within 30 days will result in the dismissal of the application pursuant to section 73.3568.²⁵

Sincerely,

Nazifa Sawez
Assistant Chief
Audio Division
Media Bureau

cc: William J. Getz, Carl T. Jones Corp.

²³ 47 CFR § 73.3564. *See* Appendix B in the Report and Order in MM Docket No. 91-347.

²⁴ 47 CFR § 73.3564(a)(3).

²⁵ 47 CFR § 73.3568.

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

In the Matter of	)	
	)	
Iowa Network Access Division	)	WC Docket No. 18-60
Tariff F.C.C. No. 1	)	Transmittal No. 36
	)	Transmittal No. 38
	)	Transmittal No. 44

MEMORANDUM OPINION AND ORDER

Adopted: August 8, 2023

Released: August 8, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we approve the plan of Iowa Network Access Division d/b/a Aureon Network Services (Aureon) to refund to its customers certain unlawful, tariffed interstate access service charges. In response to a Commission order requiring Aureon to submit certain cost and demand data for calendar years 2018 and 2019,¹ Aureon submitted the required data, as well as a refund plan.² We direct Aureon to issue refunds to its customers in accordance with the terms set forth in its Refund Plan and this Order.³

II. BACKGROUND

2. Aureon, a division of Iowa Network Services, Inc. (INS), is a centralized equal access (CEA) provider that was created to aggregate traffic traveling between rural incumbent local exchange carriers (LECs) in Iowa and other networks, and to implement long distance equal access obligations.⁴ Aureon delivers traffic to its subtending LECs through several points of interconnection across Iowa.⁵

¹ *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Transmittal No. 38, Transmittal No. 44, Order, FCC 22-14 (Feb. 22, 2022) (*Aureon Data Order*).

² Refund Plan of Iowa Network Services, Inc. d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36, Transmittal No. 38, Transmittal No. 44 (filed Apr. 25, 2022) (Refund Plan). There is a *Protective Order* in this proceeding. Iowa Network Access Division Tariff F.C.C. No. 1, WC Docket No. 18-60, Transmittal No. 36, Protective Order, 33 FCC Rcd 2893 (WCB 2018).

³ We direct this action under the authority granted in 47 U.S.C. § 204(a)(1) and in accordance with Commission rules and orders. 47 U.S.C. § 204(a)(1). See *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Order, 33 FCC Rcd 2089 (WCB/PPD 2018) (*Aureon First Tariff Suspension Order*); *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Memorandum Opinion and Order, 33 FCC Rcd 7517 (2018) (*Aureon First Tariff Investigation Order*); *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, Order, 33 FCC Rcd 8547 (WCB/PPD 2018) (*Aureon Second Tariff Suspension Order*); *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, Memorandum Opinion and Order, 34 FCC Rcd 1510 (2019) (*Aureon Second Tariff Investigation Order*).

⁴ *Application of Iowa Network Access Division*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (CCB 1988) (*Aureon Section 214 Order*). Equal access obligations require LECs to permit end users to use 1+ dialing to reach the long-distance provider of their choice.

⁵ See Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 36 at 27, 29 (filed May 3, 2018).

Aureon's "Access Division" is the regulated entity that provides CEA service by leasing facilities from a separate, unregulated "Network Division" of INS.⁶ Many of the facilities leased by Aureon are also used by the Network Division, either directly or indirectly, to provide unregulated services.

3. Since its inception, Aureon has been regulated as a dominant carrier subject to the cost-based tariff filing requirements of section 61.38 of the Commission's rules.⁷ Aureon is also a competitive LEC.⁸ As a result, Aureon cannot tariff a rate for its services that is higher than the rate the competing incumbent LEC charges for the same access services.⁹

4. On November 8, 2017, the Commission adopted the *Aureon Liability Order*, partially granting a complaint filed by AT&T Corp. alleging that Aureon violated the Commission's rate cap and rate parity rules by raising its interstate switched transport rate,¹⁰ contained in Tariff F.C.C. No. 1, to \$0.00896 per minute of use (MOU), and by not lowering its intrastate rates as required by those rules.¹¹ The Commission, among other things, directed Aureon to file interstate tariff revisions consistent with the *Aureon Liability Order* and to include all necessary cost studies and support as required by section 61.38 of the Commission's rules.¹²

5. In response to the Commission's direction in the *Aureon Liability Order*, on February 22, 2018, Aureon filed Transmittal No. 36, containing revisions to its interstate access Tariff F.C.C. No. 1.¹³ In its tariff revisions, Aureon reduced its interstate switched transport rate to \$0.00576 per MOU,

⁶ See *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1510-11, para. 2.

⁷ 47 CFR § 61.38; see, e.g., *Aureon Section 214 Order*, 3 FCC Rcd at 1469, para. 10; *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Memorandum Opinion and Order, 32 FCC Rcd 9677, 9692, para. 30 (2017) (*Aureon Liability Order*); Order on Reconsideration, 33 FCC Rcd 7964 (2018); Second Order on Reconsideration, 33 FCC Rcd 11855 (2018) (*Second Order on Reconsideration*), *aff'd in part and rev'd in part*; *AT&T Corp. v. FCC*, 970 F.3d 344 (D.C. Cir. 2020) (*AT&T Corp. v. FCC*). Under section 61.38, any tariff changes must include, among other things, the basis for the ratemaking employed and economic information to support the change, including specific cost information and cost projections. 47 CFR § 61.38(b).

⁸ *Aureon Liability Order*, 32 FCC Rcd at 9689, para. 25 (citing 47 CFR §§ 51.901-919); *AT&T Corp. v. FCC*, 970 F.3d at 349.

⁹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17937, para. 807 (2011), *aff'd*, *FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). This obligation, adopted in its initial form in 2001, provides that a competitive LEC may not tariff interstate access charges above those of the competing incumbent LEC for similar services. See *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001); 47 CFR § 51.911; *AT&T Corp. v. FCC*, 970 F.3d at 349.

¹⁰ Aureon charges for interstate CEA service using a single tariffed rate called the "switched transport rate," which is non-distance sensitive and recovers the costs of both transport and tandem switching. See *Aureon Liability Order*, 32 FCC Rcd at 9681-82, para. 11. In its consideration of the *Aureon Liability Order*, the D.C. Circuit set aside the Commission's determination that Aureon violated the rate cap for interstate access charges, but deferred to the Commission's resolution of the tariff-related issues resulting from the complaint proceeding. *AT&T Corp. v. FCC*, 970 F.3d at 350-51.

¹¹ *Aureon Liability Order*, 32 FCC Rcd at 9689, para. 24.

¹² *Id.* at 9695, para. 35; 47 CFR § 61.38.

¹³ Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 36 (filed Feb. 22, 2018) (available via the Commission's Electronic Tariff Filing System (ETFS)); Iowa Network Access Division, Tariff F.C.C. No. 1, Transmittal No. 36, 32nd Rev. Page 1, 16th Rev. Page 1.1, 13th Rev. Page 145, § 6.8.1 (filed Feb. 22, 2018) (available via ETFS) (collectively Transmittal No. 36).

effective March 1, 2018.¹⁴ The Wireline Competition Bureau (Bureau) suspended the revised rate, imposed an accounting order, and opened an investigation into the lawfulness of Aureon's revised interstate switched transport rate that became effective on March 1, 2018.¹⁵ While the Commission investigated the rate that became effective on March 1, 2018, Aureon's customers continued to pay Aureon the disputed rate included in Transmittal No. 36.

6. On July 31, 2018, the Commission issued a Memorandum Opinion and Order detailing the findings of the investigation into the tariff revision submitted in Transmittal No. 36.¹⁶ The Commission found that the proposed rate of \$0.00576 per MOU was lower than the applicable rate cap, but higher than the competing incumbent LEC rate of \$0.005634 for the same service, and directed Aureon to refile its interstate switched transport rate in accordance with the order and to include cost support for the revised rate.¹⁷ Aureon submitted a revised tariff on September 24, 2018, reducing its interstate switched transport rate to \$0.00296 per MOU effective October 1, 2018.¹⁸ On September 28, 2018, the Bureau suspended the rate filed in Transmittal No. 38, continued the existing accounting order, and set for investigation the lawfulness of the revised interstate switched transport rate.¹⁹

7. After reviewing the information Aureon submitted, the Commission concluded that Aureon failed to provide adequate cost support to justify the tariffed interstate switched transport rate of \$0.00296 contained in Transmittal No. 38, as required by the Commission's rules.²⁰ The Commission also found that Aureon's cost support failed to demonstrate that Aureon's claimed expense for network facilities leased by the Access Division from the Network Division as reflected in the interstate revenue requirement for CEA service complied with the Commission's affiliate transaction rule.²¹ Aureon also failed to establish that it paid its affiliated Network Division less than the lower of: (1) the fair market value of the leased facilities; and (2) the fully-distributed costs of the leased facilities.²² Accordingly, the Commission directed Aureon to revise its tariffed interstate switched transport rate.²³

¹⁴ Transmittal No. 36 (proposed revision to § 6.8.1(A)).

¹⁵ See generally *Aureon First Tariff Suspension Order*. The Bureau's suspension order initiated a proceeding to investigate only the rate filed in Transmittal No. 36 and had no bearing on rates from previously filed tariff transmittals. See *Second Order on Reconsideration*, 33 FCC Rcd at 11857-58, para. 7 ("AT&T maintains that the Commission's separate investigation into Aureon's 2018 tariff is somehow dispositive as to the appropriate benchmark and cost-based rate from mid-2013 to 2018. It is not. The 2018 tariff investigation is prospective only, relates to a tariff that Aureon submitted in 2018, and has no bearing on Aureon's 2012 or 2013 tariffs.") (internal citations omitted).

¹⁶ See *Aureon First Tariff Investigation Order*, 33 FCC Rcd at 7524-66, §§ III-V.

¹⁷ *Id.* at 7567, paras. 122-23, 126.

¹⁸ See Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 38 (filed Sept. 24, 2018) (available via ETFS and WC Docket No. 18-60); Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 38, 14th Rev. Page 145, § 6.8.1 (filed Sept. 24, 2018) (available via ETFS) (collectively Transmittal No. 38).

¹⁹ See generally *Aureon Second Tariff Suspension Order*.

²⁰ *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1514, para. 12.

²¹ *Id.*; 47 CFR § 32.27 (governing affiliate transactions). The Commission found that Aureon may not ignore the rate at which its unregulated Network Division sells DS3 transport services to third parties (on a nonregulated basis) when estimating fair market value for the Network Division's leased network to the Access Division. See *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1516-17, paras. 14-19.

²² See *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1514, para. 12.

²³ *Id.* at 1523, para. 39.

8. On April 29, 2019, Aureon filed tariff revisions proposing a new interstate switched transport rate, to become effective May 14, 2019,²⁴ but in a series of tariff filings, Aureon further revised the rate and deferred the effective date to October 15, 2019.²⁵ On September 27, 2019, the Bureau granted Aureon's application for special permission and waived section 61.59 of the Commission's rules to allow Aureon to make changes to a tariff that had not been effective for 30 days.²⁶ On September 30, 2019, Aureon filed Transmittal No. 44, and accompanying cost support, proposing a revised tariffed interstate switched transport rate of \$0.00411, which became effective on October 15, 2019 and was deemed lawful.²⁷

9. The rates submitted in Transmittal Nos. 36 and 38, while unlawful, were in effect from March 1, 2018, through October 14, 2019. The unlawful rates charged during that period are subject to refunds for overearnings.²⁸ Although most carriers voluntarily submit refund plans following tariff investigation orders, Aureon did not take steps to issue refunds to its customers or submit to the Commission a plan to do so.²⁹ As a result, the Commission issued an order explicitly requiring Aureon to submit the data necessary to enable the Bureau to formulate a refund plan and conclude the investigation into Aureon's interstate switched transport rate.³⁰ In the *Aureon Data Order*, the Commission directed Aureon to provide actual historical year cost of service studies for 2018 and 2019,³¹ a detailed accounting of company-wide and interstate switched transport service investments and expenses,³² and billing and collection data regarding each customer to which Aureon provided switched transport service during the

²⁴ See Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 40 (filed Apr. 29, 2019) (available via ETFS); Iowa Network Access Division, Tariff F.C.C. No. 1, Transmittal No. 40, Description and Justification, Cost Support Material (filed Apr. 29, 2019) (available via ETFS); Iowa Network Access Division Tariff, F.C.C. No. 1, 36th Rev. Page 1, 18th Rev. Page 1.1, 15th Rev. Page 145, § 6.8.1 (dated Apr. 29, 2019) (available via ETFS) (proposing an increased interstate switched transport rate of \$0.00363).

²⁵ Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 41 at 1 (filed May 10, 2019) (available via ETFS) (deferring effective date from May 14, 2019 to June 28, 2019); Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 42 at 1 (filed June 21, 2019) (available via ETFS) (deferring effective date from June 28, 2019 to August 1, 2019); Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 43 at 1 (filed July 22, 2019) (available via ETFS) (deferring effective date from August 1, 2019 to October 15, 2019).

²⁶ See Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Application No. 9 (filed Sept. 27, 2019) (available via ETFS) (requesting special permission for waiver of section 61.59 "so that changes may be made to tariff material that has not yet been effective for 30 days"); Iowa Network Access Division, Tariff F.C.C. No. 1, 40th Rev. Page 1, 22nd Rev. Page 1.1, 19th Rev. Page 145, § 6.8.1 (dated Sept. 30, 2019) (available via ETFS) (noting that tariff changes were issued under authority of Special Permission Number 19-004); see also 47 CFR § 61.59.

²⁷ Letter from James U. Troup, Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, Transmittal No. 44 (filed Sept. 30, 2019) (available via ETFS); Iowa Network Access Division, Tariff F.C.C. No. 1, Transmittal No. 44, Description and Justification, Cost Support Material (filed Sept. 30, 2019) (available via ETFS); Iowa Network Access Division, Tariff F.C.C. No. 1, 40th Rev. Page 1, 22nd Rev. Page 1.1, 19th Rev. Page 145, § 6.8.1 (filed Sept. 30, 2019) (available via ETFS) (collectively Transmittal No. 44). Transmittal No. 44 included a proposed effective date of Oct. 15, 2019.

²⁸ See *Aureon Data Order* at 4-5, para. 9.

²⁹ See *id.*

³⁰ *Id.*

³¹ *Id.* at 5, para. 10.

³² *Id.* at 5-6, para 11.

relevant period.³³ On April 25, 2022, Aureon submitted its Refund Plan and the data required by the Commission in the *Aureon Data Order*.³⁴

10. In its Refund Plan, Aureon calculated separate rates for 2018 and 2019 derived from actual historical year cost studies and demand data for those calendar years.³⁵ Aureon subtracted the derived rate from the unlawful rate charged in the relevant time periods to determine the appropriate refund credit per MOU.³⁶ Aureon proposed to credit its customers \$0.00346 per MOU for the period March 1, 2018, through September 30, 2018, and \$0.00066 per MOU for the period October 1, 2018, through December 31, 2018, based on the rate derived from its 2018 cost study.³⁷ For the period January 1, 2019, through October 14, 2019, Aureon proposed no refund for any customer, because its 2019 cost study rate is higher than the rate it charged.³⁸ Aureon's Refund Plan also included interest, compounded daily, using the "Internal Revenue Service [IRS] non-corporate rates for overpayment and underpayment."³⁹ In response to questions from Commission staff, Aureon later clarified that as a corporation it should have identified the interest rate used in the Refund Plan as the IRS *corporate* interest rate to calculate the interest due to affected customers.⁴⁰

11. Aureon excluded AT&T, Verizon, Inteliquent, and Lumen from its refund calculations, explaining that it has reached settlement agreements with those customers, thereby satisfying its refund liability with respect to those carriers.⁴¹ Although, as advised by Commission staff, Aureon submitted its refund calculations using the relevant time periods during which the unlawful rates were in effect and without offsetting its "overearnings" under Transmittal 36 with "underearnings" under Transmittal 38, it did so under protest.⁴²

12. On April 28, 2022, the Bureau issued a Public Notice seeking comment on Aureon's Refund Plan.⁴³ Lumen filed comments objecting to the Refund Plan.⁴⁴ First, Lumen challenged Aureon's use of actual MOUs in determining a refund rate for interstate switched transport.⁴⁵ Lumen argued that Aureon should instead calculate its refund liability using projections based on the Commission's rules, or alternatively, using the demand forecasts Aureon used in setting the unlawful rates.⁴⁶ Next, Lumen

³³ *Id.* at 6, para. 12.

³⁴ Refund Plan.

³⁵ *Id.* at 3-5.

³⁶ *Id.*

³⁷ *Id.* at 5.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Letter from Carey S. Stover, Aureon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60 at 1 (filed June 26, 2023) (Aureon June 26, 2023 *Ex Parte* Letter) ("Aureon should have used the 'corporate' rate as Aureon is a corporation.").

⁴¹ Refund Plan at 6. See Comments of Lumen Technologies, Inc. WC Docket No. 18-60, at 1, n.3 (filed May 13, 2022) (Lumen Comments).

⁴² Refund Plan at 2-3 & n.1.

⁴³ *Wireline Competition Bureau Seeks Comment on Refund Plan of Iowa Network Access Division*, Public Notice, DA 22-467 (rel. Apr. 28, 2022).

⁴⁴ Lumen Comments at 2.

⁴⁵ *Id.* at 2-3.

⁴⁶ *Id.* at 2-7.

suggested that Aureon overstates its revenue requirement by using estimates of available circuits, instead of actual inventory.⁴⁷ No other party submitted comments on Aureon's Refund Plan.

13. At the time the Commission issued the *Aureon Data Order* and Aureon submitted its Refund Plan, Aureon and Lumen were engaged in litigation over the terms of a settlement agreement regarding related matters.⁴⁸ Aureon and Lumen have since settled the dispute over Aureon's charges for CEA service provided to Lumen prior to October 14, 2019.⁴⁹ Lumen now "takes no position on the amount of any refund to be issued to Aureon's other customers for charges assessed on traffic prior to October 14, 2019."⁵⁰

III. DISCUSSION

14. We find that Aureon's proposed Refund Plan is reasonable and we approve the company's proposal to refund overcharges paid by its customers from March 1, 2018 through October 14, 2019, plus interest compounded daily, by issuing a credit on the invoices of affected customers. We also find reasonable Aureon's proposal to use the IRS corporate rate for calculating interest on the refunds.

15. *Legal Authority and Standard of Review.* Section 204(a) of the Communications Act of 1934, as amended, grants the Commission the authority to set refunds, with interest, for "such portion of . . . revised charges as by its decision shall be found not justified."⁵¹ The broad permissive language of the statute "leaves refund decisions to the discretion of the Commission."⁵²

16. *Refund Period.* When directing Aureon to file a refund plan, the Commission instructed the company to "develop its actual, historical year revenue requirement for interstate switched transport service separately for calendar years 2018 and 2019."⁵³ Although Aureon uses actual costs, including the Commission's prescribed rate of return on rate base, derived from calendar year 2018 and 2019 cost studies in its Refund Plan to develop its actual, historical year revenue requirements, Aureon nevertheless protests this approach, suggesting instead that it should be permitted "to calculate the rates of return using [the 2017-2018 and 2019-2020] two-year monitoring periods."⁵⁴ In essence, Aureon proposes to lump together its earnings under unlawful tariffs with earnings under lawful tariffs, even though only the unlawful tariffs are at issue here. Aureon neither explains nor provides support for its proposed approach.⁵⁵ Aureon does not, for example, provide its actual, realized rate of return on rate base for either of these two-year monitoring periods even though it advocated for use of that data. We find that

⁴⁷ *Id.* at 8-9.

⁴⁸ See Refund Plan at 6-7; Letter from Timothy M. Boucher, Assistant General Counsel, Lumen, to Marlene H. Dortch, Secretary, FCC, at 1 (filed Apr. 21, 2022); Letter from Carey S. Stover, Aureon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60 at 1 (filed Aug. 1, 2022) ("Aureon excluded Lumen from the refund plan because our dispute with Lumen was and is still being handled by the U.S. District Court for the Southern District of Iowa.").

⁴⁹ Letter from Timothy M. Boucher, Assistant General Counsel, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-60, at 1 (filed Jan. 10, 2023).

⁵⁰ *Id.*

⁵¹ 47 U.S.C. § 204(a)(1).

⁵² *Las Cruces TV Cable v. FCC*, 645 F.2d 1041, 1047 (D.C. Cir. 1981). Cf. *New England Tel. & Tel. Co. v. FCC*, 826 F.2d 1101, 1111 (D.C. Cir. 1987) (finding the Commission's explanation in support of a calendar year-based calculation of refunds "sensible enough" and its ultimate choice "not unreasoned"). See also *Aureon First Tariff Investigation Order*, 33 FCC Rcd at 7567, para. 125; *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1523, para. 38 (the Commission directed the Bureau in both orders to determine any refunds that may be required once revised rates are effective).

⁵³ *Aureon Data Order* at 4-5, paras. 9-10. Aureon did not contest the Commission's order.

⁵⁴ Refund Plan at 2 & n.1.

⁵⁵ See *id.* at 2.

calculating refund rates using actual costs and actual demand for the limited period during which the unlawful tariffs were in effect and subtracting these rates from the rates that were actually billed is the most appropriate method for determining refunds, and is consistent with Commission precedent.⁵⁶

17. *Use of Historical Data.* We find that Aureon's use of actual, historical cost and demand data is consistent with the requirements adopted in the *Aureon Data Order* and is a reasonable method for determining Aureon's refund rate. Refunds must be made for the backward-looking period during which the accounting order was in effect.⁵⁷ The Commission's use of actual historical data ensures that refund rates are cost-based and therefore just and reasonable for the backward-looking refund liability period.

18. As an initial matter, Lumen argued⁵⁸ that we should require Aureon to derive a refund rate using projected MOUs for 2018 and 2019, rather than actual historical year data.⁵⁹ Citing section 61.38(b)(1)(ii) of our rules, Lumen asserted that Aureon should have set its refund rates using the same projected MOUs it "would have used had it complied with the Commission's rules from the outset," or, alternatively using the same projected minutes as it used to set its unlawful rates.⁶⁰ We find Lumen's arguments to be inapposite. Section 61.38, which Lumen relies on to support its position, applies only to *prospective* rate changes; it does not apply to retrospective refunds, such as the ones at issue here.⁶¹ We find using actual historical year cost studies and demand data to be an appropriate and reasonable methodology for determining refunds in this case.

19. *Circuit Inventory Estimates.* Lumen broadly contended that the revenue requirement Aureon calculated in its Refund Plan was flawed, but the only example of a specific flaw cited by Lumen was that "Aureon continues to provide estimates of DS-3s in its CEA network rather than the actual inventory requested by the Commission."⁶² Aureon explains that it did not maintain records of the inventory of actual circuits in 2018.⁶³ Given that Aureon does not have an "actual inventory," we find Lumen's argument unpersuasive. Accordingly, we allow Aureon to use estimates of circuit inventory in calculating its 2018 costs.

⁵⁶ See, e.g., *2001 Annual Access Tariff Filings*, CC Docket No. 01-206, Order, 17 FCC Rcd 2110, 2110-11, paras. 2-3 (PPD 2002); *July 1, 2018 Annual Access Charge Tariff Filings, South Dakota Network, LLC, Tariff F.C.C. No. 1*, WC Docket No. 18-100, Memorandum Opinion and Order, 34 FCC Rcd 3671, 3672, paras. 4-5 (WCB 2019) (*SDN Refund Order*); *Northern Valley Communications, LLC, Tariff F.C.C. No. 3*, WC Docket No. 20-11, Memorandum Opinion and Order, DA 22-865, at 11, para. 25 (WCB 2022) (*Northern Valley Refund Order*).

⁵⁷ 47 U.S.C. § 204(a)(1); see also *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, Order Designating Issues for Investigation, 27 FCC Rcd 10311, 10321, para. 28 (WCB/PPD 2012). Here, the orders to keep account are contained in the *Aureon First Tariff Suspension Order* and *Aureon Second Tariff Suspension Order*. *Aureon First Tariff Suspension Order*, 33 FCC Rcd at 2091, para. 9 ("Iowa Network Access Division d/b/a Aureon shall keep accurate account of all amounts received that are associated with the switched access rates that are subject to this investigation."); *Aureon Second Tariff Suspension Order*, 33 FCC Rcd at 8549, para. 9 ("The accounting order applicable to Iowa Network Access Division d/b/a Aureon, shall remain in effect until this investigation is concluded.").

⁵⁸ Although Lumen no longer takes any position on Aureon's refund liability, we nonetheless address the arguments Lumen originally made in its comments.

⁵⁹ Lumen Comments at 3, 5.

⁶⁰ *Id.* at 3, 5-7. Section 47 CFR § 61.38(b)(1)(ii) states, in relevant part, that "[f]or a tariff change the issuing carrier must submit . . . [a] study containing a projection of costs for a representative 12 month period" and subsection (iii) requires, among other things, "the projected effects on the traffic and revenues for the same representative 12 month period used in (b)(1)(ii) above."

⁶¹ 47 CFR § 61.38(b)(1)(ii) (requiring all tariff changes to be accompanied by "[a] study containing a projection of costs for a representative 12 month period").

⁶² Lumen Comments at 8-9.

⁶³ Refund Plan at 4.

20. As the Commission explained in the *Aureon Second Tariff Investigation Order*, carriers are required to account for their physical plant in accordance with the accounting rules set forth in Part 32 of our rules.⁶⁴ Where physical plant inventory is unavailable, however, carriers and the Commission must rely on estimates. For example, when conducting inventory audits of carriers, the Commission itself has employed sampling to provide statistical inventory estimates.⁶⁵ Aureon's actual circuit inventory is unavailable, making estimates the only method of establishing circuit inventory for the purpose of calculating a revenue requirement. Aureon's approach is within the range of reasonable approaches that it might have used to estimate the number of circuits for 2018. As there is nothing in the record to suggest that an alternative approach would produce more accurate estimates, we find Aureon's estimates and the resulting revenue requirement for 2018 to be reasonable, given the circumstances.

21. *Offset for "Underearnings."* Although Aureon did not attempt to offset its 2018 overcharges with its "undercharges" from 2019—when its tariffed rate was below the rate derived from its cost study—in its Refund Plan, it expresses disagreement with that approach.⁶⁶ As an initial matter, the use of an offset would require that we allow Aureon to improperly meld the charges from two different monitoring periods and straddle two different tariff investigations. In addition, customers charged the interstate switched access rate during 2019 that later turned out to be lower than the rate Aureon's actual costs and demand justified, received no notice that the rate might be insufficient to meet Aureon's revenue requirement or that they might be asked to pay a higher rate for those services. Adopting an offset, as Aureon asks us to do, would amount to an impermissible, retroactive rate increase.⁶⁷ Aureon filed the tariffed rates that it now claims are too low. It would be inequitable to allow Aureon to retroactively increase those rates, even if those increases come in the guise of an offset.⁶⁸ The record does not demonstrate any unusual circumstance that might provide good cause to offset Aureon's 2018 refund liability with its 2019 undercharges.

22. *Interest Rates.* In a recent *ex parte* filing Aureon clarifies that as a corporation it should have identified the interest rates used in its Refund Plan as the IRS *corporate* interest rates for overpayment and underpayment rather than the IRS *non-corporate* interest rates for overpayment and underpayment.⁶⁹ In its Refund Plan, Aureon used the IRS interest rates for underpayment which are the same for corporate and non-corporate entities.⁷⁰ No parties commented on the interest rates to be used in

⁶⁴ See *Aureon Second Tariff Investigation Order*, 34 FCC Rcd at 1521-23, paras. 32-35.

⁶⁵ See, e.g., *BellSouth Telecommunications' Continuing Property Records Audit*, Order, 14 FCC Rcd 4258, Audit Report of the Continuing Property Records of BellSouth Telecommunications, Inc., at 10 & Appx. B (1999).

⁶⁶ Refund Plan at 2-3 & n.1.

⁶⁷ See *FPC v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 152 (1962) ("The company having initially filed the rates and either collected an illegal return or failed to collect a sufficient one must . . . shoulder the hazards incident to its action including not only the refund of any illegal gain but also its losses where its filed rate is found to be inadequate."); *1993 Annual Access Tariff Filings*; *1994 Annual Access Tariff Filings*, Order, 20 FCC Rcd 6077, 6083, para. 11 (WCB 2005) (refusing to allow a carrier "to recoup past undercharges due to its miscalculated lower formula adjustment and offset these underearnings against the amount it overearned by miscalculating its sharing obligation" deeming them a form of "retroactive rate increase"); *1993 Annual Access Tariff Filings*, Memorandum Opinion and Order, 12 FCC Rcd 8349, 8355-56, para. 16 (CCB 1997) (noting the carriers "were clearly on notice that their allocation method was potentially unlawful" once the Bureau suspended their tariffs and, therefore, "assumed any risk of a refund, and had no reasonable basis to assume that they would be entitled to make up undercharges").

⁶⁸ See *S. California Edison Co. v. FERC*, 805 F.2d 1068, 1072 (D.C. Cir. 1986) ("Equity does not move in favor of one whose own conduct or action has brought upon it misfortune or pecuniary loss.").

⁶⁹ Aureon June 26, 2023 *Ex Parte* Letter.

⁷⁰ Aureon did not specify in its Refund Plan that it used the IRS interest rates for underpayment to calculate the applicable interest due to its customers that were overcharged but the IRS website confirms that the interest rates Aureon provided in its Refund Plan coincide with those for corporate and non-corporate underpayment. Refund

(continued....)

this proceeding.⁷¹ Aureon asks that we “approve the refund plan as presented, noting that the rate should have been identified as the corporate rate instead of the non-corporate rate.”⁷² We accept and find reasonable Aureon’s use of the IRS corporate underpayment rate for calculating the applicable interest on refunds.⁷³ Accordingly, given the circumstances specific to the investigations into Aureon’s interstate switched transport rate, we find that Aureon’s Refund Plan will reasonably compensate customers who were charged unlawful rates during the March 1, 2018, through October 14, 2019 period.

23. Although in its Refund Plan Aureon projected a refund payment date of May 1, 2022, this Order is being released after that date. Therefore, we direct Aureon to pay interest on the refund amounts due to each customer charged unlawful rates from March 1, 2018 to October 14, 2019 until the date Aureon pays the full refund amount due to that customer.⁷⁴ Aureon must compute interest compounded on a daily basis at the applicable IRS corporate underpayment rate according to the more-recent IRS corporate underpayment interest rates of 4% for May 1, 2022 to June 30, 2022, 5% for July 1, 2022 to September 30, 2022, 6% for October 1, 2022 to December 31, 2022, and 7% for January 1, 2023 to September 30, 2023.⁷⁵

24. We direct Aureon to make the determined refunds, plus applicable interest as detailed above, to its affected customers, in the manner prescribed in the Refund Plan.⁷⁶ If Aureon does not provide refunds prior to September 30, 2023 it must calculate interest using any forthcoming IRS corporate interest rate for underpayment. These refund payments will conclude the two investigations into Aureon’s interstate switched transport rate. In the event that any settlement agreements with customers identified by Aureon are deemed void and Aureon’s refund liability is reinstated by a court, we direct Aureon to calculate such refunds in the same manner as prescribed in the Refund Plan, and to pay the refund accordingly.

IV. ORDERING CLAUSES

25. **ACCORDINGLY, IT IS ORDERED**, pursuant to sections 4(i), 4(j), 5, 201-204, 218, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155, 201-204, 218, and 403, sections 0.91 and 0.291 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and the *Aureon Data Order*, that the Refund Plan of Iowa Network Access Division d/b/a Aureon Network Services is

Plan at 5; IRS Quarterly Interest Rates (Tables of Interest Rates by Category showing the rates from 2017 to September 2023) at <https://www.irs.gov/payments/quarterly-interest-rates>.

⁷¹ Aureon used the IRS underpayment interest rate in its Refund Plan while other subjects of tariff investigations have used the IRS overpayment interest rate in their refund plans. *See, e.g., SDN Refund Order*, 34 FCC Rcd at 3672, paras. 4-5; *Northern Valley Refund Order* at 11-12, para. 26 (both using the IRS overpayment rate to calculate the applicable interest for refunds. We accept Aureon’s use of the IRS corporate underpayment interest rate here. Refund Plan at 5; IRS Quarterly Interest Rates (Tables of Interest Rates by Category showing the rates from 2017 to September 2023) at <https://www.irs.gov/payments/quarterly-interest-rates>.

⁷² Aureon June 26, 2023 *Ex Parte* Letter.

⁷³ Refund Plan at 5. Aureon mistakenly lists in its Refund Plan a 5% interest rate from March 1, 2018 to December 31, 2018. *Id.* The corporate underpayment interest rate was 5% from March 1, 2018 to March 31, 2018, 4% from April 1, 2018 to June 30, 2018 and 5% from July 1, 2018 to December 31, 2018. Aureon must modify the interest calculation and refund payment to affected customers accordingly. IRS Quarterly Interest Rates (Tables of Interest Rates by Category showing the rates from 2017 to September 2023) at <https://www.irs.gov/payments/quarterly-interest-rates>.

⁷⁴ *See SDN Refund Order*, 34 FCC Rcd at 3672, para. 5 (“Requiring SDN to pay interest on the refund amounts due to each customer until it has paid the full amount due to that customer removes any incentive to delay refund payments.”).

⁷⁵ IRS Quarterly Interest Rates (Tables of Interest Rates by Category showing the rates from 2017 to September 2023) at <https://www.irs.gov/payments/quarterly-interest-rates>.

⁷⁶ *See* Refund Plan at 6 (“refunds plus interest . . . will be credited to each affected carrier”).

APPROVED and that Iowa Network Access Divisions shall complete refunds to affected customers in the manner prescribed in the Refund Plan and subject to the application of interest as provided in paragraphs 22 through 24 of this Order.

26. **IT IS FURTHER ORDERED** that pursuant to section 1.102 of the Commission's rules, 47 CFR § 1.102, this Order **SHALL BE EFFECTIVE** upon release.

WIRELINE COMPETITION BUREAU

Trent B. Harkrader
Chief
Wireline Competition Bureau

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

In the Matter of	)	
	)	
Expanding Flexible Use of the 12.2-12.7 GHz Band	)	WT Docket No. 20-443
	)	
Expanding Use of the 12.7-13.25 GHz Band for	)	GN Docket No. 22-352
Mobile Broadband or Other Expanded Use	)	

ORDER

Adopted: August 8, 2023

Released: August 8, 2023

By the Chief, Wireless Telecommunications Bureau:

1. On May 19, 2023, the Commission released a Report and Order and Further Notice of Proposed Rulemaking (in WT Docket No. 20-443) and Notice of Proposed Rulemaking and Order (in GN Docket No. 22-252).¹ In the *Further Notice of Proposed Rulemaking (FNPRM)* the Commission further investigates the potential to expand terrestrial fixed use or to permit unlicensed use in the 500 megahertz of mid-band spectrum at 12.2-12.7 GHz (12.2 GHz band). In the *Notice of Proposed Rulemaking (NPRM)*, to further its efforts to make spectrum available for terrestrial mobile service or other expanded use, the Commission proposes to repurpose some or all of the 12.7-13.25 GHz (12.7 GHz band) for mobile broadband or other expanded use. Comments in response to the *FNPRM* and the *NPRM* are due on August 9, 2023, while reply comments are due on September 8, 2023.

2. On August 4, 2023, the Satellite Industry Association (SIA), together with Eutelsat S.A., Hispasat, S.A, Intelsat License LLC, Ovzon LLC, SES Americom, Inc., Space Exploration Technologies Corp., and WorldVu Satellites Limited (collectively the Joint Requestors) filed a Joint Request for Extension of the Filing Deadline (Joint Request), seeking a 45-day extension of the comment (and reply) dates for both the *NPRM* and the *FNPRM*.² The Joint Requestors argue that “questions posed in [the *FNPRM* and] the *NPRM* have implications for the long-term interests of the mobile, satellite,

¹ See *Expanding Flexible Use of the 12.2-12.7 GHz Band; Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, WT Docket No. 20-443, GN Docket No. 22-352, FCC 23-36, Report and Order and Further Notice of Proposed Rulemaking and Notice of Proposed Rulemaking and Order, 2023 WL 3686032 (May 19, 2023) (FCC 23-36). The *FNPRM* and the *NPRM* were subsequently published separately in the Federal Register. See *Expanding Flexible Use of the 12.2-12.7 GHz Band*, 88 Fed. Reg. 43502 (July 10, 2023) (*FNPRM*); *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, 88 Fed. Reg. 43938 (July 10, 2023) (*NPRM*).

² Joint Request for Extension of Comment Deadline of the Satellite Industry Association (SIA), together with Eutelsat S.A., Hispasat, S.A, Intelsat License LLC, Ovzon LLC, SES Americom, Inc., Space Exploration Technologies Corp., and WorldVu Satellites Limited, WT Docket No. 20-443, GN Docket No. 22-352 (filed Aug. 4, 2023) (Joint Request). SIA Executive Members include: Amazon; The Boeing Company; DIRECTV; EchoStar Corporation; HawkEye 360; Intelsat S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; Ligado Networks; Lockheed Martin Corporation; Northrop Grumman; OneWeb; Planet Labs PBC; SES Americom, Inc.; Spire Global Inc.; and Viasat Inc. SIA Associate Members include: ABS US Corp.; The Aerospace Corporation; Artel, LLC; AST Space Mobile; Astranis Space Technologies Corp.; Aurora Insight; Blue Origin; Comtech; Eutelsat America Corp.; ExoAnalytic Solutions; Hughes; Inmarsat, Inc.; Kymeta Corporation; Leonardo; Lynk; Omnispace; OneWeb Technologies; Ovzon; Panasonic Avionics Corporation; Telesat Canada; ULA and XTAR, LLC. *Id.* at 1, n.1.

broadcasting, and unlicensed industries, and therefore they require significant and thoughtful analysis that merits providing additional time for comments and reply comments.”³ Furthermore, they argue “[a]dditional time would benefit satellite operators in particular, who face another comment deadline only two days before [the FNPRM’s and] the NPRM’s deadline in a major spectrum-sharing proceeding that also requires significant attention and lengthy analysis.”⁴ They assert that good cause exists to grant the instant extension request because the FNPRM and the NPRM involve complex technical questions and policy issues with the potential to impact “a diverse set of terrestrial (licensed and possibly unlicensed) and satellite communications systems,” and that “[a]n extension of time will allow interested parties and their experts the opportunity to better analyze the questions posed in [the FNPRM and] the NPRM, fostering a collaborative spectrum approach and allowing them to prepare more thorough responses.”⁵

3. With this order, the Wireless Telecommunications Bureau denies the Joint Request. As set forth in section 1.46 of the Commission’s rules, extensions of time shall not be routinely granted.⁶ Moreover, Commission rulemaking proceedings often have implications for the long-term interests of multiple interested industries. We therefore find nothing sufficiently unique or unusual that would warrant significant extensions of the comment deadlines in this instance.⁷ We are similarly unpersuaded based on the record before us that extensions of the reply comment deadlines—set for 30 days after the initial comment deadline—are warranted. Finally, we note that although the FNPRM and the NPRM were released on May 19, 2023, and were thus publicly available for almost three months prior to the deadline for initial comments, the Joint Request was filed just days before that deadline, without any explanation about why it was not filed sooner. Because the Joint Request was filed less than 7 days before the August 9, 2023, deadline for filing comments,⁸ and because we find no justification for extending that deadline, we decline to do so. The deadline for filing initial comments in response to the FNPRM and the NPRM remains August 9, 2023.⁹

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.131, 0.331, and 1.46 of the Commission’s rules, 47 CFR §§ 0.131, 0.331, and 1.46, the Joint Request for Extension of Comment Deadline filed by the Satellite Industry Association, together with Eutelsat S.A., Hispasat, S.A, Intelsat License LLC, Ovzon

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.* (quoting FCC 23-36 at para. 1).

⁶ 47 CFR § 1.46(a). We also note that the Joint Request was untimely filed less than 7 days prior to the August 9, 2023, comment filing deadlines. See 47 CFR § 1.46(b) (Motions for extension of time in which to file . . . comments filed in response to notice of proposed rulemaking . . . shall be filed at least 7 days before the filing date.).

⁷ *Accord Shortwave Modernization Coalition Petition for Rulemaking to Amend the Commission’s Rules to Allow Fixed, Long-Distance, Non-Voice Communications Above 2 MHz and Below 25 MHz*, Order, 2023 WL 4930836, at *1, para.3 & n.16 (WTB July 31, 2023) (citing 47 CFR § 1.46(a)); *Amendment of Rules Governing Ultra-Wideband Devices and Systems*, RM-11844, Order Denying Extension of Time to File Comments and Reply Comments, 34 FCC Rcd 7176, 7177 at para. 3 (OET 2019).

⁸ 47 CFR § 1.46(b).

⁹ See *supra* note 6. Under 47 CFR § 1.46(b), comments need not be filed until 2 business days after the denial of a timely motion for extension of time.

LLC, SES Americom, Inc., Space Exploration Technologies Corp., and WorldVu Satellites Limited, on August 4, 2023, **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications 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 23-672

Released: August 9, 2023

COMMENT DATES FOR PROPOSED REVISIONS TO PROVIDERS' ANNUAL REPORTING AND CERTIFICATION REQUIREMENTS

WC Docket Nos. 23-62, 12-375

Comments Due: September 8, 2023

Reply Comments Due: September 25, 2023

By this Public Notice, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau (collectively, the Bureaus) announce the comment and reply comment dates for the Public Notice on the Proposed Revisions to Providers' Annual Reporting and Certification Requirements.

The Bureaus released a Public Notice on August 3, 2023 seeking comment on proposed revisions to the instructions and templates for the Annual Reports and Annual Certifications that the Commission requires certain providers of incarcerated people's communications services (IPCS) to submit.¹ In issuing the Public Notice, the Bureaus propose changes to reflect expanded reporting requirements regarding access to IPCS by persons with communication disabilities,² and the addition of video IPCS data necessary to help implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022.³

The *Public Notice* requires that comments and reply comments be filed no later than 30 and 45 days after publication in the Federal Register.⁴ On August 9, 2023, the Federal Register published a summary of the *Public Notice* titled "Wireline Competition Bureau and the Office of Economics and Analytics Seek Comment on Proposed Revisions to Providers' Annual Reporting and Certification Requirements."⁵ The August 9, 2023 *Federal Register Notice* establishes **September 8, 2023** as the deadline for comments and **September 25, 2023** as the deadline for reply comments.⁶

¹ *Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23-62, 12-375, Public Notice, DA 23-656 (WCB/CGB Aug. 3, 2023) (*Public Notice*).

² See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76, Appx. B (Final Rules), at 24-26, paras. 47-52, (Sept. 30, 2022) (*2022 ICS Order*). The ICS communication disabilities access rules adopted in the *2022 ICS Order* did not become effective in time to be reflected in the instructions for the 2023 Annual Reports and Certifications.

³ Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156; 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d).

⁴ *Public Notice* at 1.

⁵ Federal Communications Commission, Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau Seek Comment on Revisions to Providers' Annual Reporting and Certification Requirements, 88 Fed. Reg. 53850 (Aug. 9, 2023) (*Federal Register Notice*).

⁶ *Federal Register Notice* at 53850.

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

For further information, please contact Amy Goodman, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1549 or via e-mail at Amy.Goodman@fcc.gov or Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418-1264 or via email at Michael.Scott@fcc.gov.

-FCC-



Federal Communications Commission
Washington, D.C. 20554

August 9, 2023

DA 23-673

In Reply Refer To:

1800B3-ARR

Released: August 9, 2023

Elijah Radio
c/o Donald Martin, Esq.
P.O. Box 8433
Falls Church, VA 22041
(sent by electronic email to: dempc@prodigy.net)

Central Baptist Church of Ocala Inc.
c/o James E. Price, III, Esq.
P.O. Box 1877
LaFayette, GA 30728
(sent by electronic email to: sterlingjamesp@gmail.com)

Big Bend Heritage Music Association, Inc.
c/o Jason Bennett
7017 South Yale #444
Tulsa, OK 74136
(sent by electronic email to: jason@fmexpansion.com)

Florida Educational Radio, Inc.
c/o Kyle Magrill
2805 NW 6th Street
Gainesville, FL 32609
(sent by electronic email to: kyle@circuitwerkes.com)

Learning Avenue, Inc.
c/o Donald Martin, Esq.
P.O. Box 8433
Falls Church, VA 22041
(sent by electronic email to: dempc@prodigy.net)

D N D Ministries, Inc.
c/o James Hamilton, Esq.
330 Willow Street
Mayo, FL 32066
(sent by electronic mail to: tv23jax@yahoo.com)

In re: **NCE MX Group 59A**

Elijah Radio

New NCE (FM), Live Oak, Florida

Facility ID No. 768185

Application File No. 0000167035

Central Baptist Church of Ocala Inc.

New NCE (FM), West Lake, Florida
Facility ID No. 762509
Application File No. 0000166339

Big Bend Heritage Music Association, Inc.

New NCE (FM), Cross City, Florida
Facility ID No. 767144
Application File No. 0000166684

New NCE (FM), Perry, Florida
Facility ID No. 767149
Application File No. 0000166293

Florida Educational Radio, Inc.

New NCE (FM), Lee, Florida
Facility ID No. 768734
Application File No. 0000167677

Learning Avenue, Inc.

New NCE (FM), Live Oak, Florida
Facility ID No. 767785
Application File No. 0000167472

D N D Ministries, Inc.

New NCE (FM), Mayo, Florida
Facility ID No. 768357
Application File No. 0000167338

Petition to Deny

Dear Applicants and Counsel:

We have before us seven mutually exclusive (MX) applications filed by Big Bend Heritage Music Association, Inc. (BBH), Elijah Radio (ER), Learning Avenue, Inc. (LAI), Florida Educational Radio, Inc. (FER), DND Ministries, Inc. (DND), and Central Baptist Church of Ocala, Inc. (CBCO) for construction permits for new noncommercial educational (NCE) FM stations in different communities in Florida, which the Media Bureau (Bureau) designated as NCE MX Group 59A.¹ In the *Fourth*

¹See *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations*, Public Notice, 36 FCC Rcd 16452 at Attach. A (MB Nov. 29, 2021); see also Application File Nos. 0000167035 (ER Application), 0000166339 (CBCO Application), 0000166684 (BBH-Cross City Application), 0000167677 (FER Application), 0000167472 (LAI Application), 0000166293 (BBH-Perry Application), and 0000167338 (DND Application). Group 59, which originally contained 17 applications, was bifurcated as a result of a technical amendment. The other applications in the MX group were evaluated as Group 59B in previous orders. See *Threshold Fair Distribution Analysis of 13 Groups of Mutually*

Comparative Order,² the Commission identified the CBCO Application as the tentative selectee of NCE MX Group 59A. We also have before us the Petition to Deny the CBCO Application filed by BBH,³ and a related responsive pleading.⁴ For the reasons set forth below, we grant the BBH Petition, rescind our tentative selection of the CBCO Application, and identify the BBH-Cross City Application as the new tentative selectee of NCE MX Group 59A.

Background. The subject applications were filed during the November 2021, NCE FM filing window.⁵ In the *First Comparative Order*, the Commission determined that ER and CBCO had comparable fair distribution of service claims, analyzed the ER and CBCO applications under the point system, and identified ER as the tentative selectee.⁶

On August 29, 2022, CBCO filed an informal objection against the ER Application (CBCO Objection), arguing that ER should have been eliminated under the first tie-breaker analysis because it failed to update its application to reflect four recent grants of its applications for new NCE FM stations from the 2021 NCE Window.⁷ In the *Fourth Comparative Order*, the Commission granted the CBCO Objection, rescinded the tentative selection of the ER Application, and identified CBCO as the new tentative selectee of Group 59A.⁸

BBH subsequently filed its Petition, arguing that CBCO is not entitled to a first NCE service preference because it failed to consider Station WILA(FM), Live Oak, Florida, an existing NCE station that operates on a “permanently reserved channel outside of the reserved band,” and, once WILA is taken into account, the CBCO Application would not provide a first NCE service to at least 2,000 people and 10% of the population within its proposed service area.⁹

In the CBCO Opposition, CBCO argues that section 73.7002 of the Commission’s rules (Rules) only requires applicants to consider reserved channel NCE signals, not allotments reserved for NCE use

Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations, Memorandum Opinion and Order, DA 22-477 (MB May 2, 2022); *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 (June 5, 2023) (*Fourth Comparative Order*).

² *Fourth Comparative Order* at 24-26, paras. 75-79.

³ Pleading File No. 0000217528 (filed Jul. 5, 2023) (BBH Petition).

⁴ CBCO filed an Opposition to the BBH Petition. Pleading File No. 0000217824 (filed Jul. 12, 2023) (CBCO Opposition).

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 *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 10-11, paras. 32-34 (Aug. 2, 2022) (*First Comparative Order*). ER, CBCO, and BBH-Cross City each claimed a first NCE service preference. In the *First Comparative Order*, the Commission eliminated FER, LAI, and BBH-Perry because each did not claim eligibility for a fair distribution preference, eliminated DND because it failed to provide sufficient documentation to support its fair distribution claim, and eliminated BBH-Cross City because ER’s next best proposal would serve at least 5,000 more people.

⁷ See Pleading File No. 0000198584 (filed Aug. 29, 2022) at 1-2. ER amended its application on January 28, 2022, and April 5, 2022, prior to the adoption of the *First Comparative Order*, but neglected to reflect the recent grants.

⁸ *Fourth Comparative Order* at 26-27, paras. 77-79.

⁹ BBH Petition at 2, Decl. of John Jason Bennett, and Fair Distribution Analysis.

outside the reserved band, in first and second NCE service calculations.¹⁰ CBCO, therefore, maintains that because WILA operates outside of the reserved band, it should not be included in its first NCE service calculation.¹¹

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended,¹² 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.¹³

We reject CBCO's argument that WILA should not be counted in its first and second NCE service calculations because the station operates on an allotment outside the reserved band. Section 73.7002 of the Rules specifies that an "applicant that will provide the first or second reserved channel noncommercial educational (NCE) aural signal" is considered superior to a mutually exclusive applicant that does not propose such service.¹⁴ To determine whether an applicant qualifies for a first or second NCE service preference, the Form 2100, Schedule 340 Instructions specify that "applicants must consider all full-service FM *reserved channel authorizations* placing a 60 dBμ contour over areas that the applicant also proposes to cover with a 60 dBμ contour."¹⁵ The *Filing Procedures Public Notice* clarifies that only "AM stations and/or FM stations that voluntarily operate with a noncommercial format on channels *not specifically reserved for that purpose* (i.e., non-reserved channels in the commercial band) are not counted in determining first and second NCE service."¹⁶ WILA, in contrast, operates on Channel 261, Live Oak, Florida, which is specifically reserved for NCE operation.¹⁷ Accordingly, WILA should have been included in CBCO's first NCE service fair distribution calculation.

Based on the corrected study BBH submits, had WILA been considered, CBCO would not provide a first NCE service to at least 2,000 people and 10% of the population in the proposed service area.¹⁸ Accordingly, we grant the BBH Petition, rescind the tentative selection of the CBCO Application,

¹⁰ CBCO Opposition at 1.

¹¹ *Id.*

¹² 47 U.S.C. § 309(d).

¹³ 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).

¹⁴ 47 CFR § 73.7002.

¹⁵ See Form 2100, Schedule 340 Instructions at page 14 (emphasis added).

¹⁶ See *Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window*, Public Notice, 36 FCC Rcd 11458, 11464 (2021) (emphasis added) (*Filing Procedures Public Notice*).

¹⁷ On October 16, 2009, the Bureau announced a filing window for vacant FM allotments exclusively reserved for noncommercial educational use, and identified Channel 261, Live Oak, Florida, as a vacant NCE reserved channel. See *Media Bureau Announces Filing Window for Vacant FM Allotments Reserved for Noncommercial Educational Use*, Public Notice, 24 FCC Rcd 12621 and Attach. A (MB 2009).

¹⁸ BBH Petition at 6-8, Fair Distribution Analysis. An NCE FM applicant is only eligible to receive a fair distribution preference if it would provide a first or second reserved band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station's service area, provided that the population served is at least 2,000 people. See 47 CFR § 73.7002(b).

and conduct a new fair distribution analysis in accordance with the Commission's established comparative procedures.¹⁹

ER, CBCO, and BBH-Cross City each claim eligibility for a first NCE service fair distribution preference.²⁰ FER, LAI, and BBH-Perry do not. Although DND certifies that it is eligible for a first NCE service fair distribution preference, it failed to provide sufficient documentation to support its claim.²¹ Accordingly, DND, FER, LAI, and BBH-Perry are each eliminated.

BBH-Cross City claims to provide new first NCE service to 2,131 people, 17% of the population, and ER to 6,656 people, 13% of the population. However, the staff has reviewed the ER Application and determined that it also failed to account for WILA. The staff's independent analysis shows that, when WILA is taken into account, ER would provide new first NCE service to only 2,050 people and 4% of the population. Therefore, ER is not eligible for a first NCE service preference and is eliminated.

Further, while CBCO initially claimed to provide new first NCE service to 7,471 people, based on BBH's corrected figures, CBCO would only provide a first NCE service to 1,164 people and 2.9% of the population, disqualifying it from claiming a first NCE service preference. CBCO is therefore also eliminated. Accordingly, BBH-Cross City, the only applicant eligible for a first NCE service preference, is the new tentative selectee for MX Group 59A.²²

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Petition to Deny filed by Big Bend Heritage Music Association, Inc., on July 5, 2023 (Pleading File No. 0000217528), **IS GRANTED**.

IT IS FURTHER ORDERED that the tentative selection of the application of Central Baptist Church of Ocala for a construction permit for a noncommercial educational FM station at West Lake, Florida (Application File No. 0000166339) **IS RESCINDED**.

IT IS FURTHER ORDERED that the application filed by Big Bend Heritage Music Association, Inc. (Application File No. 0000166684) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Cross City, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or

¹⁹ See, e.g., 47 CFR § 73.7002.

²⁰ See Application File Nos. 0000167035, 0000166339, and 0000166684, Fair Distribution of Service Section, and associated exhibits.

²¹ See Application File No. 0000167338, Fair Distribution of Service Section, and associated exhibits. DND's application does not enumerate the population that would receive first and/or second NCE service. Accordingly, we find DND's claim of 307(b) eligibility lacking the basic information that is needed to include and compare the proposal with the others in the group.

²² The naming of a new tentative selectee in this proceeding is a routine action consistent with the Bureau's authority and Commission directives. Specifically, the Bureau has delegated authority to conduct a fair distribution analysis and make section 307(b) determinations. See *Reexamination of Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7397 (2000). Moreover, our decision does not involve new or novel issues or the points awarded to any applicant. See, e.g., *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").

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 Elijah Radio (Application File No. 0000167035), Florida Educational Radio, Inc. (Application File No. 0000167677), Learning Avenue, Inc. (Application File No. 0000167472), DND Ministries, Inc. (Application File No. 0000167338), Big Bend Heritage Music Association, Inc. (Application File No. 0000166293), and Central Baptist Church of Ocala (Application File No. 0000166339), and TO GRANT the application of Big Bend Heritage Music Association, Inc. (Application File No. 0000166684) 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

**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	)	
SES Americom, Inc.	)	
	)	

ORDER

Adopted: August 9, 2023

Released: August 9, 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 (Certification) filed by SES Americom, Inc. (SES)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 SES Americom, Inc., Phase II Certification of Accelerated Relocation, GN Docket Nos. 18-122 and 23-97 (filed July 10, 2023). In the instant Order, the Bureau is only considering the showing made in, and validating, the Phase II Certification of Accelerated Relocation filed by SES. 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 station⁶ 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 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 are 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

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.

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.

removal from the *March 2023 Incumbent Earth Station List Public Notice* 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. SES submitted its Phase II Certification of Accelerated Relocation on July 10, 2023. The Bureau received no Challenges.

8. SES asserts that it has met all the elements required in the *Phase II Certification Procedures and Incremental Reduction PN*.²¹ Specifically, SES certifies that it has repacked all of its C-band downlink transmissions within the contiguous United States (CONUS) and relocated all associated incumbent earth stations throughout CONUS into the upper 200 megahertz of the C-band.²² SES also certifies that it has completed all actions necessary to satisfy the Phase II Accelerated Relocation

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 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. *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 SES Phase II Certification at 1; see *Phase II Certification Procedures and Incremental Reduction PN* at 8–9.

²² SES Phase II Certification at 1. SES provides the caveat that a number of services, including ones from SES's international fleet, will continue to be downlinked into CONUS below 4.0 GHz at the Hawley, PA or Brewster, WA teleports "in accordance with the Commission's rules and the *C-Band R&O*." SES Phase II Certification at 3–4 and nn.1, 7, and 13. In its August 2020 Transition Plan, SES previously identified Brewster, WA and Hawley, PA as the two locations for its future consolidated Telemetry, Tracking, and Command (TT&C) operations in CONUS. SES Americom, Inc., Transition Plan, GN Docket Nos. 18-122 and 20-173 at 1, 18 (filed Aug. 14, 2020). In its Phase I Certification, SES previously reported the completion of grooming and other work at its TT&C sites, a point which it reconfirms in its Phase II Certification. See SES Americom, Inc., Certification, GN Docket Nos. 18-122 and 21-320 (filed Oct. 1, 2021); SES Americom, Inc., Amendment, GN Docket Nos. 18-122 and 21-320 (filed Oct. 26, 2021); SES Phase II Certification at 3–4. While the Bureau reiterates its earlier determination that, pursuant to paragraph 374 of the *3.7 GHz Report and Order*, the locations of these sites are reasonable, we otherwise make no specific findings as to SES's TT&C migration activities or performance. See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Phase I Certification of Accelerated Relocation, SES Americom, Inc., as amended*, GN Docket Nos. 18-122 and 21-320, 36 FCC Rcd 16432, 16436 at n.30 (WTB 2021); *3.7 GHz Report and Order*, 35 FCC Rcd at 2479–80, para. 374.

Deadline by providing passband filters to block signals from 3.7–4.0 GHz to all associated incumbent earth stations in CONUS and making all necessary equipment changes to allow operators of such earth stations “to receive substantially the same service during and after the transition as they were able to receive before the transition.”²³

9. In its Phase II Certification, SES addresses each of the eight criteria set forth in the *Phase II Certification Procedures and Incremental Reduction PN*.²⁴ Specifically, SES claims that, with limited exceptions, it has repacked all of its C-band downlink services in CONUS into the 4.0–4.2 GHz frequency range, including services on both domestic and international satellites.²⁵ SES states that it has launched five new satellites and provides specific operational information in its Phase II Certification.²⁶ As for migrating services to the upper portion of the C-band, SES asserts that Appendix B to its Phase II Certification provides a detailed list of all services that were migrated for its customers, including the pre- and post-transition satellites, transponder, and frequencies for each service, the start and end dates of the transition period for each service and whether migrating the service required a technology upgrade.²⁷ SES maintains that it provided a period of dual illumination to ensure continuous service and quality while its services were migrated from one frequency to another.²⁸ In terms of technology upgrades, SES reports that one customer required video compression/modulation technology upgrades “for the service to continue to be provided at the same quality after the relocation.”²⁹

10. According to SES, Appendix C to its Phase II Certification provides the number and location of each Phase II incumbent earth station, with corresponding antenna and feeds, for which it bears transition responsibility.³⁰ SES claims that it shipped and installed passband filters on every feed identified in Appendix C, except where earth station operators opted to purchase their own equipment, self-install, or presented special circumstances, and that it repointed existing antennas or installed new antennas where necessary.³¹ SES further asserts that its installers performed any additional work needed to ensure the incumbent earth station was “receiving substantially the same service after the service was transitioned.”³²

11. SES also provides in Appendices B and C to its Phase II Certification the dates of completion on which it asserts specific satellite services and incumbent earth stations were transitioned.³³ With respect to outreach efforts, SES notes that it used an outreach vendor to contact each earth station operator and worked with the Relocation Coordinator, other satellite operators, and various industry associations to identify all earth stations for which it bears transition responsibility.³⁴

²³ SES Phase II Certification at 1.

²⁴ *Phase II Certification Procedures and Incremental Reduction PN* at 8–9.

²⁵ SES Phase II Certification at 2; *see supra* n.22.

²⁶ *Id.* at 2–3. We again note that 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, including the Relocation Payment Clearinghouse.

²⁷ SES Phase II Certification at 3–4, Appendix B.

²⁸ *Id.* at 4.

²⁹ *Id.* at 4–5.

³⁰ *Id.* at 5–6, Appendix C.

³¹ *Id.* at 5.

³² *Id.*

³³ *Id.* at 6, Appendices B and C.

³⁴ *Id.* at 6–7.

12. SES asserts that it has identified no variances from its July 2023 Transition Plan but notes that Appendix C to such Transition Plan includes incumbent earth stations it has provisionally claimed which are pending removal from the *March 2023 Incumbent Earth Station List Public Notice*.³⁵ SES also details agreements with two earth station operators which SES argues relieve it of transition responsibilities for thirteen total earth station antennas.³⁶

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 SES on July 10, 2023 is hereby validated,³⁷ with the following condition: if after the disbursement of the ARP, the Bureau subsequently finds that SES should have transitioned additional earth stations, antennas, or feeds regardless of whether or not they were accounted for in its Transition Plan and Certification, SES 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.³⁸

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.

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 SES must complete all Phase II transition work for any earth stations, antennas, or feeds later determined to be associated with SES, regardless of whether they were accounted for in its Transition Plan and Certification, in a prompt and effective manner.

³⁵ *Id.* at 8 (acknowledging that SES remains responsible for any remedial transition work for any claimed earth stations that are not removed from the Incumbent Earth Station List and pledging to take commercially reasonable efforts to promptly complete the work necessary to resolve any issues associated with such earth stations).

³⁶ *Id.*

³⁷ While the Bureau validates SES'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.

³⁸ *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.

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	)	
	)	
Westel, Inc.	)	File No.: EB-IHD-22-00033166
	)	NAL/Acct. No.: 202332080033
	)	FRN: 0004359444

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: July 18, 2023

Released: July 20, 2023

By the Commission:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	3
A. Legal Framework	3
1. Annual and Quarterly Worksheet Filing Requirements	4
2. LOI Response Requirements	9
B. Factual Background	10
III. DISCUSSION	16
A. Westel Apparently Violated Commission Rules and Orders by Failing to File Annual and Quarterly Worksheets by the Filing Deadlines	16
B. Westel Apparently Violated a Commission Order by Failing to Respond to a Bureau LOI Fully and by the Response Deadline	18
IV. PROPOSED FORFEITURE	21
A. Proposed Forfeiture for Apparent Failures to File Worksheets	24
B. Proposed Forfeiture for Apparent Failure to Respond Fully to a Bureau LOI	31
C. Total Proposed Forfeiture	34
V. CONCLUSION	35
VI. ORDERING CLAUSES	36

I. INTRODUCTION

1. We propose in this Notice of Apparent Liability for Forfeiture (NAL) a forfeiture penalty of \$400,000 against Westel, Inc. (Westel or Company) for apparently willful and repeated violations stemming from its failures to file Annual and Quarterly Telecommunications Reporting Worksheets (Worksheets), as well as an apparently willful violation of a Commission order for its failure to respond fully to an Enforcement Bureau (Bureau) Letter of Inquiry (LOI) regarding compliance with filing and contribution requirements under the Communications Act of 1934, as amended (Act), and the Federal Communications Commission's (FCC or Commission) rules. Since February 1, 2020, Westel failed repeatedly to file or to file on time a total of 14 Worksheets between February 1, 2020 and May 1, 2023. We therefore propose in this NAL a penalty of \$400,000 for Westel's apparently willful and repeated violations in failing to file Annual and Quarterly Worksheets and a willful violation for failing to respond to the Bureau's LOI fully by the response deadline, in apparent violation of 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 to file Worksheets and to respond to the Bureau's LOI.¹

2. Under the rules and orders of the Commission, telecommunications service providers and certain telecommunications providers (collectively, service providers) are required to file Worksheets with the Universal Service Administrative Company (USAC). These filing requirements further important regulatory programs implemented by the Commission pursuant to the Act. USAC and the administrators of the Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), and the North American Numbering Plan (NANP) rely on information filed in the Worksheets to determine, as prescribed in Commission rules, each service provider's equitable and accurate contributions responsibilities for the Universal Service Fund (USF) and these other federal funding mechanisms, consistent with the Act and our rules. Likewise, the Commission relies on the information filed in Worksheets to assess equitable and accurate federal regulatory fees owed by each service provider. The failure to file timely, complete, and accurate Worksheets undermines the Commission's efforts to maintain the USF and these other federal cost recovery programs arising under the Act. The equitable administration of each of these federal payment requirements depends on the timely filing of Worksheets.

II. BACKGROUND

A. Legal Framework

3. The Act codifies Congress's historical commitment to promoting universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."² 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.³ The Commission also requires certain providers of interstate telecommunications to contribute to the USF.⁴ Pursuant to the Act, the Commission has likewise established cost recovery rules for the TRS Fund, LNP and NANP administration, and federal regulatory

¹ 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *Wireline Competition Bureau Releases the 2023 Telecommunications Reporting Worksheets and Accompanying Instructions*, WC Docket No. 06-12, Public Notice, DA 22-1094, 2022 WL 10379829, at *10 (WCB Oct. 14, 2022) (*2023 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 36 FCC Rcd 14176, 14200 (WCB 2021) (*2022 Annual Worksheet Instructions*); Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Ellen Garner Chief Executive Officer, and Tom Garner, Chairman, Westel Inc. (Feb. 7, 2022) (regarding compliance with 47 U.S.C. §§ 159(a), 222, 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157, 1.7001, 1.8002, 52.17, 52.32, 54.706, 54.711, 54.712, 54.713, 64.604, 64.2009(e), and 64.2115) (on file in EB-IHD-22-00033166) (LOI).

² 47 U.S.C. § 254(d).

³ 47 CFR § 54.706(b). *See also* 47 CFR § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms."). According to its 2022 Annual Worksheet filing, Westel provides interexchange services, and is therefore subject to the Worksheet filing and contribution requirements established under the FCC's rules. *See* Federal Communications Commission, *FCC Form 499 Filer Database Detailed Information*, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=808840> (last visited July 7, 2023); 47 CFR § 54.706(a) (indicating that providing access to interexchange service is considered interstate telecommunications).

⁴ *See* 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); 47 CFR § 54.706(a).

fees,⁵ and requires service providers to file Annual and Quarterly Worksheets.⁶ The Commission is authorized to issue LOIs to investigate service providers' compliance with these and other requirements implemented under the Act.⁷

1. Annual and Quarterly Worksheet Filing Requirements

4. 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,⁸ and file quarterly an FCC Form 499-Q, also known as the Quarterly Worksheet.⁹ 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.¹⁰ The monthly USF contributions that were invoiced based on projected revenues reported in a service provider's Quarterly Worksheets are then subject to an annual true-up based on actual revenues reported in the service provider's Annual Worksheet.¹¹ A service provider must timely file Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year, and Annual Worksheets by April 1 of each year.¹² The Commission's rules require that service providers report accurate information in the Annual Worksheets.¹³ The Commission's rules also explicitly warn service providers that the failure to file timely and accurate Worksheets or submit timely USF payments potentially subjects them to enforcement action.¹⁴

⁵ See 47 U.S.C. §§ 225(b)(1); 251(e)(2); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 52.32(a), 64.604(c)(5)(iii)(A).

⁶ See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

⁷ See, e.g., 47 U.S.C. § 403.

⁸ 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's Registration System (CORES) and obtaining a Filer ID from USAC's E-File system. See, e.g., *2022 Annual Worksheet Instructions*, *supra* note 1, at 14191.

⁹ See 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

¹⁰ E.g., *2022 Annual Worksheet Instructions*, *supra* note 1, at 14236.

¹¹ See *Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001) (*2001 USF Order*); 47 CFR § 54.711. In other words, if a service provider's revenues reported in an Annual Worksheet exceed revenues projected in Quarterly Worksheets, USAC will invoice additional USF assessments so that the service provider will fully pay the USF assessments required for the year under the Commission's rules and orders. See *2001 USF Order*, 16 FCC Rcd at 5752-53, para. 12. Conversely, if a service provider's revenues reported in an Annual Worksheet are lower than revenues projected in Quarterly Worksheets, USAC will issue credits so that the service provider will not pay more than the USF assessments required for the year. See *id.* at 5752-53, para. 12.

¹² See, e.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200.

¹³ 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." See, 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*, *supra* note 1, at 14200-01, 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.

¹⁴ 47 CFR § 54.713.

5. 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.”¹⁵ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.¹⁶ The Commission implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.¹⁷ 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.¹⁸ Pursuant to section 64.604(c)(5)(iii)(A) of the Commission’s rules, certain service providers¹⁹ must contribute to the TRS Fund based on their end-user revenues.²⁰ 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.²¹

6. 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.²² Section 251(e)(2) of the Act requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”²³ In carrying out these statutory directives, the Commission adopted sections 52.17 and 52.32 of the Commission’s rules.²⁴ Under the Commission’s rules, service providers²⁵ must contribute to the costs of numbering administration and

¹⁵ 47 U.S.C. § 225(b)(1).

¹⁶ See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301 para. 7 (1993).

¹⁷ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143-45 paras. 5-9 (2000).

¹⁸ *Id.*

¹⁹ 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).

²⁰ *Id.* Under the Commission’s rules, service providers must contribute at least \$25 per year, and service providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, service providers are permitted to divide their contributions into 12 equal monthly payments. *Id.* § 64.604(c)(5)(iii)(B).

²¹ *Id.* Rolka Loube replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. See *Interstate Telecommunications Relay Service (TRS) Fund Administrator Transition*, Public Notice, 26 FCC Rcd 8436 (2011).

²² 47 U.S.C. § 251(e)(1).

²³ *Id.* § 251(e)(2). “Number Portability” means “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” *Id.* § 153(37). The inability of customers to retain their telephone numbers when changing local service providers would hamper the development of local competition. *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702, para. 3 (1998), *aff’d*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002).

²⁴ 47 CFR §§ 52.17, 52.32.

²⁵ All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration and LNP. See *id.* §§ 52.17, 52.32; see also *id.* § 52.5(i)-(j)

(continued....)

LNP on the basis of their end-user telecommunications revenues.²⁶ The NANP administrator's billing and collection agent, Welch LLP (Welch),²⁷ and the LNP administrator, iconectiv, LLC (iconectiv),²⁸ respectively use Annual Worksheet filings to determine service providers' required payments for NANP and LNP administration.²⁹

7. The Act directs the Commission to "assess and collect regulatory fees to recover the costs of carrying out" the functions of the Commission,³⁰ including "enforcement activities, policy and rulemaking activities, user information services, and international activities."³¹ Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.³² Service providers³³ must pay regulatory fees annually based on interstate and international end-user revenues as reported in Annual Worksheets.³⁴

8. 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, and federal regulatory fees, the accuracy, completeness, and timeliness of Worksheet filings are vital. When a service provider fails to file Worksheets by each filing deadline, the service provider could prevent administrators from fully invoicing the service provider for its USF, TRS Fund, LNP, NANP, and federal regulatory fee payment obligations.³⁵ A contributor's failure to comply with the Worksheet filing

(Continued from previous page) _____
(stating that, for the purpose of the Commission's Part 52 rules, "telecommunications carrier" includes an interconnected VoIP provider).

²⁶ See *id.* § 52.17(a) ("Contributions to support numbering administration shall be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually . . . such contributions to be no less than twenty-five dollars (\$25)."); *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.).

²⁷ In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. New Release, Fed. Comm'n's 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 22, 2023); Ottawa Business Journal, *Welch LLP celebrates 100th anniversary in Ottawa* (Feb. 8, 2018), <https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa>.

²⁸ See *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, Order, 31 FCC Rcd 8406 (2016) (approving the recommendation of the North American Numbering Council (NANC) that iconectiv serve as the next LNP administrator).

²⁹ 47 CFR §§ 52.17(b), 52.32(b).

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

³¹ 2022 *Annual Worksheet Instructions*, *supra* note 1, at 14192.

³² See 47 CFR §§ 1.1152–1.1156, 1.1157(b) (addressing federal regulatory fee requirements for wireless radio, mass media, common carrier, cable television, and international service providers).

³³ 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 22, 2023).

³⁴ See 47 CFR § 1.1154.

requirements can impede the very purpose for which Congress enacted section 254(d)—to ensure that every required contributor to the USF “contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”³⁶ The effects on the administration of TRS, LNP, NANP, and on the Commission’s assessment of federal regulatory fees are similar. Indeed, a service provider that fails to comply with the Worksheet filing requirements can evade its federal obligations to contribute fully toward the vital programs linked to the reporting obligations.³⁷ As a consequence, other service providers carry an unfair burden of funding the USF and the other federal regulatory programs arising under the Act.³⁸ Delinquent service providers obtain an unfair competitive advantage over service providers that comply with the filing provisions of the Commission’s rules, and fully pay USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments required under the Commission’s rules.³⁹

2. LOI Response Requirements

9. Section 403 of the Act grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations.⁴⁰ Section 0.111(a)(17) of the Commission’s rules delegates authority to the Bureau to “conduct investigations . . . on its own initiative” of potential violations of the Act and of the Commission’s rules.⁴¹ An LOI issued to an entity under investigation by the Bureau constitutes a Commission order, and a failure to respond to a Bureau LOI fully and on time constitutes a violation of a Commission order.⁴² This violation can give rise to a forfeiture penalty under section 503 of the Act.⁴³ An investigation target’s failure to provide a complete and timely response to an LOI threatens to compromise the Commission’s ability to adequately investigate violations of the Act and the Commission’s rules.⁴⁴ Given the critical importance of LOIs to

(Continued from previous page)

³⁵ See *id.* § 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *Telseven NAL*, *supra* note 8, at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, *supra* note 8, at 1636, para. 20; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241-42, para. 24 (2008) (*Telrite NAL*), *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

³⁶ 47 U.S.C. § 254(d).

³⁷ See, e.g., *Telseven NAL*, *supra* note 8, 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*), Order of Forfeiture, 23 FCC Rcd 8952 (2008).

³⁸ See *Telseven NAL*, *supra* note 8, at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

³⁹ See *Telseven NAL*, *supra* note 8, at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

⁴⁰ 47 U.S.C. § 403 (“The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter.”); see also LOI, *supra* note 1, at 2 (citing 47 U.S.C. §§ 154(i), 154(j), 403).

⁴¹ 47 CFR § 0.111(a)(17). In addition, section 4(i) of the Act authorizes the Commission to “issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.” See 47 U.S.C. § 154(i).

⁴² See, e.g., 47 U.S.C. § 155(c)(3); *Aura Holdings of Wis., Inc.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 3688, 3696, para. 21 (2018), Forfeiture Order, 34 FCC Rcd 2540 (2019).

⁴³ 47 U.S.C. § 503(b)(1)(B) (any person who is found, in accordance with procedures set forth in section 503, to have willfully or repeatedly failed to comply with provisions of the Act or “any rule, regulation, or order issued by the Commission” shall be liable for a forfeiture penalty).

the Commission's investigatory and regulatory functions, it is imperative that investigation targets respond fully and on a timely basis. An incomplete or untimely LOI response results in the Commission wasting limited resources and time pursuing information that the Commission needs to complete its investigation.

B. Factual Background

10. Westel is incorporated and headquartered in Texas.⁴⁵ In 1981, the Commission approved the Company's application for authority to operate as a resale common carrier and to resell communication services and facilities of other common carriers on an interstate basis under section 214 of the Act.⁴⁶ Westel is an interexchange carrier that currently provides Voice over Internet Protocol (VoIP) over broadband connection, resold VoIP, resold long distance and toll-free service, resold unified communication services including voice mail and video.⁴⁷

11. Westel filed its first Annual Worksheet in 2002.⁴⁸ Generally, between April of 2002 and November of 2009, Westel's Annual and Quarterly Worksheet filings were not substantially late.⁴⁹ Beginning in February of 2010, however, Westel began missing filing deadlines, and in February 2011, the Company began not filing certain Worksheets at all.⁵⁰ More recently, between February 1, 2020, and May 1, 2023, Westel failed repeatedly to file or to file on time a total of 14 Worksheets.⁵¹ *First*, on February 28, 2020, Westel filed the February 2020 Quarterly Worksheet nearly one month late.⁵² *Second*, Westel failed to file the 2020 Annual Worksheet.⁵³ *Third*, Westel failed to file the May 2020 Quarterly Worksheet.⁵⁴ *Fourth*, on August 31, 2020, Westel filed the August 2020 Quarterly Worksheet nearly one

(Continued from previous page) _____

⁴⁴ See *Neon Phone Serv., Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7964, 7974, para. 24 (2017) (*Neon Phone NAL*).

⁴⁵ Westel was incorporated on August 18, 1981. See Response to Letter of Inquiry, from Jason Danowsky, FosterDanowsky, LLP, Counsel to Westel, Inc., to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau at 6, Responses to Question 13-15 (May 9, 2022) (on file in EB-IHD-22-00033166) (LOI Response).

⁴⁶ See *id.* at 5, Response to Question 8.

⁴⁷ *Id.* at 6, Responses to Questions 13. Westel currently offers services in Arizona, Texas, Oklahoma, Kansas, and Missouri. *Id.* at 7, Response to Question 15.

⁴⁸ See Letter from Elfren Castro, Sr. Manager of Contributor Operations, Universal Service Administrative Company, to Jeffrey Brown, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau, at 1 July 10, 2023) (on file in EB-IHD-22-00033166) (USAC Letter).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² The Company filed a revised February 2020 Quarterly Worksheet after USAC created an estimated Worksheet. *Id.*

⁵³ USAC Letter, *supra* note 48, at 1. On May 8, 2022, Westel claimed it was preparing a 2020 Annual Worksheet, see LOI Response, *supra* note 45, at 7, Response to Question 16, but the Company has still not filed the Worksheet.

⁵⁴ Westel attempted to file the May 2020 Quarterly Worksheet after the May 1, 2020 deadline, but USAC rejected the filing because Westel did not file a completed Worksheet within the 45-day filing window for filing revisions to Quarterly Worksheets or late Quarterly Worksheets. See Wireline Competition Bureau Releases the 2020 Telecommunications Reporting Worksheets and Accompanying Instructions, Public Notice, 35 FCC Rcd 1350, 1426 (WCB 2020) (2020 Annual Worksheet Instructions); Universal Service Administrative Company, *When to File*, <https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/> (last visited June 22, 2023); USAC Letter, *supra* note 48, at 1.

month late.⁵⁵ *Fifth*, on December 15, 2020, Westel filed the November 2020 Quarterly Worksheet over six weeks late.⁵⁶ *Sixth*, Westel failed to file the February 2021 Quarterly Worksheet.⁵⁷ *Seventh*, on March 31, 2022, Westel filed the 2021 Annual Worksheet nearly one year late.⁵⁸ *Eighth*, Westel failed to file the May 2021 Quarterly Worksheet.⁵⁹ *Ninth*, the Company failed to file the August 2021 Quarterly Worksheet.⁶⁰ *Tenth*, the Company failed to file the November 2021 Quarterly Worksheet.⁶¹ *Eleventh*, on March 18, 2022, Westel filed its February 2022 Quarterly Worksheet nearly seven weeks late.⁶² *Twelfth*, on September 15, 2022, Westel filed its August 2022 Quarterly Worksheet nearly seven weeks late.⁶³ *Thirteenth*, The Company failed to file its 2023 Annual Worksheet.⁶⁴ *Fourteenth*, Westel failed to file its May 2023 Quarterly Worksheet.⁶⁵

12. Although USAC repeatedly contacted Westel to prompt the Company's compliance with the Commission's Worksheet filing requirements, the Company nonetheless has repeatedly failed to comply.⁶⁶ Thus, on September 13, 2021, USAC referred this matter to the Bureau for investigation of Westel's repeated failures to file Worksheets or file Worksheets on time.⁶⁷

⁵⁵ The Company filed a revised August 2020 Quarterly Worksheet after USAC created an estimated Worksheet. USAC Letter, *supra* note 48, at 1.

⁵⁶ The Company filed a revised November 2020 Quarterly Worksheet after USAC created an estimated Worksheet. *Id.*

⁵⁷ *Id.*

⁵⁸ The Company filed a revised 2021 Annual Worksheet after USAC created an estimated Worksheet. *Id.*

⁵⁹ *Id.*

⁶⁰ USAC Letter, *supra* note 48, at 1.

⁶¹ On April 21, 2022, Westel attempted to file the November 2021 Quarterly Worksheet nearly six months late, but USAC rejected the filing because Westel did not file a completed Worksheet within the 45-day filing window for filing revisions to Quarterly Worksheets or late Quarterly Worksheets. *See id.*; Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions, Public Notice, 35 FCC Rcd 13671, 13743 (WCB 2020) (2021 Annual Worksheet Instructions).

⁶² The Company filed a revised February 2022 Quarterly Worksheet after USAC created an estimated Worksheet. USAC Letter, *supra* note 48, at 1.

⁶³ The Company filed a revised August 2022 Quarterly Worksheet after USAC created an estimated Worksheet. *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* The Company admits it failed to file the following Worksheets by the filing deadlines between February 2020 and February 2022: (1) February 1, 2020; (2) April 1, 2020; (3) May 1, 2020; (4) February 1, 2021; (5) April 1, 2021; (6) May 1, 2021; (7) August 1, 2021; (8) November 1, 2021; (9) February 1, 2022. LOI Response, *supra* note 45, at 7, Responses to Questions 16-17. The Company responded to the LOI on May 9, 2022, and subsequently failed to file or file timely the Worksheets due on August 1, 2022, April 1, and May 1, 2023.

⁶⁶ For example, on November 20, 2020, USAC contacted Westel regarding the November 2020 Quarterly Worksheet. On April 20, 2021, USAC contacted Westel regarding the 2021 Annual Worksheet. On August 6, 2021, USAC contacted Westel regarding the August 2021 Quarterly Worksheet. On November 10, 2021, USAC contacted Westel regarding the November 2021 Quarterly Worksheet. On February 17 and March 17, 2022, USAC contacted Westel regarding the February 2022 Quarterly Worksheet. On April 5, 2022, USAC contacted Westel regarding the Company's 2022 Annual Worksheet. On April 21, 2022, USAC contacted Westel regarding the February 2022 Quarterly Worksheet. USAC Letter, *supra* note 48, at 1-2.

⁶⁷ *Id.* at 2.

13. On February 7, 2022, the Bureau issued an LOI to Westel concerning the Company's compliance with requirements arising under the Act and the Commission's rules.⁶⁸ The Company partially responded to the Bureau's LOI on May 9, 2022.⁶⁹ Westel failed to respond to the Bureau document requests for certain financial data, including (a) the Company's three most recent federal income tax filings, and (b) financial statements for the three most recent years.⁷⁰ The Company has still not produced the required documentation to the Bureau.

14. In its LOI Response, Westel "acknowledges that the violations were continuous over a period of time," but in reference to the upward forfeiture adjustment factors in section 1.80(b)(10) of the Commission's rules,⁷¹ the Company claims: (a) the violations were not egregious; (b) the Company's ability to pay a forfeiture is limited; (c) the violations were not intentional; (d) Westel did not cause substantial harm; (e) there were no prior violations of FCC requirements; and (f) Westel did not obtain substantial economic gain through its rule violations.⁷² Westel admits that its violations were repeated.⁷³ Westel further claimed that its violations were corrected and the Company was developing procedures to ensure future compliance.⁷⁴

15. In reference to the downward forfeiture adjustment factors in section 1.80(b)(10) of the Commission's rules, the Company claims: (a) the violations were minor because they were not intentional, its consumers were not harmed, and the violations were not due to misrepresentation or dishonesty; (b) Westel has cooperated with the Commission's investigation; (c) the Company has a history of overall compliance; and (d) Westel will not be able to survive a substantial forfeiture.⁷⁵ Based on these claims, Westel requests the Commission not issue a forfeiture.⁷⁶ For the reasons discussed below, Westel's arguments provide no basis to refrain from proposing or reducing a forfeiture in this case.

III. DISCUSSION

A. Westel Apparently Violated Commission Rules and Orders by Failing to File Annual and Quarterly Worksheets by the Filing Deadlines

16. Based on evidence developed through the Bureau's investigation, the Company 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 failing to file or to file on time the Company's Worksheets due between February 1, 2020, and May 1, 2023.⁷⁷ Service providers,

⁶⁸ See LOI, *supra* note 1.

⁶⁹ See LOI Response, *supra* note 45. On March 9, 2022, Bureau staff granted Westel's request for an extension until May 9, 2022 to respond to the LOI, and Bureau staff and Westel entered into an agreement to toll the applicable statutes of limitation for 90 days. See Tolling Agreement executed by Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, and Tom Garner, Director, Westel, Inc. (Mar. 9, 2022) (Tolling Agreement) (on file in EB-IHD-22-00033166).

⁷⁰ See LOI Response, *supra* note 45, at 18, Responses to Document Requests 56-57 ("Westel will provide these documents in a supplemental response."). Westel was required to respond fully to the LOI by the response deadline, and the Company cannot grant itself an extension of time to respond.

⁷¹ 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

⁷² LOI Response, *supra* note 45, at 1-2.

⁷³ *Id.* at 2.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 3.

including interexchange carriers like Westel, must file Annual Worksheets by April 1 of each year, and Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year.⁷⁸

17. We consider each individual failure to file a Worksheet by the filing deadline a separate apparent violation of 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.⁷⁹ We find that the Company 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 14 separate times by failing to file or to file on time Worksheets, which were due by the following deadlines: February 1, April 1, May 1, August 1, and November 1, 2020; February 1, April 1, May 1, August 1, and November 1, 2021; and February 1, August 1, 2022; April 1, and May 1, 2023.⁸⁰

B. Westel Apparently Violated a Commission Order by Failing to Respond to a Bureau LOI Fully and by the Response Deadline

18. Section 403 of the Act gives the Commission broad power to compel service providers such as Westel to provide information and documents as directed by a Bureau LOI.⁸¹ The Commission has delegated to the Bureau authority to "conduct investigations . . . on its own initiative" of potential violations of the Act or the Commission's rules.⁸² When an entity subject to Commission jurisdiction fails to respond to a Bureau LOI, the entity violates a Commission order.⁸³

19. The Bureau directed Westel to provide information and documents related to the Company's compliance with the Act and Commission rules establishing filing and contributions requirements.⁸⁴ Westel did not respond to the Bureau's LOI fully. Westel failed to respond to the Bureau's document requests for (a) the Company's three most recent federal income tax filings, and (b) financial statements for the three most recent years. In its May 9, 2022 response to the LOI, Westel stated that it would provide the documents in a later response.⁸⁵ However, Westel was required to respond fully to the LOI by the response deadline, the Company cannot grant itself an additional extension of time to respond, and Westel has still not produced the documentation.

(Continued from previous page)

⁷⁷ See, e.g., 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200; *2021 Annual Worksheet Instructions*, *supra* note 61, at 13693; *2020 Annual Worksheet Instructions*, *supra* note 54, at 1363.

⁷⁸ E.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200.

⁷⁹ See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200; *2021 Annual Worksheet Instructions*, *supra* note 61, at 13693; *2020 Annual Worksheet Instructions*, *supra* note 54, at 1373; see also *Pacific Data Systems*, Notice of Apparent Liability for Forfeiture, DA 23-68, 2023 WL 1067981, at *4, para. 11 (EB Jan. 25, 2023) (*Pacific NAL*) (stating each individual failure to file a Worksheet by each filing deadline is considered a separate violation); *Telnexus LLC*, Notice of Apparent Liability for Forfeiture, DA 22-227, 2022 WL 74189, *3, para. 11 (EB Mar. 9, 2022) (*Telnexus NAL*).

⁸⁰ See generally USAC Letter, *supra* note 48.

⁸¹ 47 U.S.C. § 403; see also *id.* § 154(i).

⁸² 47 CFR § 0.111(a)(17); see 47 U.S.C. § 155(c)(3) ("Any order . . . or action made or taken pursuant to any [] delegation . . . shall have the same force and effect . . . and [be] enforced in the same manner, as orders . . . of the Commission.").

⁸³ See, e.g., 47 U.S.C. § 155(c)(3); *GPSPS, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2522, 2530, para. 20 (2015), Forfeiture Order, 30 FCC Rcd 7814, 7814, para. 2 (2015).

⁸⁴ See LOI, *supra* note 1.

⁸⁵ See LOI Response, *supra* note 45, at 18, Responses to Document Requests 56-57.

20. The Commission’s authority to conduct investigations and to compel entities to provide information and documents sought during investigations is well-established.⁸⁶ Westel has failed to provide a full response to the LOI. In particular, the Company has not provided responses to Document Requests 56 and 57. We thus find that the Company apparently willfully violated a Commission order by failing to respond fully to the LOI by the response deadline.⁸⁷

IV. PROPOSED FORFEITURE

21. 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.”⁸⁸ 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.⁸⁹ 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,⁹⁰ and the Commission has so interpreted the term in the section 503(b) context.⁹¹ We therefore find that the Company’s failures to file or to file on time a total of 14 Worksheets required between February 1, 2020, and May 1, 2023 were apparently willful and repeated violations. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if “the violation charged occurred more than one year prior to the date of issuance of the required notice or notice of apparent liability.”⁹² In this case, we propose forfeitures for the Company’s apparent violations for failures to (a) file the Worksheets due by August 1, 2022, April 1, 2023, and May 1, 2023, and (b) submit a complete response the Bureau’s LOI by May 9, 2022.⁹³

22. For the apparent violations at issue here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against a service provider such as Westel 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.⁹⁴

⁸⁶ Section 403 of the Act grants the Commission both the authority to institute inquiries and “the power to make and enforce any order or orders” relating to its inquiries into compliance with the Act. 47 U.S.C. § 403. Section 0.111(a)(17) of the Commission’s rules delegates this authority to the Bureau. 47 CFR § 0.111(a)(17) (granting the Enforcement Bureau the authority to “[i]dentify and analyze complaint information, conduct investigations, conduct external audits and collect information, including pursuant to sections 218, 220, 308(b), 403 and 409(e) through (k) of the Communications Act, in connection with complaints, on its own initiative or upon request of another Bureau or Office.”). Additionally, section 4(i) of the Act authorizes the Commission to “issue such orders, not inconsistent with this Act as may be necessary in the execution of its functions.” 47 U.S.C. § 154(i). Section 4(j) of the Act states that “[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.” 47 U.S.C. § 154(j).

⁸⁷ See *infra* para. 21 (“willful” means the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law) (quoting 47 U.S.C. § 312(f)(1)).

⁸⁸ 47 U.S.C. § 503(b)(1)(B).

⁸⁹ 47 U.S.C. § 312(f)(1).

⁹⁰ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

⁹¹ See, e.g., *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

⁹² 47 U.S.C. § 503(b)(6)(B).

⁹³ The statute of limitations for the earliest of these apparent violations, which occurred on May 9, 2022, expires August 7, 2023. See *id.*; Tolling Agreement, *supra* note 69.

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.”⁹⁵ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria to consider when determining the appropriate penalty in any given case.⁹⁶ 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.”⁹⁷

23. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.⁹⁸ 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.⁹⁹ 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.¹⁰⁰

A. Proposed Forfeiture for Apparent Failures to File Worksheets

24. We propose a forfeiture of \$300,000, which includes a \$100,000 forfeiture for each of the three failures to file Worksheets by the deadlines established on (1) August 1, 2022, (2) April 1, 2023, and (3) May 1, 2023. Section 1.80 of the Commission’s rules specifies a base forfeiture of \$3,000 for failure to file required forms or information.¹⁰¹ 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 failure of a service provider to file timely or accurate Worksheets.¹⁰² 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

(Continued from previous page)

⁹⁴ 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); 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).

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

⁹⁶ 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

⁹⁷ 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) (*1997 Forfeiture Guidelines Order*), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁹⁸ *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

⁹⁹ 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”).

¹⁰⁰ 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

¹⁰¹ *Id.*

¹⁰² E.g., *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015) (*PTT Forfeiture Order*); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, 4162, paras. 9, 28 (2011) (*ADMA Forfeiture Order*); *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4720-21, 4727, paras. 26-28, 31, 45 (2006) (*Globcom Forfeiture Order*).

or continuous violations.¹⁰³ An enforcement action for the failure to file timely or accurate Worksheets can include upward adjustments up to the statutory maximum forfeiture authorized under section 503(b) of the Act.¹⁰⁴

25. 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.¹⁰⁵ The Commission, USAC, and the administrators of the TRS Fund, LNP, and NANP rely on the data reported in Worksheets to determine accurate amounts that service providers owe for important funding requirements implemented under the Act.¹⁰⁶ When a service provider fails to report its revenues accurately in its Worksheets by each filing deadline, the service provider could prevent the USF, TRS, LNP and NANP administrators and the Commission from fully invoicing the service provider for federal payment obligations implemented under the Act.¹⁰⁷ Westel's failure to file its Worksheets between February 1, 2020, and May 1, 2023, had serious implications for the administration of these funding requirements. The Commission and the administrators acting on its behalf depend on every service provider's compliance with the periodic Worksheet filing requirements. A service provider's failure to file its Worksheets impedes the Congressional mandate that each service provider contribute on an equitable and nondiscriminatory basis to the USF,¹⁰⁸ and to these other important funding mechanisms arising under the Act. We have also considered the degree of the Company's culpability and repeated violations.¹⁰⁹ The Company has an important obligation to file accurate Worksheets by the filing deadlines every year, and Westel has apparently failed to comply for over three years. Westel's culpability is also substantial given the Company's Worksheet filing failures that occurred after the Company was the subject of an enforcement action for CPNI filing requirements.¹¹⁰ The Company is thus culpable for its repeated filing failures.

26. In the Company's May 9, 2022 LOI Response, the Company incorrectly claimed that its filing violations were not egregious.¹¹¹ After the Bureau issued the February 7, 2022 LOI, Westel filed the August 2022 Quarterly Worksheet approximately seven weeks late, and failed to file the 2023 Annual Worksheet, and the May 2023 Quarterly Worksheet. We find that the Company's 14 filing failures, with three of the failures occurring during the Bureau's investigation, were egregious. Westel also claims the Company's filing violations were not intentional.¹¹² However, as addressed above, we propose forfeitures

¹⁰³ E.g., *Pacific NAL*, *supra* note 79, at *5, para. 15 (providing notice of upward adjustments up to statutory maximum forfeitures for prior violations and for repeated or continuous violations); *PayG, LLC b/b/a Skyswitch*, Notice of Apparent Liability for Forfeiture, FCC 22-69, 2022 WL 4245060, *13, para. 41 (Sept. 14, 2022) (*PayG NAL*) (providing notice of upward adjustments as high as the statutory maximum forfeiture for prior violations and for repeated or continuous violations); see also *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-303, 2022 WL 1000385, at *8, para. 26 (EB Apr. 1, 2022) (*Correct Solutions NAL*) (providing notice of future upward adjustments to \$100,000 or more).

¹⁰⁴ See 47 U.S.C. § 503(b); *Pacific NAL*, *supra*, note 79, at *5, para. 15; *PayG NAL* at *13, para. 41.

¹⁰⁵ See 47 U.S.C. § 503(b)(2)(E).

¹⁰⁶ See 47 CFR §§ 1.1154, 1.1157, 52.17(a), 52.32, 54.711, 64.604(c)(5)(iii).

¹⁰⁷ See *id.* §§ 52.17(b), 52.32(b), 54.711, 64.604(c)(5)(iii)(B); *Telseven NAL*, *supra* note 8, at 6643-44, 6646-48, paras. 15, 23-25; *Telseven Forfeiture Order*, *supra* note 8, at 1636, para. 20; *Telrite NAL*, *supra* note 35, at 7241-42, para. 24.

¹⁰⁸ See 47 U.S.C. § 254(d).

¹⁰⁹ See *id.* § 503(b)(2)(E); 47 CFR § 1.80, Note to Para. (b)(10).

¹¹⁰ See *Annual CPNI Certification*, Omnibus Notice of Apparent Liability For Forfeiture, 24 FCC Rcd 2299, 2305 & Appx. 1 (EB 2009) (*2009 Omnibus CPNI NAL*) (notifying Westel and other companies of apparent liability for forfeiture in the amount of \$20,000 for the willful or repeated failure to comply with CPNI certificate filing requirements), *consent decree adopted*, *Westel, Inc.*, Order, 25 FCC Rcd 12964 (EB 2010).

¹¹¹ LOI Response, *supra* note 45, at 1.

under section 503(b)(1)(B) of the Act for the Company's "willful" and "repeated" failures to comply with the Commission's Worksheet filing requirements.¹¹³ The Commission need not find that Westel intended to violate the Commission's rules and orders in order to propose a forfeiture.¹¹⁴ Westel also claims the Company is unable to pay a forfeiture.¹¹⁵ The Company has provided no evidence to support its inability to pay claim. Westel is free to submit documentation supporting this claim in a response to this NAL.¹¹⁶

27. Westel incorrectly claims that the Company did not cause substantial harm nor obtain substantial economic gain through its rule violations and that the filing violations were minor.¹¹⁷ As addressed above, a service provider that fails to comply with the Commission's Worksheet filing requirements can either entirely avoid or underpay the USF, TRS, LNP, NANP, and federal regulatory fee cost recovery requirements by the payment deadlines. This places an unfair burden on service providers that fully comply with the Commission's filing and payment requirements on a timely basis and allows delinquent service providers to derive an unfair competitive advantage over compliant service providers.¹¹⁸ We therefore reject Westel's claims that its Worksheet filing violations were minor, did not cause substantial harm, and did not provide the Company a substantial economic gain.¹¹⁹

28. Westel also incorrectly claims that it did not previously violate any FCC requirements.¹²⁰ In fact, however, the Commission previously found that Westel violated the Commission's Customer Proprietary Network Information (CPNI) certification filing requirements.¹²¹ Having previously been the subject of Commission enforcement action for compliance with a Commission filing requirement, the Commission expects that Westel would implement effective measures to ensure the Company's future compliance with all its Commission filing obligations, including the Worksheet filing requirements. Although Westel claimed on May 9, 2022, that its filing violations were corrected,¹²² the Company has still not filed its 2020 Annual Worksheet. Westel also stated that it was cooperating with the Commission's investigation,¹²³ yet it failed to respond completely to the Bureau's document requests for certain financial data, including (a) the Company's three most recent federal income tax filings, and (b)

(Continued from previous page) —————

¹¹² *Id.* at 1-2.

¹¹³ 47 U.S.C. § 503(b)(1)(B).

¹¹⁴ *See supra* para. 20.

¹¹⁵ LOI Response, *supra* note 45, at 2.

¹¹⁶ In analyzing financial hardship claims, the Commission has found that "[i]n general, gross revenues are the best indicator of [a company's] ability to pay a forfeiture." *Unipoint Techs., Inc.*, Forfeiture Order, 29 FCC Rcd 1633, 1643, para. 29 (2014).

¹¹⁷ LOI Response, *supra* note 45, at 1-2.

¹¹⁸ *See, e.g., Telseven NAL, supra* note 8, at 6638-39, para. 6; *Globalcom NAL, supra* note 37, at 3484, para. 12; *LPSI NAL, supra* note 37, at 9977-78, para. 9.

¹¹⁹ Given the importance of the Worksheet filing compliance to the USF, TRS, LNP, NANP, and federal regulatory fee cost recovery requirements, the associated unfair advantage gained through Westel's noncompliance, and the resulting disadvantage to Westel's competitors that comply with the filing and payment requirements, we likewise reject Westel's argument that the filing violations were minor because they were unintentional, its customers were not harmed, and the violations were not due to misrepresentation or dishonesty. *See* LOI Response, *supra* note 45, at 2.

¹²⁰ *See id.* at 2.

¹²¹ *See 2009 Omnibus CPNI NAL, supra* note 110.

¹²² *See* LOI Response, *supra* note 45, at 2.

¹²³ *See id.* at 2.

financial statements for the three most recent years.¹²⁴ Westel also claimed that it was developing procedures to ensure future compliance with the Worksheet filing requirements,¹²⁵ yet the Company failed to file the Worksheets due by April 1, 2023 and May 1, 2023. Given Westel's long history of Worksheet and CPNI certification filing failures, we also reject the Company's claim that it has a history of overall compliance.¹²⁶

29. In summary, we reject Westel's arguments to not issue or reduce the proposed forfeiture. 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.¹²⁷ Consistent with Commission precedent,¹²⁸ we apply an upward adjustment for the repeated nature of the Company's violations, including the Company's failures to file timely a total of 14 Worksheets between February 1, 2020, and May 1, 2023.¹²⁹

30. We thus apply an upward adjustment to the base forfeiture that not only reflects the extent and gravity of the violation, and the substantial harm to federal cost recovery requirements by not filing Worksheets,¹³⁰ but also reflects the repeated violations in this case.¹³¹ We thus propose a forfeiture of \$300,000, which represents a \$100,000 forfeiture for each of the three failures to file Worksheets by the deadlines established on August 1, 2022; April 1, 2023; and May 1, 2023.

B. Proposed Forfeiture for Apparent Failure to Respond Fully to a Bureau LOI

31. As noted above, a letter of inquiry is an order of the Commission, and recipients that fail to provide a complete response on a timely basis can be subjected to a forfeiture penalty.¹³² It is imperative that service providers provide timely, accurate, and complete responses to investigative inquiries to demonstrate their full compliance with the requirements of the Act and the Commission's rules. The Company's failure to provide a timely and complete response to the LOI threatens to compromise the Commission's ability to investigate adequately violations of important federal regulatory requirements.¹³³

¹²⁴ See *id.* at 18, Responses to Document Requests 56-57 ("Westel will provide these documents in a supplemental response."). Westel was required to respond fully to the LOI by the response deadline, and the Company failed to do so.

¹²⁵ See *id.* Corrective action taken by an investigation target to come into compliance with Commission requirements is expected, and does not nullify or mitigate a forfeiture penalty. See, e.g., *Hinton Tel. Co.*, 30 FCC Rcd 2308, 2311, para. 10 (2015), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 11614 (2015); *AT&T Wireless Servs., Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21871, para. 14 (2002); *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994).

¹²⁶ See LOI Response, *supra* note 45, at 2.

¹²⁷ 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

¹²⁸ See *Pacific NAL*, *supra* note 79, at *5, paras. 15-17. See also *PayG NAL*, *supra* note 104, at *13, para. 41; *Correct Solutions NAL*, *supra* note 103, at *8, para. 26.

¹²⁹ See USAC Letter, *supra* note 48. Westel admits that its Worksheet filing violations were repeated. See LOI Response, *supra* note 45, at 2.

¹³⁰ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10); *PTT Forfeiture Order*, *supra* note 102, at 14707, para. 19; *ADMA Forfeiture Order*, *supra* note 102, at 4155, 4162, paras. 9, 28; *Globcom Forfeiture Order*, *supra* note 102, at 4720-21, 4727, paras. 26-28, 31, 45.

¹³¹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to para. (b)(10); *Pacific NAL*, *supra* note 79, at *5, para. 15; *PayG NAL*, *supra* note 104, at *13, para. 41; *Correct Solutions NAL*, *supra* note 103, at *8, para. 26.

¹³² See *supra* para. 9.

¹³³ See *Neon Phone NAL*, *supra* note 44, at 7974, para. 24.

32. Section 1.80 of the Commission's rules specifies a base forfeiture of \$4,000 for a party's failure to respond to Commission communications.¹³⁴ We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.¹³⁵ In the past, the Bureau has proposed a \$100,000 forfeiture for the intentional and egregious failure of a company to respond to an LOI.¹³⁶ We find that Westel's failure to respond fully to the LOI in this case was intentional and egregious and therefore propose a forfeiture of \$100,000 for the apparent violation.¹³⁷

33. In assessing a forfeiture amount we consider the nature, extent and gravity of the failure to respond completely to the Bureau's LOI.¹³⁸ Westel's response failures have serious implications on the Commission's ability to investigate the Company and ensure compliance with Commission requirements established under the Act. The Company has an important obligation to respond to a Bureau LOI and is thus highly culpable for its failure to comply. Furthermore, in this instance, the Company requested and received a significant extension of time to respond to the LOI and still did not fully respond. The Company's sustained failure to provide complete responses needlessly increased the difficulty of the Bureau's investigation, hindered the Bureau's efforts to assess the Company's compliance with Commission requirements, and has caused the expenditure of additional Commission resources.

C. Total Proposed Forfeiture

34. Consistent with the Act and the Commission's rules,¹³⁹ 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 four hundred thousand dollars (\$400,000). The total proposed forfeiture includes a proposed forfeiture of (a) three hundred thousand dollars (\$300,000) for the Company's apparently willful and repeated violations resulting from its failures to file three Worksheets; and (b) one hundred thousand dollars (\$100,000) for the Company's apparently willful violation in connection with its failure to respond fully to an LOI by the response deadline.¹⁴⁰

V. CONCLUSION

35. We have determined that Westel 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 failing to file or to file timely its Worksheets between February 1, 2020, and May 1, 2023,¹⁴¹ and a Commission order by failing to respond fully to the Bureau's LOI by the response deadline.¹⁴²

¹³⁴ 47 CFR § 1.80, Tbl. 1 to Para. (b)(10).

¹³⁵ 1997 *Forfeiture Guidelines Order*, *supra* note 97, at 17098–99, para. 22.

¹³⁶ See *Quadrant Holdings, LLC*, Notice of Apparent Liability for Forfeiture, DA 22-825, 2022 WL 3339390, *5, paras. 16-17 (EB Aug. 5, 2022) (“The egregiousness and intentional nature of [the] misconduct, as well as [the company's] ability to pay, considered in conjunction with the deterrent effect of the proposed forfeiture, dictate that [the company] be held liable for an amount significantly higher than the base forfeiture set for the relevant misconduct.”).

¹³⁷ See *id.*

¹³⁸ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

¹³⁹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

¹⁴⁰ 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.

¹⁴¹ See, e.g., 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); 2023 *Annual Worksheet Instructions*, *supra* note 1, at *10; 2022 *Annual Worksheet Instructions*, *supra* note 1, 36 FCC Rcd 14176, 14200.

¹⁴² See LOI, *supra* note 1.

VI. ORDERING CLAUSES

36. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission's rules, 47 CFR § 1.80, Westel, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four hundred thousand dollars (\$400,000) for its willful and repeated violation of sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules, 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), and Commission orders,¹⁴³ and its willful violation of a Commission order to respond to the Bureau's LOI.¹⁴⁴

37. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Westel, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 40 below.

38. In order for Westel, Inc. to pay the proposed forfeiture, Westel, Inc. shall notify Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, David Janas at David.Janas@fcc.gov, and Jeffrey Brown at Jeffrey.Brown@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/core/userLogin.do>. Upon payment, Westel, Inc. shall send electronic notification of payment to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, David Janas at David.Janas@fcc.gov, and Jeffrey Brown at Jeffrey.Brown@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁴⁵

- 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 159¹⁴⁶ or printed CORES form¹⁴⁷ 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).¹⁴⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

¹⁴³ See, e.g., 2023 Annual Worksheet Instructions, *supra* note 1, at *10; 2022 Annual Worksheet Instructions, *supra* note 1, 36 FCC Rcd 14176, 14200.

¹⁴⁴ See LOI, *supra* note 1.

¹⁴⁵ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

¹⁴⁶ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹⁴⁷ 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/core/userLogin.do>.

¹⁴⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

39. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.¹⁴⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

40. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules, 47 CFR §§ 1.16, 1.80(g)(3). The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, David Janas at David.Janas@fcc.gov, and Jeffrey Brown at Jeffrey.Brown@fcc.gov.

41. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.¹⁵⁰ 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

¹⁴⁹ See 47 CFR § 1.1914.

¹⁵⁰ 47 U.S.C. § 503(b)(2)(E).

retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.¹⁵¹

42. **IT IS FURTHER ORDERED** that within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, (a) pursuant to sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules, 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), and Commission orders,¹⁵² Westel, Inc. **SHALL FILE** the Company's 2020 and 2023 Annual Worksheets and any pending 2023 Quarterly Worksheets that were due within 45 days of the release date of this Notice of Apparent Liability for Forfeiture and Order; and (b) pursuant to the Bureau's LOI, **SHALL PRODUCE** a complete response to the Bureau's LOI.¹⁵³

43. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by first class mail and certified mail, return receipt requested, to Tom Garner, Chairman, Westel, Inc., 12015 Park Thirty Five Circle, Suite 1208, Austin, Texas 78753 and Jason Danowsky, Attorney, FosterDanowsky, LLP, 904 West Avenue, Suite 107, Austin, Texas 78701.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁵¹ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678–79, paras. 44–45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

¹⁵² See, e.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at *10; *2022 Annual Worksheet Instructions*, *supra* note 1, 36 FCC Rcd 14176, 14200.

¹⁵³ See LOI, *supra* note 1.

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

In the Matter of	)	
	)	
Schools and Libraries Universal Service Support	)	CC Docket No. 02-6
Mechanism	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National	)	CC Docket No. 97-21
Exchange Carrier Association, Inc.	)	
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: July 20, 2023

Released: July 21, 2023

Comment Date: [45 days after date of publication in the *Federal Register*]

Reply Comment Date: [75 days after date of publication in the *Federal Register*]

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	2
III. DISCUSSION	11
A. Making Tribal College and University Libraries Eligible for E-Rate	12
B. Improving and Simplifying the E-Rate Application Process	18
1. Streamlining E-Rate for Libraries Making Low-Cost Purchases	19
2. Modifying Category Two Rules to Support Tribal Libraries	22
3. Providing Guidance on Cost-Allocation Rules and Procedures	25
C. Improving Communication Between the Commission and Tribal Nations	31
IV. FURTHER NOTICE OF PROPOSED RULEMAKING	40
A. Updating Eligible Services	42
B. Changing or Clarifying the E-Rate Competitive Bidding Requirements	49
C. Streamlining the E-Rate Program Forms	60
D. Validating Discount Rules	68
E. Seeking Information on Other College Libraries Acting as Public Libraries	70
F. Modifying E-Rate Invoice and Disbursement Standards	71
G. Seeking Comment on Program Recoveries	76
H. Updating E-Rate Program Definitions	77
V. PROCEDURAL MATTERS	82
VI. ORDERING CLAUSES	92
APPENDIX A – Final Rules	
APPENDIX B – Proposed Rules	

APPENDIX C – Final Regulatory Flexibility Analysis

APPENDIX D – Initial Regulatory Flexibility Analysis

I. INTRODUCTION

1. The E-Rate program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and Wi-Fi equipment to connect today's students and library patrons with next-generation learning opportunities and services.¹ In January 2022, the Commission began an initiative to increase Tribal libraries' access to E-Rate support, recognizing the valuable role that these entities serve in providing high-speed Internet access to Tribal communities. The Commission first clarified that Tribal libraries are eligible to participate in the program² and later launched a Tribal Library Pilot Program to ensure that Tribal library entities have equitable access to the E-Rate program.³ Building on those efforts, the Commission initiated a rulemaking proceeding in February 2023 to seek comment on additional rule changes to improve Tribal participation in the E-Rate program.⁴ Today, we take steps to further enhance Tribal applicants' access to the E-Rate program through program simplifications and other changes that aim to encourage greater Tribal participation in the program. At the same time, we take steps to simplify the E-Rate processes, where appropriate, for other E-Rate applicants and seek comment on further possible rule changes suggested by commenters in a further notice of proposed rulemaking (*E-Rate FNPRM*).

II. BACKGROUND

2. The E-Rate program was established in 1996 as a universal service support mechanism to ensure the delivery of affordable advanced telecommunications and information services to eligible schools and libraries.⁵ Since its inception, the E-Rate program has provided support for connectivity to and within schools and libraries, and it has been instrumental in providing students and library patrons access to essential advanced telecommunications and broadband services. Eligible schools, libraries, and consortia of eligible schools and libraries, apply for E-Rate support annually during the application filing window that is generally open between mid-January and mid-March, prior to the start of the upcoming funding year.⁶

3. Although the Commission recently resolved one of the limitations on which libraries are eligible for E-Rate support by amending its definition of "library" in section 54.500 of its rules to include a Tribal library,⁷ other eligibility restrictions remain. For example, section 54.501(b)(2) of the Commission's rules requires libraries' budgets to be "completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities)" to be eligible for E-Rate

¹ The E-Rate program is formally known as the schools and libraries universal service support mechanism.

² See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order, 37 FCC Rcd 1458 (2022) (*Tribal Library Order*). We incorporate the record derived from that proceeding into this one.

³ *Tribal Libraries E-Rate Pilot Program* (Oct. 20, 2022), <https://www.fcc.gov/tribal-libraries-e-rate-pilot-program>; Press Release, FCC, FCC Announces Pilot Program to Help Tribal Libraries Sign Up For E-Rate Program (Oct. 20, 2022), <https://www.fcc.gov/document/fcc-announces-pilot-help-tribal-libraries-sign-e-rate>.

⁴ *Schools and Libraries Universal Service Support Mechanism; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Notice of Proposed Rulemaking, FCC 23-10, 2023 WL 2124459 (Feb. 16, 2023) (*Tribal E-Rate NPRM*).

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 et seq.).

⁶ See 47 CFR § 54.507(c)-(d). Each funding year runs from July 1 through the following June 30. See 47 CFR § 54.507(b). Funding year 2023, for example, runs from July 1, 2023 through June 30, 2024. The funding year 2023 application filing window was open from January 18, 2023 to March 28, 2023.

⁷ See *Tribal Library Order*, 37 FCC Rcd at 1460, para. 7; 47 CFR § 54.500 ("A 'library' includes . . . [a] Tribal library.").

support.⁸ This is because when the Commission addressed the eligibility of schools and libraries in 1997, it elected not to include higher education academic libraries out of concern that “institutions of higher learning could assert that their libraries, and thus effectively their entire institutions, were eligible for support,” finding this inconsistent with congressional intent that funding would flow to an institution of learning only if it is an elementary or secondary school.⁹ The Commission also sought to ensure that a school library at an elementary or secondary school could not collect universal service support twice for the same service.¹⁰

4. The E-Rate program’s eligible equipment and services (collectively “eligible services”) are divided into category one and category two services. Category one services provide connectivity to the schools and libraries, while category two services provide connectivity within them.¹¹ For category one services, the Commission did not set a budget; however, for category two services, there is a five-year, pre-discount budget up to which applicants may request funding.¹² In 2019, the Commission set the category two funding floor, or minimum funding level available for smaller schools and libraries, to a pre-discount level of \$25,000, meaning that all applicants could receive funding of at least \$25,000 over a five-year period.¹³ The Commission also set the pre-discount budget multiplier for all libraries at \$4.50 per square foot,¹⁴ over a five-year funding cycle beginning in funding year 2021.¹⁵

5. Under the Commission’s rules, eligible schools and libraries can receive discounts ranging from 20% to 90% of the pre-discount price of eligible equipment and services, based on indicators of need and the category of service.¹⁶ When it adopted the category two funding budgets, the Commission lowered the maximum discount rate for category two services.¹⁷ Specifically, the maximum

⁸ 47 CFR § 54.501(b)(2).

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9070, paras. 557-59 (1997) (*Universal Service First Report and Order*).

¹⁰ *Id.* at 9070, para. 559.

¹¹ 47 CFR § 54.502(a)(1)-(2).

¹² 47 CFR § 54.502(b)-(d); *see also Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219 (2019) (*Category Two Report and Order*); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8898-8922, paras. 76-133 (2014) (*First 2014 E-Rate Order*); *Modernizing the E-Rate Program for Schools and Libraries*; *Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15571-78, paras. 77-81 (2014) (*Second 2014 E-Rate Order*).

¹³ 47 CFR § 54.502(d)(1)-(4); *see also Category Two Report and Order*, 34 FCC Rcd at 11230-34, paras. 29-30, 34-39. This means that a library can receive discounts on up to \$4.50 per square foot in funding for category two services over a five-year funding cycle or, if the square footage multiplied by the \$4.50 for a library is below \$25,000, a library can receive discounts on up to \$25,000 in costs for category two services or equipment over a five-year funding cycle. For example, a library that is 5,000 square feet would, with the library multiplier of \$4.50, be eligible for \$22,500 in funding over the five-year funding period, but, because the funding floor is \$25,000, would instead be eligible for \$25,000 in category two budget funding over the same five-year period. If a library was 6,000 square feet, it would be eligible for \$27,000 in category two budget funding over a five-year period. This amount is above \$25,000, so the funding floor would not apply.

¹⁴ Libraries calculate square footage by providing “the total area for all floors, in square feet, of all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.” 47 CFR § 54.502(d)(3).

¹⁵ 47 CFR § 54.502(d)(1)-(4); *see also Category Two Report and Order*, 34 FCC Rcd at 11230-34, paras. 29-30, 34-39.

¹⁶ 47 CFR § 54.505(c).

¹⁷ 47 CFR § 54.505(c); *First 2014 E-Rate Order*, 29 FCC Rcd at 8901-02, paras. 82-85.

discount rate for category two services and equipment was lowered from 90% to 85% to ensure that E-Rate funds are spread more widely, increase applicant incentive to select the most cost-effective options, and reduce the opportunities for waste, fraud, and abuse of the limited funds.¹⁸

6. The E-Rate program only provides funding for eligible equipment and services within both categories of services, and an eligible services list is updated and published every funding year to assist applicants.¹⁹ However, certain E-Rate eligible equipment or services may have components that are ineligible or can be used for ineligible purposes and, therefore, applicants are required to remove the costs of (or cost allocate) the ineligible portions of the equipment or services from their E-Rate funding requests.²⁰ Under these rules, if a piece of equipment or service contains ineligible components, costs should be allocated to the extent that a clear delineation can be made between the eligible and ineligible components.²¹ The cost allocation must have a tangible basis and the price for the eligible portion must be the most cost-effective means of receiving the eligible equipment or service.²² If the ineligible functionality is part of the product or service without any itemized costs associated with it, it is considered to be “ancillary,” and the costs for the product’s or service’s ineligible functionality do not need to be removed.²³

7. The Commission has established rules and procedures for commonly recurring cost allocations. Non-instructional facilities (NIFs) are school buildings without classrooms and library buildings without public areas, such as administrative buildings and data centers. Category two E-Rate support is generally not available for NIFs, unless the equipment is “essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose.”²⁴ In the December 2019 *Category Two Report and Order*, the Commission declined to modify rules regarding category two eligibility or cost-allocation requirements for NIFs.²⁵ With regard to

¹⁸ *Id.*

¹⁹ 47 CFR § 54.502(a), (e); see *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 22-1313, 2022 WL 17886489 (WCB Dec. 14, 2022) (*FY2023 Eligible Services List*).

²⁰ 47 CFR § 54.504(a)(1)(v).

²¹ 47 CFR § 54.504(e)(1).

²² USAC, *Cost Allocation for Services*, <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-overview/cost-allocations-for-services/> (last visited July 20, 2023) (providing examples of ineligible components of otherwise eligible services, including an otherwise eligible firewall bundle that includes an ineligible spam license and intrusion prevention license).

²³ 47 CFR § 54.504(e)(2) (providing that an ineligible functionality may be considered “ancillary” if (1) a price for the ineligible component that is separate and independent from the price of the eligible components cannot be determined, and (2) the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality); see also *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 21927-28, paras. 36-39 (2003) (*Third Report and Order*).

²⁴ 47 CFR § 54.502(b)(6); see also *Universal Service First Report and Order*, 12 FCC Rcd at 9017-18, 9021, para. 459 (1997) (making internal connections eligible); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440, paras. 208-210 (1997) (*Fourth Order on Reconsideration*) (finding that NIFs are generally ineligible for internal connections, which are eligible only when necessary to transport information to individual classrooms); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18779, paras. 31-32 (2010) (*Sixth Report and Order*) (making residential dorms for schools with unique student populations eligible for category two support because they meet the definition of educational purposes).

²⁵ *Category Two Report and Order*, 34 FCC Rcd at 11238-39, paras. 50-51.

requiring cost allocation for NIFs, the Commission stated, at that time, that the cost allocation of the NIFs portion of the shared use was unlikely to be a significant burden.²⁶

8. E-Rate applicants are also required to seek competitive bids for the eligible services they seek to purchase using E-Rate funds.²⁷ The competitive bidding requirements ensure E-Rate participants are informed of available choices and receive the best prices for the requested eligible services and equipment.²⁸ To accomplish this, applicants must submit an FCC Form 470 for posting on the Universal Service Administrative Company's (USAC) website, which opens a competitive bidding process for the requested E-Rate eligible services.²⁹ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.³⁰ Applicants must then carefully consider all received bids, and the price of eligible equipment and services must be the primary factor in selecting the winning bid.³¹ After entering into a contract for E-Rate eligible services, applicants request support by submitting an FCC Form 471 application to USAC.³² However, as one way of simplifying the E-Rate process and encouraging smaller schools and libraries to obtain vital services through the program, the Commission adopted a rule exempting commercially available Internet access services that cost \$3,600 or less per year from the competitive bidding rules, allowing applicants to request these services without filing FCC Form 470.³³

9. Finally, pursuant to section 54.701 of the Commission's rules, the federal universal service fund (USF) and the universal service support programs, including the E-Rate program, are administered by USAC under the direction and oversight of the Commission.³⁴ USAC is led by a board composed of nineteen directors.³⁵ The USAC Board is made up of one permanent director and eighteen directors serving three-year terms who are divided into three groups of six directors, each group offset by a year so that six directors are changed every year.³⁶ To provide USAC with a variety of viewpoints, these eighteen directors represent a range of telecommunications stakeholders and market participants, including telecommunications companies, Internet service providers, schools, libraries, and low-income consumer representatives.³⁷ Further, the USAC Board has three committees responsible for administering specific universal service support mechanisms: a Schools and Libraries Committee, a Rural Health Care Committee, and a High Cost & Low Income Committee.³⁸

10. On February 16, 2023, the Commission adopted a Notice of Proposed Rulemaking (*Tribal E-Rate NPRM*) seeking comment on a variety of proposed program improvements meant to

²⁶ *Id.*

²⁷ 47 CFR § 54.503.

²⁸ *See* 47 CFR §§ 54.503, 54.511.

²⁹ *See id.*; *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (2022) (FCC Form 470).

³⁰ 47 CFR § 54.503.

³¹ *See* 47 CFR §§ 54.503, 54.511; *see also* *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 481.

³² *See* 47 CFR § 54.504.

³³ *First 2014 E-Rate Order*, 29 FCC Rcd at 8948-50, paras. 199-202; *see also* 47 CFR § 54.503(e).

³⁴ *See* 47 CFR §§ 54.701, 54.702.

³⁵ 47 CFR § 54.703.

³⁶ *Id.*

³⁷ *Id.*

³⁸ 47 CFR § 54.705.

encourage Tribal participation in the E-Rate program.³⁹ The Commission sought comment on amending our eligibility rules to permit Tribal college libraries that serve as public libraries to apply for and receive E-Rate funding.⁴⁰ The Commission also sought comment on a variety of potential E-Rate application simplifications and improvements, including making changes to the competitive bidding process and application deadlines.⁴¹ The Commission further sought comment on enhancing access to category two funding through changes to the maximum discount rate and increasing the funding floor budget.⁴² Finally, the Commission sought comment on adding a Tribal representative to the USAC Board of Directors, and making other improvements such as adopting a definition of “Tribal” for the E-Rate program and improving USAC outreach to applicants.⁴³ In addition to the *Tribal E-Rate NPRM*, the Consumer and Governmental Affairs Bureau’s (CGB) Office of Native Affairs and Policy (ONAP) and the Wireline Competition Bureau (Bureau) held two Tribal Consultations and Listening Sessions to engage directly with Tribal leaders and community representatives on April 13, 2023 and May 19, 2023.⁴⁴ These Tribal Consultations and Listening Sessions added to the knowledge gained by ONAP and Bureau staff who traveled to Tribal communities and Tribal libraries around the country to learn more about the connectivity challenges and issues that Tribes continue to face in applying for E-Rate support.⁴⁵

III. DISCUSSION

11. Consistent with our efforts to encourage more Tribes to participate in the E-Rate program, we now take steps to increase Tribal library eligibility and continue to reduce administrative burdens in the program. In doing so, we expect to make the program more accessible to Tribal communities, so that they can leverage E-Rate funds to improve and meet the broadband connectivity needs of their communities. Where appropriate, we also amend our rules to benefit non-Tribal applicants as well, to simplify and streamline the E-Rate program for all participants. First, we modify our rules to allow Tribal college and university (TCU)⁴⁶ libraries to apply for and receive E-Rate support, provided they are also serving as a public library in their community. Next, we adopt a number of changes to simplify and improve the E-Rate application process for Tribal library and other applicants. We also take

³⁹ See *Tribal E-Rate NPRM*, 2023 WL 2124459, *3, para. 9.

⁴⁰ *Id.* at *4-5, paras. 11-13.

⁴¹ *Id.* at *5-6, paras. 14-16.

⁴² *Id.* at *8, para. 19.

⁴³ *Id.* at *8-9, paras. 20-22.

⁴⁴ See Letter from Molly O’Conor, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21 (filed Apr. 19, 2023) (April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*); Letter from Molly O’Conor, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21 (filed May 31, 2023) (May 19, 2023 Tribal Consultation and Listening Session *Ex Parte*).

⁴⁵ See, e.g., Press Release, FCC, FCC Chairwoman to Join Tribal Representatives in New Mexico to Promote Tribal Library Connectivity Efforts (Dec. 6, 2022), <https://www.fcc.gov/document/chairwoman-visits-new-mexico-promote-tribal-library-connectivity>. Staff also traveled to Suquamish, Washington; Lummi Nation School Library; Lummi Library; Little Boston Library; and Nisqually Library. A virtual roundtable was also held for Alaska Tribal Libraries and an in-person roundtable was held at the Morongo Band of Mission Indians Council Chambers in Banning, California.

⁴⁶ See Letter from the American Indian Higher Education Consortium (AIHEC) to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21, at 14 (filed June 8, 2023) (AIHEC *Ex Parte*) (noting the definition of ‘Tribal College or University’ in section 316(b) of the Higher Education Act of 1965 is “an institution that— (A) qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.) or the Navajo Community College Act (25 U.S.C. 640a note); or (B) is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).”) (quoting 20 U.S.C. § 1059c(b)(3)).

steps to enhance communication with Tribal Nations by providing additional outreach to Tribal entities and leaders and by adopting a definition of “Tribal” to better identify Tribal applicants. Finally, we also add a Tribal representative to the USAC Board of Directors to ensure Tribal input into the administration and oversight of the federal USF and the universal service support programs. Taken together, we expect that these measures will provide a meaningful difference for Tribal communities, especially Tribal libraries that seek to participate in the E-Rate program. We also seek comment on additional rule changes and clarifications suggested by commenters to further streamline and approve the application process for all E-Rate applicants. We consider certain of those suggestions in the *E-Rate FNPRM* below.

A. Making Tribal College and University Libraries Eligible for E-Rate

12. Based on a review of the record and consistent with our authority pursuant to section 254(h) of the Communications Act of 1934, as amended, we adopt our proposal to make TCU libraries eligible for E-Rate support when they also serve as a public library in their community.⁴⁷ Commenters that addressed this issue unanimously supported the rule change and provided evidence about how TCU libraries offer valuable library services to their communities.⁴⁸

13. The American Library Association (ALA) argues, for example, that TCU libraries like Ilisagvik College’s Tuzzy Consortium Library do not just serve students, faculty, and staff, but also the wider community, even providing workforce and career programs to members of the public, and should therefore be permitted to draw on the E-Rate program support like any other library.⁴⁹ During the April 13, 2023 Tribal Consultation and Listening Session, the Director of Education for the Inupiat Community of the Arctic Slope, Mark Roseberry, explained that their TCU library is responsible for serving their entire Alaskan community and that the library would greatly benefit from E-Rate funding.⁵⁰ The American Indian Higher Education Consortium (AIHEC) noted that, of the 35 accredited TCUs, 31 open their libraries to the public as the only public library in their rural communities, acting as a vital resource in the communities they serve.⁵¹ AIHEC further commented that TCU libraries serve the public at their own expense despite facing Internet connection costs ranging from 21 to 70 times the national average at much slower speeds.⁵² It noted that TCU libraries, such as Oglala Lakota College, provide a wide variety of services to the public for free, offering computers and Internet access to community members who would not otherwise have access to the Internet so that they can do homework, complete research, and find employment.⁵³ We find that permitting TCU libraries that also serve as public libraries to receive E-Rate support will provide a meaningful benefit to Tribal communities, particularly where the TCU library may be the only library in its community. We therefore will consider a TCU library eligible to apply for

⁴⁷ See *Tribal E-Rate NPRM* at *4-5, paras. 11-13.

⁴⁸ See 47 U.S.C. § 254(h)(2)(B); see, e.g., Advanced Data Services (ADS) Comments at 1; American Library Association (ALA) Comments at 4-5; Alaska Department of Education and Early Education and Alaska State Library Reply at 5; State E-rate Coordinators’ Alliance (SECA), Schools, Health & Libraries Broadband Coalition (SHLB), Consortium for School Networking (CoSN), and State Educational Technology Directors Association (SETDA) Comments at 6-7 (Joint Commenters); Mille Lacs Band of Ojibwe Reply at 1; National Tribal Telecommunications Association (NTTA) Comments at 3; Wisconsin Department of Public Instruction (WiDPI) Reply at 2; Washington State Library Comments at 3; WTA – Advocates for Rural Broadband (WTA) Comments at 6; AIHEC *Ex Parte* at 2.

⁴⁹ See ALA Comments at 4.

⁵⁰ April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B at 1 (supporting the eligibility of Tribal college libraries that serve as public libraries).

⁵¹ AIHEC *Ex Parte* at 2.

⁵² *Id.* at 4-5.

⁵³ *Id.* at 7-8.

E-Rate support if it serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community.

14. In making this change, we seek to balance our goal of improving broadband connectivity on Tribal lands with our duty as a responsible steward of limited universal service resources. We therefore adopt limitations to ensure that E-Rate support is restricted to TCU library use only, and not to support the broader connectivity requirements of the higher education institution. For example, TCU libraries cannot request funding for services or equipment beyond the needs of the library, and any category two equipment must be installed within the eligible library only and cannot be installed in another location within the TCU.⁵⁴ Commenters suggest that TCU libraries not be required to perform cost-allocation calculations because they are burdensome and would potentially deter TCU libraries from seeking support.⁵⁵ To address this concern, accordingly, we will not require TCU libraries to perform cost-allocation calculations of the college student and staff usage at the library versus public usage of bandwidth, as members of the college community are also members of the public. If, however, the TCU library is seeking E-Rate support for a portion of the total bandwidth used at the Tribal college or university, it will be required to calculate the bandwidth usage from other parts of the Tribal college or university, and include only the library portion of bandwidth use in its E-Rate funding request. Such limitations will ensure that E-Rate funding is not improperly provided to the other TCU buildings like classrooms and dormitories.

15. The State E-Rate Coordinators' Alliance, the Schools, Health, and Libraries Broadband Coalition, the Consortium for School Networking, and the State Educational Technology Directors Association (collectively, the Joint Commenters), in their comments, also suggest that a TCU library should only be eligible when there is no other Tribal library accessible to the community.⁵⁶ We are not convinced that this restriction is either necessary or meaningful. First, there are a very limited number of TCU libraries, which limits the impact of granting eligibility. It is also administratively challenging to determine whether another Tribal library is "accessible" to the community. Finally, we do not impose similar restrictions in the E-Rate program to limit funding when two or more libraries may be serving the same community. If an otherwise eligible library is providing services to the public and members of the public are making use of those services, the presence of another eligible library accessible to that community has no impact on the eligibility of either library. For these reasons, we decline to adopt this restriction at this time.

16. We find that our action is consistent with our statutory authority under section 254(h) of the Communications Act to enhance access to advanced telecommunications and information services for libraries.⁵⁷ In defining which libraries would be eligible for E-Rate support in 1997, the Commission initially adopted rules barring all college and university libraries from eligibility so as to guard against "institutions of higher learning [that] could assert that their libraries, and thus effectively their entire institutions, were eligible for support," finding it inconsistent with congressional intent that funding would flow to an institution of learning only if it is an elementary or secondary school.⁵⁸ Here, the presence of other program protections, as well as the very limited number of TCUs and the value of the

⁵⁴ See, e.g., Joint Commenters Comments at 5-6; Alaska Department of Education and Early Education and Alaska State Library Reply at 5. We will permit Tribal college libraries to request E-Rate support for the portion of a shared category two switch located outside of the library if it is housed in college or university data center.

⁵⁵ See, e.g., ALA Comments at 4 (stating that cost allocation would add unnecessary complications for Tribal college library applicants and severely hinder program participation); WiDPI Reply at 2 (suggesting that removing the cost allocation by the Tribal college would have a very minimal impact on the program); AIHEC *Ex Parte* at 11-12 (discussing the challenges that cost allocation poses).

⁵⁶ See, e.g., Joint Commenters Comments at 7.

⁵⁷ 47 U.S.C. § 254(h)(2)(A).

⁵⁸ See *Universal Service First Report and Order*, 12 FCC Rcd at 9070, paras. 557-59.

services they provide to their Tribal communities persuade us to change our rules and ensure that TCU libraries that also serve as a public library are not barred from eligibility. Though one commenter suggested granting eligibility to non-TCU libraries at small colleges or in rural areas,⁵⁹ we do not have a sufficient record to evaluate this issue and seek further comment in the *FNPRM*.

17. Allowing TCUs that serve as public libraries to participate in E-Rate is also consistent with the federal government's special treatment of TCUs. TCUs are unique higher education institutions that are controlled or chartered by a federally recognized Tribe, governed by a board of whose members are a majority Indian, and have a majority of Indians as its student body.⁶⁰ Congress provides support for TCUs as part of its responsibility to provide for Indian education and facilitate its policy of enabling Tribal control of all matters relating to the education of Indian students.⁶¹ Congress has stated that the federal government has a special responsibility, as part of its overall trust responsibility to Indian Tribes, for the education of Indian students, and the federal government has long recognized and "charged itself with moral obligations of the highest responsibility and trust" toward Indian Tribes.⁶² Accordingly, TCUs are unique higher education institutions that are entitled to special treatment from the federal government based on their trust relationship between the United States and Indian Tribes and their mission of providing education to Indian students.

B. Improving and Simplifying the E-Rate Application Process

18. Building on our proposals in the *Tribal E-Rate NPRM*, we next implement several measures to streamline and simplify the E-Rate application process for Tribal libraries and other similarly situated applicants. First, we streamline the application process for libraries making small purchases. Next, we increase the category two discount rate for Tribal library applicants with the most need, helping to offset the costs of in-building equipment and services. We also increase the minimum amount of funding that is available for category two purchases, with the goal of encouraging Tribal libraries that do not currently participate in the program to apply for E-Rate support. And finally, we provide guidance on a number of cost-allocation calculation issues that applicants have raised to reduce the administrative burden and streamline the E-Rate program overall. Collectively, we expect these changes to contribute to the Commission's ongoing goals of both improving and streamlining the program, and reducing barriers to accessing E-Rate funding for Tribal applicants.

1. Streamlining E-Rate for Libraries Making Low-Cost Purchases

19. To streamline the application process and simplify what is required for Tribal and other similarly-situated libraries making low-cost equipment purchases, we adopt a competitive bidding exemption for library applicants seeking E-Rate support for category two equipment or services that total a pre-discounted amount of \$3,600 or less in a single funding year. The exemption will simplify the E-Rate application process because it will allow libraries to purchase low-cost category two services and equipment without filing an FCC Form 470 to solicit bids and waiting 28 days before entering into a contract. A category two funding request will be eligible for this exemption only if the total cost per library is \$3,600 or less; and the cost cannot be averaged across a number of libraries.⁶³ By adopting this exemption to the competitive bidding process, we believe it will be easier for smaller libraries, including Tribal libraries and libraries serving rural communities, to apply for E-Rate support when they are making limited purchases of equipment to install or upgrade their Wi-Fi networks.

⁵⁹ See e.g., ADS Comments at 1 (suggesting small or rural college libraries also be made eligible); ADS Reply at 1 (reiterating their suggestion from their initial comments).

⁶⁰ 25 U.S.C. §§ 1801(a)(4); 1804.

⁶¹ 25 U.S.C. §§ 1802; 2011.

⁶² 25 U.S.C. § 2000; *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 176 (2011).

⁶³ For example, if a library system requests category two support for three libraries, the amount of funding for each library must be \$3,600 or less to be eligible for this exemption from filing the FCC Form 470.

20. Commenters broadly supported expanding the existing competitive bidding exemption to include category two equipment and services, with suggestions ranging from support for the proposed \$3,600 exemption to eliminating the competitive bidding requirement entirely for Tribal entities.⁶⁴ Because competitive bidding is essential to ensuring cost-effective purchasing in the E-Rate program, we disagree with commenters that suggest we eliminate competitive bidding for Tribal entities entirely or where there is only one commercial service offering.⁶⁵ At the same time, we acknowledge that there are administrative costs associated with the E-Rate application process that can be burdensome, particularly for smaller entities.⁶⁶ WTA explained that the low-cost category two services and equipment requests that small libraries often make also do not attract many bids in Tribal and rural areas.⁶⁷ As commenters highlighted, the competitive bidding process can be challenging, especially for smaller libraries that have a limited staff.⁶⁸ We believe that adopting a \$3,600 exemption for libraries requesting category two equipment and services, matching the existing \$3,600 competitive bidding exemption for commercially available high-speed Internet access services,⁶⁹ strikes the right balance in simplifying the E-Rate application process, while retaining competitive bidding requirements where appropriate to ensure that limited E-Rate resources are spent efficiently and effectively. We expect that the exemption will provide a meaningful benefit to Tribal, small, and rural library applicants by making it easier to receive funding for the Wi-Fi network equipment and services they need.

21. We emphasize that Tribal, and other small or rural library applicants may only request E-Rate support based on the actual cost of the equipment or service requested. We caution library applicants and service providers that we will still require cost-effective purchases under this exemption in order to avoid waste in the program, and we direct USAC to review the costs for equipment and services and to deny funding for purchases that are determined to not be cost-effective. In this regard, we note that it is generally straightforward to review and compare the costs of category two equipment, given that it tends to be widely commercially available, in order to ensure that applicants are not seeking reimbursement for wasteful spending.⁷⁰ We also agree with ALA that libraries may be subject to state and local requirements that help ensure that these low-cost purchases are still cost-effective.⁷¹ At present,

⁶⁴ See, e.g., ADS Comments at 2 (supporting an initial exemption at \$3,600); ALA Comments at 6-7 (encouraging the Commission to exempt purchases of \$10,000 or less from the competitive bidding process); NTTA Comments at 4 (recommending a competitive bidding exemption if the Tribal library can demonstrate that there is only one provider in their service area offering commercially available broadband at a published price); USET Comments at 2 (stating that a general exemption to the program's competitive bidding rules should be adopted); WTA Comments at 4 (recommending an increase of the competitive bidding exemption to \$10,000 or doing away with it entirely for Tribal and other rural schools and libraries).

⁶⁵ See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480; *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26431, para. 53 (2003) (*Ysleta Order*) ("The Commission has determined that seeking competitive bids for eligible services is the most efficient means for ensuring that eligible schools and libraries are fully informed of their choices and are most likely to receive cost-effective services.").

⁶⁶ See, e.g., ALA Comments at 7 (noting that the E-Rate process would be simplified with a competitive bidding exemption).

⁶⁷ WTA Comments at 4.

⁶⁸ ALA Comments at 6-7 (arguing that it does not make sense for libraries to provide "voluminous details" to receive funding for low-cost equipment); WTA Comments at 4 (explaining that the competitive bidding process costs E-Rate applicants "substantial time").

⁶⁹ 47 CFR § 54.503(e).

⁷⁰ *Ysleta Order*, 18 FCC Rcd at 26432, para. 54 (explaining that a request for routers at prices two or three times greater than the prices available from commercial vendors would not be cost-effective, absent extenuating circumstances).

⁷¹ See, e.g., ALA Comments at 7.

a competitive bidding exemption for category two equipment and services costing less than \$3,600 allows us to determine whether this small exemption can help libraries, but we are not precluded from amending this level in the future.⁷² Based on limited record evidence, we decline to extend the exemption to school entities at this time,⁷³ but seek further comment on this question in the *E-Rate FNPRM* below.⁷⁴

2. Modifying Category Two Rules to Support Tribal Libraries

22. To increase Tribal library access to category two funding, we increase the maximum discount rate for category two services for Tribal libraries to 90%, and we increase the category two funding floor to \$55,000 for Tribal libraries. We expect that these changes will help Tribal libraries to better meet their needs by reducing the share that they must pay for Wi-Fi networks and increasing the amount of support they can receive. At the same time, we expect that the budgetary impact to the E-Rate program will be minimal.⁷⁵ Taken together, we expect that these measures will encourage greater participation in the E-Rate program by Tribal libraries that will offer a substantial benefit to the communities they serve, at minimal cost to the overall E-Rate program.

23. Tribal libraries tend to be under-resourced, operating on a limited budget to meet the diverse needs of their patrons. Many lack full-time, permanent library staff, much less a dedicated information technology (IT) staff member,⁷⁶ often relying on the same IT staff that serves the larger Tribal government.⁷⁷ While we appreciate the request by applicants for more support for staffing costs,⁷⁸ section 254 of the Communications Act constrains what services are eligible for E-Rate program support.⁷⁹ Given these statutory constraints that limit our ability to fund certain costs, we therefore have tried to identify other options to make Internet connectivity more affordable for Tribal libraries. We believe that a five percentage point increase to the maximum discount rate, from 85% to 90%, will make category two services more affordable, allowing Tribal libraries to stretch their limited budgets to better meet their community's Wi-Fi network connectivity needs. Commenters agreed and broadly supported an increase, arguing that a higher discount rate would make a "big difference"⁸⁰ to applicants and would result in important additional savings to Tribal applicants.⁸¹ In an April 13, 2023 Tribal Consultation and

⁷² See ADS Comments at 2 (suggesting setting the exemption at \$3,600, but considering raising it in the future if too few applicants use it).

⁷³ See Letter from Kristen Corra, Policy Counsel, Schools, Health, and Libraries Broadband Coalition (SHLB), to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21, at 2 (filed July 12, 2023) (SHLB *Ex Parte*); Letter from Debra M. Kriete, Chairperson, State E-rate Coordinators' Alliance (SECA), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-184, CC Docket Nos. 96-45, 97-21, at 4 (filed July 13, 2023) (SECA *Ex Parte*).

⁷⁴ See *infra* para 49.

⁷⁵ See Universal Service Administrative Company, *E-Rate Request for Discount on Services: Basic Information (FCC Form 471 and Related Information)*, <https://opendata.usac.org/E-rate/E-Rate-Request-for-Discount-on-Services-Basic-Info/9s6i-myen> (last visited July 20, 2023) (providing information about the number of libraries that self-identified as Tribal that requested funding for category two services.).

⁷⁶ See Washington State Library Reply at 3.

⁷⁷ See May 19, 2023 Tribal Consultation and Listening Session *Ex Parte* at 2 (explaining how Tribal IT departments often have many priorities in their community). One May 19 Tribal Listening Session participant suggested E-Rate funding be provided for staffing, however, we lack authority to provide funding for staffing at this time. See also Letter from J. Michael Chavarria, Governor, Santa Clara Indian Pueblo, to Denise Bambi Kraus, Chief, Office of Native Affairs and Policy, FCC, CC Docket Nos. 02-6, 96-45, 97-21 (filed June 1, 2023).

⁷⁸ *Id.*

⁷⁹ See 47 U.S.C. § 254(h)(1)(B).

⁸⁰ Washington State Library Reply at 3.

⁸¹ WTA Comments at 4-5.

Listening Session, Tribal participants from Alaska noted that costs are very high in their remote communities, and that an increase in the discount rate would be especially helpful.⁸² By making category two services more affordable, we expect that this increase will provide a meaningful benefit to Tribal libraries, that in turn, will encourage greater participation in the E-Rate program.

24. Increasing the category two funding floor to \$55,000 from the current floor of \$25,000 will also significantly aid Tribal libraries, where the remoteness of Tribal libraries on Tribal lands makes purchasing, installing, and maintaining equipment more difficult and, therefore, more costly.⁸³ This means that Tribal libraries will be eligible to receive up to a pre-discount amount of \$55,000 in category two funding over a five-year period, based on the actual costs of the equipment or services. This increase is consistent with the Washington State Library suggestion that because category two costs of serving small remote libraries is approximately \$11,000 per year, setting the funding floor at \$55,000 for the five-year budget cycle may be more appropriate.⁸⁴ These amounts were estimated based on a recent state pilot project to connect a number of single and very small library systems (fewer than five branches) with a basic Wi-Fi package.⁸⁵ The NTTA claimed that, in many of these remote and expensive-to-serve communities, the Internet connection available through the Tribal library may be the only broadband available to community members and recommended increasing the funding floor to \$35,000.⁸⁶ Based on this record evidence, we agree that an increase in minimum funding levels would help ensure that sufficient E-Rate funding is available to meet the Wi-Fi network requirements of Tribal libraries, and we set the category two services five-year funding floor at \$55,000. While we limit the \$55,000 funding floor to Tribal library entities at this time, we will evaluate the impact of this change and consider whether to expand it to all libraries if we find that it has a significant impact on the ability of libraries to meet the needs of their communities and is likely to increase participation in the E-Rate program.

3. Providing Guidance on Cost-Allocation Rules and Procedures

25. As part of our efforts to simplify the E-Rate program, the *Tribal E-Rate NPRM* sought comment on common cost-allocation issues that Tribal libraries and other non-Tribal applicants experienced, noting that cost allocation can be confusing for all E-Rate applicants and may pose particular challenges for Tribal libraries, especially those located in multipurpose buildings.⁸⁷ Commenters provided a number of examples where cost allocation can complicate the application process.⁸⁸ The

⁸² See April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B.

⁸³ See, e.g., *id.*; Washington State Library Reply at 2-3 (noting that remote, single site libraries have unique challenges due to rurality, a lack of dedicated IT staff, limited budgets, and no economies of scale).

⁸⁴ Washington State Library Reply at 2.

⁸⁵ Washington State Library Reply at 1 (noting that the basic package included a router, one to three switches, three to five indoor wireless access points, and an uninterruptible power supply unit, along with ongoing support for installation and maintenance).

⁸⁶ NTTA Comments at 5.

⁸⁷ See *Tribal E-Rate NPRM* at *7, paras. 17-18.

⁸⁸ See, e.g., ADS Comments at 2-3 (recommending a simplification of cost allocation to accept alternative reasonable methodologies for cost-allocation); ALA Comments at 10 (recommending no cost allocation at Tribal college libraries); Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5 (recommending relaxing the cost-allocation requirements and allowing for ancillary use consistent with the *Sixth Report and Order*'s community use requirements and suggesting cost allocation of advanced firewall services be eliminated); Joint Commenters Comments at 10-11, 13-14, 17 (recommending changes to the burdensome cost-allocation requirements for non-instructional facilities, cabling, and ancillary use by childcare or health clinics located at a school); WTA Comments at 5 (recommending no cost allocations for category two equipment within a Tribal library in a multipurpose building and suggesting methods to avoid cost allocation for Tribal libraries, namely, purchasing a separate connection for the Tribal library or conducting a study of a typical month to determine use of a shared broadband connection to determine the cost allocation).

Alaska Department of Education and Early Development and the Alaska State Library provided an example where a Tribal library is in a building with a room that is infrequently used as an office by an ineligible entity.⁸⁹ They noted that relaxing the cost allocation requirements for minimal or occasional use of a single room from an eligible location could make a real difference for these applicants in small villages where the library may act as the hub of that community. Other commenters also provided a number of other scenarios wherein schools and libraries are required to cost allocate for the minimal Internet usage of a variety of in-building offerings, such as offices, health kiosks and other healthcare services, childcare, pre-kindergarten, adult education, and vocational and technical classes available to the public.⁹⁰ These and similar services, though ineligible themselves for E-Rate support, may provide significant benefit, while having a minimal impact on the school's or library's total Internet usage⁹¹ and no real impact on schools and libraries' decision-making process in determining the level of Internet service they need.⁹² Yet, schools and libraries that decide to offer these valuable services to their students, staff, and library patrons are required to conduct cost-allocation calculations to remove those portions of minimal ineligible Internet usage by these services.⁹³ In addition, if a school or library selects a product or service containing an ineligible component and that product or service is the most cost-effective means of receiving the eligible component functionality, those ineligible components are ancillary, and costs do not need to be allocated between the eligible and ineligible components.⁹⁴

26. We agree with commenters that conducting cost allocations to exclude costs associated with minimal ineligible use or service components can be challenging, especially with regards to services.⁹⁵ As a means of providing a safe harbor, we adopt a presumption that if at least 90% of an applicant's requested Internet service is being used for eligible purposes, the remaining ineligible use of the Internet service will be presumed to be ancillary and, therefore, cost allocation is not required. This

⁸⁹ Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5 (noting the frustration surrounding cost allocation in these cases of minimal use).

⁹⁰ See, e.g., ADS Comments at 3 (discussing healthcare kiosks potentially using E-Rate supported services at a library); Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5 (recommending relaxing the cost-allocation requirements for instances of a single room in an eligible library being used for minimal office uses in a village); Joint Commenters Comments at 17 (providing examples of uses of E-Rate supported services that could be considered ancillary); SHLB *Ex Parte* at 2-3 (providing additional examples of uses of E-Rate supported services that could be considered ancillary, such as use by ineligible pre-kindergarten or adult learners); SECA *Ex Parte* at 2-3 (similarly supporting ineligible use of E-Rate supported services by pre-kindergarten or adult learners to be considered ancillary).

⁹¹ Joint Commenters Comments at 17 ("Currently, children under the age of 3 are not considered eligible to use E-rate supported services and as such, although minimal, schools would be required to cost allocate the Internet usage of these children and the staff that care for them.... These classes are typically electrical, plumbing, masonry, carpentry and automotive classes that use little Internet, yet what services are used through these classes are required to be cost allocated from an E-rate request or reimbursement."); Alaska Department of Education and Early Education and Alaska State Library Reply at 4 ("This is frustrating because the office may be infrequently used, and the bandwidth usage may be minimal.").

⁹² This guidance also applies to applicants that request E-Rate support for data transmission services and connect to a statewide network. See SHLB *Ex Parte* at 2-3.

⁹³ *Id.*

⁹⁴ 47 CFR § 54.504(e)(2) ("If a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service."); see also Joint Commenters at 9.

⁹⁵ See ADS Comments at 3; Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5; Joint Commenters Comments at 17.

does not mean that we currently find healthcare, childcare services, or services for students under the age of three to be eligible for E-Rate support, nor does it mean that if less than 90% of an applicant's requested Internet service is being used for eligible purposes that the ineligible portion cannot be demonstrated to be ancillary.⁹⁶ However, we agree with commenters that if an applicant selected the most cost-effective Internet service offering to meet its needs, then the minimal ineligible use of that Internet service should be treated as ancillary and cost allocation is not required. In this regard, we emphasize that applicants may request only the amount of bandwidth needed for eligible use. We therefore determine that permitting minimal ancillary use, without requiring cost allocation, will not result in waste or additional costs to the E-Rate program, because applicants may only request what they need to support eligible uses.⁹⁷ We expect this finding will provide clarity to applicants about when an ineligible use of Internet service can be presumed to be ancillary, consistent with our existing rules and without creating an undue risk of waste, fraud, and abuse of limited E-Rate funds. In turn, we expect it will also simplify the application process for some applicants.

27. In specific regard to Tribal libraries, if the Tribal library is selecting the most cost-effective means of receiving the eligible service without regard to the value of the ineligible components, the burden to allocate a portion of the cost for any ineligible use may decrease participation by these small entities.⁹⁸ So, with the presumption stated above, we expect the occasional office use, such as described by the Alaska Department of Education and Early Education and Alaska State Library,⁹⁹ could be considered ancillary and cost allocation would not be required, as long as 90% of the requested Internet service is used for the library's eligible purposes. We decline to fully remove cost allocation requirements for all Tribal libraries housed in a multipurpose building¹⁰⁰ because of concerns that the exception could lead to the E-Rate program funding largely ineligible services – for instance, if a large administrative building has a small Tribal library located within one room in the building – but we seek additional comment on this issue on the *E-Rate FNPRM* below.

28. Next, we address concerns raised by the Joint Commenters and clarify that expenses associated with cabling that is primarily being used to provide broadband connectivity within schools and libraries need not be cost allocated, provided it is the most cost-effective means of receiving the eligible service.¹⁰¹ The Joint Commenters note that applicants have periodically experienced difficulties receiving E-Rate support for cabling, or have been required to return funding based on what equipment the cabling was connected to after installation.¹⁰² They further explain that these issues typically arise in the context of installing internal cabling throughout a building that “provide data transmission to specific points located in the ceilings or in walls of a school or library building, thus creating a ‘drop’ or ‘jack’ for various types of equipment to connect to, and then gain access to the communications network.”¹⁰³ Cabling is conditionally eligible for E-Rate support, which means that it is ineligible for E-Rate funding

⁹⁶ For example, if the applicant seeks additional bandwidth as a result of the ineligible uses or selected a bid based on the value of the ineligible use, that would not be compliant with the ancillary use rule.

⁹⁷ We clarify that we are not changing community use standards. See *SHLB Ex Parte* at 4.

⁹⁸ See, e.g., NTTA Comments at 5 (suggesting that allowing Tribal library community building to provide E-Rate discounted broadband access to the building would increase program participation).

⁹⁹ See Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5.

¹⁰⁰ See, e.g., USET Comments at 3-4 (commenting that no cost allocation should be imposed on a Tribal administrative building, cultural center, or community service center that also houses what a Tribal Nation has defined as a library).

¹⁰¹ See *FY2023 Eligible Services List*, at Appendix B, p.8 (listing cabling as an eligible broadband internal connection).

¹⁰² See, e.g., Joint Commenters Comments at 13-15.

¹⁰³ *Id.* at 13.

when it is for an ineligible use, such as for a security camera network or voice network, and the costs must be allocated or removed from the funding requests.¹⁰⁴ However, we agree that it is unworkable to determine conditional eligibility of the cabling on a drop-by-drop basis, particularly after the fact, depending on what broadband-enabled device is plugged into the local area network cabling. Many devices may be connected to a school or library's local area network, both wired and wirelessly, and the devices connected to a network may change over time. We therefore find that the eligibility determination should be based on the purposes of the network as a whole, rather than for each cabling "drop" or "jack". As such, cabling "drops" or "jacks" that are part of a local area network primarily serving an eligible purpose (i.e., distributing broadband throughout a school or library building) are eligible for E-Rate and do not require cost allocation. We anticipate that this will help applicants by providing them certainty to request category two funding for the cabling needed for their Wi-Fi networks without concern that in the future an auditor will seek recovery of a small portion of that E-Rate funding due to a broadband-enabled device, such as a security camera, being attached at a later date. At the same time, we expect applicants' category two budgets will constrain them from requesting more cabling drops than necessary for their local area networks. Regardless of this clarification, we remind applicants that cabling is ineligible to the extent it is installed specifically for a security camera network or for a dedicated voice network.

29. Finally, we address an issue with the cost allocation required for shared equipment that is located at a non-instructional facility, including library administrative buildings.¹⁰⁵ While NIFs are eligible for category one support, category two support is generally not available for NIFs unless the equipment is "essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose."¹⁰⁶ This is generally a district switch located in an administrative building or data center. Under the current rules, a school district or library system generally cannot use any of its budget for category two equipment for a NIF. The exception for essential, shared equipment still applies, and therefore, applicants can purchase this type of equipment to be located in a NIF, but the rules now explicitly state that the applicant must remove the costs associated with the NIF's use of the shared equipment.¹⁰⁷ As a result, we have since learned that applicants have been required to undergo complicated cost-allocation calculations that have proven to be administratively burdensome, resulting in the removal of a small fraction of the funding request for the needed equipment, undercutting our efforts to streamline the category two application process.¹⁰⁸ As long as the applicant is choosing the most cost-effective offering for the shared equipment (e.g., a district switch) without regard

¹⁰⁴ See 47 CFR § 54.504(e).

¹⁰⁵ See Joint Commenters Comments at 10-12; Petition for Reconsideration of the State E-Rate Coordinators' Alliance Regarding Shared NIF Equipment Cost Allocation Requirement, WC Docket No. 13-184, (filed Jan. 21, 2020) (SECA Petition for Reconsideration).

¹⁰⁶ 47 CFR § 54.502(a)(6); see also *Universal Service First Report and Order*, 12 FCC Rcd at 9017-18, 9021, para. 459 (1997) (making internal connections eligible); *Fourth Order on Reconsideration* 13 FCC Rcd at 5440 paras. 208-210 (finding that NIFs are generally ineligible for internal connections, which are eligible only when necessary to transport information to individual classrooms); *Sixth Report and Order*, 25 FCC Rcd at 18779, paras. 31-32 (making residential dorms for schools with unique student populations eligible for category two support because they meet the definition of educational purposes).

¹⁰⁷ See *Category Two Report and Order*, 34 FCC Rcd at 11238-39, paras. 50-51; 47 CFR § 54.502(d)(6) ("When applying for category two support for eligible services to a non-instructional school building or library administrative building, the applicant shall deduct the cost of the non-instructional building's use of the category two services or equipment.")

¹⁰⁸ See Joint Commenters Comments at 11 (urging the Commission to change this unnecessary cost allocation requirement.); see also SECA Petition for Reconsideration, at 7 (providing examples of how to cost allocate the use of shared equipment by a NIF).

for the NIF's use, we agree that the applicant should not be required to cost allocate the NIF's use of the shared equipment. In recognition of this, we now amend our rules to no longer require cost allocation to remove the costs associated with the NIFs' use of the shared equipment in NIFs and related-library administrative buildings. Removing these requirements will permit applicants to forego these complex cost-allocation procedures as they seek to equip their schools and libraries with the category two equipment they need to serve their students and library patrons.¹⁰⁹

30. We recognize that there still exist potential cost-allocation challenges for those Tribal libraries that share space with other governmental and/or community organizations or services, often in unique configurations. We therefore direct USAC to publicly post plain language guidance, approved by the Bureau, providing examples of Tribal library cost allocations as they may arise.¹¹⁰ This could help other Tribal library applicants understand whether they need to cost allocate in their particular situation and provide examples on how they should cost allocate, if required. We also seek comment in the *E-Rate FNPRM* below if there are additional cost-allocation examples that would benefit from further Commission guidance.¹¹¹

C. Improving Communication Between the Commission and Tribal Nations

31. To further strengthen our government-to-government relationship with Tribal Nations and to improve communication with Tribal communities to better support Tribal entities applying for and receiving E-Rate funding, we also make a number of changes to our rules and processes. First, we establish a formal definition of Tribal within the E-Rate program to better identify those Tribal applicants seeking E-Rate funding. Second, we amend our rules to add a Tribal representative to the USAC Board of Directors who will represent the Tribal community and provide valuable insights for the administration of the USF and the universal service programs. Lastly, we direct USAC to provide greater outreach to Tribal applicants, and all applicants, so as to create a smoother application process. Taken together, we expect these actions will strengthen the government-to-government relationship between the Commission and Tribal Nations, so that we may better support Tribal libraries and schools, and the communities that they serve.

32. *Tribal Definition.* To ensure that Tribal entities can be identified as Tribal when applying for E-Rate support and that Tribal libraries can receive the above-described increase in category two funding, we adopt and add the following definition for "Tribal" in section 54.500 of the Commission's E-Rate rules:

An entity is 'Tribal' for purposes of E-Rate funding if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

¹⁰⁹ See SECA Petition for Reconsideration. We make these changes effective 30 days after publication in the Federal Register and dismiss the petition for reconsideration based on this rule change.

¹¹⁰ See, e.g., ALA Comments at 10 (noting that plain language guidance with scenarios of what different types of cost allocation would require will aid in building Tribal library applicant E-Rate capacity).

¹¹¹ See, e.g., WTA Comments at 5 (recommending that cost allocations be removed from category two services of all eligible libraries are schools).

33. This definition of Tribal is modified slightly as compared to the definition proposed in the *Tribal E-Rate NPRM* as a result of the record we received.¹¹² We chose not to include those entities for whom “the majority of students or library patrons served are Tribal members” as being Tribal because, as one commenter noted,¹¹³ this approach would be difficult to demonstrate and administer.¹¹⁴ Additionally, after discussion with Tribal representatives during the May 19, 2023 Tribal Consultation and Listening Session¹¹⁵ we determined that both that portion of the definition and the Tribal lands portion of the definition proposed in the *Tribal E-Rate NPRM* were adequately covered by the remaining portion of the proposed definition.¹¹⁶ We also included the “Alaska native village, regional corporation, or village corporation” language based upon suggestions from the May 19 Tribal Consultation and Listening Session¹¹⁷ that we incorporate language from the definition of Tribal used by the Institute of Museum and Library Services (IMLS).¹¹⁸ The Alaska Department of Education and Early Development and the Alaska State Library in their joint comments supported this approach.¹¹⁹ While one commenter suggested maintaining the present system whereby applicants self-identify as Tribal,¹²⁰ the above-mentioned category two rule changes require implementation of a definition for Tribal applicants to evaluate their eligibility for the enhanced benefits. In addition, to better track and more easily identify Tribal entities and their Tribal affiliation, we will also collect the applicant’s Tribal affiliation as part of the application process.

34. *USAC Board of Directors.* Next, we adopt our proposal to add a new director to the USAC Board of Directors to represent the interests of Tribal communities.¹²¹ Consistent with our existing rules governing the USAC Board, we establish a new seat on the Board and require Tribal entities to nominate a person to this seat to represent the interests of Tribal communities. This idea was first suggested by ALA and the Association of Tribal Archives, Libraries, and Museums (ATALM) in their joint comments to the *2021 Tribal Libraries NPRM*, wherein they explained how such a position could simultaneously provide USAC with information from the Tribal community and provide the Tribal

¹¹² See *Tribal E-Rate NPRM*, at *9, para. 22; see also April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B, at 3; Alaska Department of Education and Early Development and the Alaska State Library Reply at 1-2.

¹¹³ Mille Lacs Band of Ojibwe Reply at 2 (suggesting that the “majority of students or library patrons served” language would be difficult to administer).

¹¹⁴ We also chose not to include the Boys & Girls Clubs of America Native Services locations in the definition of “Tribal,” as the record does not support a finding that these locations would be eligible as either a library or a school. *Contra* NTTA Comments at 2 (suggesting that these locations be added to the definition of “Tribal”); ADS Reply at 3-4 (supporting the comments of NTTA on adding these locations to the definition of “Tribal”).

¹¹⁵ See May 19, 2023 Tribal Consultation and Listening Session *Ex Parte* at 1-2.

¹¹⁶ See *Tribal E-Rate NPRM*, at *9, para. 22.

¹¹⁷ See May 19, 2023 Tribal Consultation and Listening Session *Ex Parte* at 2.

¹¹⁸ See Institute of Museum and Library Services, Native American Library Services: Enhancement Grants, FY 2023 Notice of Funding Opportunity, at 5 <https://www.imls.gov/sites/default/files/2023-01/fy23-ols-nae-nofo.pdf> (describing the eligibility requirements for applicants and stating: “For the purpose of funding under this program, “Indian tribe” means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A list of eligible entities is available from the Bureau of Indian Affairs.”).

¹¹⁹ See Alaska Department of Education and Early Development and the Alaska State Library Reply at 1-2.

¹²⁰ ADS Comments at 4.

¹²¹ *Tribal E-Rate NPRM*, at *8, para. 20.

community with information directly from USAC.¹²² Commenters that addressed the addition of a Tribal director unanimously supported the proposal.¹²³ Participants at the April 13, 2023 Tribal Consultation and Listening Session were also supportive of this proposal, noting that USAC's Board would benefit from having a Tribal perspective that could speak to the unique political and geographical identity of Tribal communities, a sentiment reiterated by Chief Executive Melanie Benjamin in reply comments filed by the Mille Lacs Band of Ojibwe.¹²⁴ Adding a Tribal director to the Board allows USAC, the USF, and all the universal service programs USAC administers to benefit from the perspective that a Tribal representative will provide.

35. Our existing rules with regards to directors will also apply to the Tribal director. The Tribal community shall nominate by consensus a new director.¹²⁵ If consensus on a nominee is not reached or a nominee is not provided, the Chair of the Commission shall select an individual to be the Tribal director.¹²⁶ The Tribal director will also serve a three-year term but will be eligible to serve for subsequent terms.¹²⁷ In addition, we add the Tribal director to the Schools and Libraries Committee so that the Tribal board member can participate in and assist the Committee in carrying out its responsibilities and duties regarding the E-Rate program.¹²⁸ As with other Board member positions, the Tribal director may also serve on other USAC Board committees as well. Since there will now be an even number of directors on the USAC Board, we direct USAC to make any necessary changes to its bylaws to ensure procedures are in place to determine an outcome in the case of a tie.

36. *Outreach and Training.* We seek to aid Tribal library applicants by directing USAC to provide additional training and outreach throughout the application, invoicing and post-commitment processes. The Tribal Libraries E-Rate Pilot Program we tested last year demonstrated the value of one-to-one and cohort assistance, tailored to the needs of new Tribal library applicants. We received positive feedback from participants and commenters alike, who have requested ongoing support to navigate the technical and administrative processes.¹²⁹ The Pilot Program also provided helpful lessons learned for both USAC and the Commission to enhance future E-Rate Tribal related trainings. We therefore direct USAC to establish an enhanced training program that includes both cohort and on-demand learning opportunities that are targeted to Tribal E-Rate applicants. Where possible, we encourage USAC to

¹²² ALA and ATALM Comments, CC Docket No. 02-6, at 4-5 (rec. Nov. 12, 2021) (ALA and ATALM Comments).

¹²³ See, e.g., ALA Comments at 11; Alaska Department of Education and Early Development and Alaska State Library Reply at 5 ("Alaska encourages the FCC to undertake these steps so that USAC and its Directors have input from all of the program's stakeholders. Treat Tribal libraries with the same set of program rules while recognizing that Tribal issues have their own layers of complexity and a Tribal voice on the USAC Board would help to bring an awareness that has been missing in the past."); Mille Lacs Band of Ojibwe Reply at 2 (supporting the change to "ensure that there will be a person at the table that can represent tribal interests"); NTTA Comments at 6 (fully supporting the idea); USET Comments at 4 (strongly recommending this proposal); WTA Comments at 2 (adding a member is "an excellent way for the Commission and its Universal Service Fund ('USF') administrator to achieve flexibility by keeping informed regarding issues, changing conditions and special circumstances"); AIHEC *Ex Parte* at 13.

¹²⁴ See, e.g., April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B, at 2-3; Mille Lacs Band of Ojibwe Reply at 2.

¹²⁵ See 47 CFR § 54.703(c)(1).

¹²⁶ See 47 CFR § 54.703(c)(3).

¹²⁷ See 47 CFR § 54.703(d).

¹²⁸ See 47 CFR § 54.705(a)(1).

¹²⁹ See, e.g., Alaska Department of Education and Early Development Reply at 6; ALA Comments at 13; Mille Lacs Band of Ojibwe Reply at 1; USET Comments at 3; WiDPI Reply at 3; see also April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B at 1, 7.

conduct hands-on, in-person training opportunities, as suggested by ALA.¹³⁰ Enhancing Tribal governments' and libraries' awareness of the E-Rate program, as well as program requirements, is integral to the other changes we adopt herein. We also direct USAC to provide specific support for TCU libraries, which will be eligible for the E-Rate program for the first time. We encourage USAC to identify any TCU library applicants and provide them with additional resources to assist them in the setting up their entity profiles in the E-Rate Productivity Center (EPC) and through the application and reimbursement processes.

37. In addition to enhanced training, commenters identified other outreach opportunities to better support Tribal library applicants. Specifically, as suggested by ALA in their initial comments, we direct USAC to identify and conduct outreach to first-time Tribal applicants (may also be known as billed entities or BENs) to provide additional information concerning the review process and to inquire as to any questions the first-time filer or applicants may have.¹³¹ Commenters also expressed confusion related to how a library, including a Tribal library, should set up their billed entity when the respective local government is the entity that pays the bill to vendors.¹³² Consistent with the comments from the Alaska Department of Education and Early Development and the Alaska State Library, we direct USAC to post guidance on its website for first-time Tribal library applicants on how to properly set up a library in EPC when the Tribal government, rather than the library, is the entity responsible for paying bills and invoices.¹³³ We also direct USAC to publish library-specific guidance, upon approval from the Bureau, on issues libraries commonly experience while navigating the E-Rate program.

38. We decline to adopt an extended or separate application filing window for Tribal libraries, as that could cause confusion, but we direct the Bureau to continue considering requests for waiver of the FCC Form 471 application filing deadline, recognizing the special circumstances that Tribal library applicants face when applying for the E-Rate program.¹³⁴ From speaking with Tribal governments and libraries, we recognize that the procurement processes for Tribal libraries can be on different timelines from the procurement processes for Tribal schools, that there are fewer staff to handle such filings, and that it can be time-consuming to get approvals for procurements from Tribal officials.¹³⁵ However, commenters suggested that extending the filing window or creating a wholly separate filing window would not be helpful at this time and that waiver requests are a better way to assist Tribal libraries in applying for E-Rate support.¹³⁶ Therefore, recognizing that the E-Rate process may be particularly challenging for small entities like Tribal libraries, we urge such entities to file timely waiver requests of the FCC Form 471 application filing deadline and to describe in such requests relevant special circumstances, such as delays from additional Tribal approvals. We expect the Bureau to adjudicate any

¹³⁰ ALA Comments at 13.

¹³¹ See *id.* at 9; Letter from Megan Janicki, Deputy Director, American Library Association (ALA), to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21, (filed July 13, 2023) (ALA *Ex Parte*).

¹³² See Joint Commenters Comments at 18.

¹³³ See Alaska Department of Education and Early Development and the Alaska State Library Reply at 3-4 (explaining the confusion from setting up "forced consortia" when the Tribal government is the billpaying entity for the library and therefore is labeled a "consortium lead" in the system even when there is just a single library).

¹³⁴ See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 10-90, 02-60, 06-122, Public Notice, DA 23-333, 13 (WCB rel. Apr. 28, 2023) (waiving the funding year 2023 application filing deadline for a Tribal library that applied after the deadline).

¹³⁵ See, e.g., ADS Comments at 2 (noting that Tribal libraries are often dependent on a Tribal government's procurement schedule); Mille Lacs Band of Ojibwe Reply at 1 (explaining the process for working through the application); May 19, 2023 Tribal Consultation and Listening Session *Ex Parte*, at 2 (explaining how limited staffing capacity can make it difficult for small Tribal libraries to apply every year).

¹³⁶ See Alaska Department of Education and Early Education and Alaska State Library Reply at 6.

such requests quickly. In this way, we maintain useful program deadlines while also providing assistance to Tribal library applicants.

39. Finally, as suggested by commenters,¹³⁷ we direct USAC to develop a mechanism to remind all registered users in EPC three weeks prior to the invoice filing deadline for each funding request (FRN) where no requests for reimbursement have been submitted yet, with instructions on how to file for reimbursement and how to file for a 120-day invoice filing deadline extension. This reminder will offer applicants and service providers an opportunity to avoid missing the invoice filing deadline and to avoid imperiling their ability to receive reimbursement for their E-Rate funding requests. While we hope that this reminder will assist applicants and service providers that may have overlooked the invoice filing deadline, we caution applicants and service providers that it is their responsibility to comply with the Commission's invoice filing deadline rule, regardless of whether or not USAC has sent a reminder of the deadline. We expect this direction to USAC will benefit all E-Rate applicants, especially Tribal library applicants who may be new to the E-Rate reimbursement process.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

40. Consistent with the changes we adopt above, in this Further Notice of Proposed Rulemaking (*E-Rate FNPRM*), we seek comment on the discrete issues discussed below that may further simplify the administration of the E-Rate program and reduce burdens for all applicants, including Tribal and other small, rural entities. Specifically, to continue meeting our program's performance goal of making the E-Rate application process and other E-Rate processes fast, simple, and efficient,¹³⁸ we seek comment on a number of suggestions raised by commenters in the *Tribal E-Rate NPRM* proceeding¹³⁹ aimed at streamlining or simplifying the program for all participants.¹⁴⁰

41. The Commission remains committed to protecting the integrity of its programs. As we consider proposals that look to further simplify the administration of the E-Rate program and reduce barriers that may inhibit Tribal and other small, rural applicants from participating in the program, we note our intention that reducing barriers does not mean reducing our commitment to maintaining the integrity of the E-Rate program. The Commission utilizes several different resources at its disposal to ensure that protections are in place prior to implementation of any rules regarding the oversight and administration of E-Rate, as well as investigating and rooting out bad actors from the program. We intend for the Bureau to continue coordinating with the Enforcement Bureau, the Office of Managing Director, the Office of General Counsel, the Office of Economics and Analytics and other Commission resources to ensure the E-Rate program is protected. Further, we intend that the Bureau and other relevant Commission offices continue consultation with other entities, such as the Government Accountability Office (GAO) and the FCC Office of Inspector General, that have a shared interest in maintaining the integrity and improving the operations of the Commission's programs.¹⁴¹ Where possible, we will strive to incorporate the recommendations of the various entities listed above in our decisional documents in an effort to establish robust protections against waste, fraud, and abuse. We seek comment on these commitments and how best to ensure that any of the proposals herein maintain and enhance safeguards to protect the integrity of the E-Rate program.¹⁴² For example, do commenters

¹³⁷ See Joint Commenters Comments at 39.

¹³⁸ *First 2014 E-Rate Order*, 29 FCC Rcd at 8891-92, paras. 55-56.

¹³⁹ See *Tribal E-Rate NPRM*.

¹⁴⁰ See generally, Joint Commenters Comments.

¹⁴¹ See, e.g., Federal Communications Commission, Office of Inspector General, Semiannual Report to Congress, October 1, 2022 – March 31, 2023; GAO, *Tribal Internet Access: Increased Federal Coordination and Performance Measurement Needed*, GAO-16-504T (Apr. 27, 2016).

¹⁴² See, e.g., *Promoting Fair and Open Competitive Bidding in the E-Rate Program*, WC Docket No. 21-455, Notice of Proposed Rulemaking, 36 FCC Rcd 17892 (2021) (*E-Rate Bidding Portal Notice*); GAO, *Telecommunications:*

(continued....)

believe it would be beneficial to compile and make available recommendations that were submitted as part of such consultations?¹⁴³

A. Updating Eligible Services

42. *License/Software Distinction.* We first seek comment on allowing all eligible multi-year software-based services that are purchased with category two equipment to be requested and reimbursed in the same manner. Currently, software-based services are eligible as Internal Connections service when they are necessary for the operation of a piece of eligible Internal Connections equipment, such as a client access license.¹⁴⁴ However, bug fixes, security patches, and technical assistance-based software services are eligible as Basic Maintenance of Internal Connections (BMIC) services.¹⁴⁵ As explained in the *Sixth Report and Order*, “[r]equests for basic maintenance will continue to be funded . . . if, but for the maintenance at issue, the service would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such service.”¹⁴⁶ Applicants are currently required to amortize the cost of BMIC-related services, including for example, software-based technical assistance services, across the length of the BMIC multi-year contract, and cannot receive full funding for the BMIC software-based technical assistance services in the first year of the contract, even if the applicant has prepaid for the multi-year BMIC software service with the purchase of the category two equipment. This means that the current E-Rate rules allow the applicant to receive full funding for an internal connections-related multi-year software service in the first funding year, but for other multi-year software-based services for technical assistance, like bug fixes, which are considered to be BMIC services, the applicant must split the cost of the multi-year software service evenly for each funding year, even if the applicant was required to prepay for the multi-year BMIC software-based services at the start of the contract period.¹⁴⁷ This procedure stems from the Commission’s efforts in 2010 to only have the E-Rate program pay for basic maintenance services that are actually provided over the course of the funding year, and to prevent the E-Rate program from being used to prepay for BMIC services that were never used or needed by the applicant.¹⁴⁸

43. In their comments to the *Tribal E-Rate NPRM*, the Joint Commenters explain that this distinction in the treatment of multi-year software-based services causes confusion during the competitive bidding process, where applicants are concerned about funding denials if they select the incorrect service subcategory (i.e., use internal connections instead of BMIC) on FCC Form 470, and places a burden on

(Continued from previous page) _____

FCC Should Take Action to Better Manage Persistent Fraud Risks in the E-rate Program, GAO-20-606 (Sept. 16, 2020) (2020 GAO E-Rate Report).

¹⁴³ See, e.g., Office of Inspector General for the Department of Transportation, <https://www.oig.dot.gov/recommendation-dashboard>; Office of Inspector General for the Department of Health and Human Services, <https://oig.hhs.gov/reports-and-publications/recommendations/tracker/>; GAO, Recommendations Database, <https://www.gao.gov/reports-testimonies/recommendations-database> (maintaining a public dashboard of open recommendations intended to improve the effectiveness of their respective programs).

¹⁴⁴ See, e.g., *FY2023 Eligible Services List*, Appendix B, at 8.

¹⁴⁵ See *id.* at 9.

¹⁴⁶ See *Sixth Report and Order*, 25 FCC Rcd at 18809, para. 107.

¹⁴⁷ USAC, FAQs: Basic Maintenance of Internal Connections (BMIC), Q2, <https://www.usac.org/e-rate/learn/faqs/basic-maintenance-of-internal-connections-bmic/> (last visited July 20, 2023).

¹⁴⁸ See *Sixth Report and Order*, 25 FCC Rcd at 18809-10, paras. 107-108; *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 17324, 17325-17326, paras. 5-6 (WCB 2010) (*2010 Clarification Order*) (clarifying that services such as software upgrades and patches, including bug fixes and security patches, and online and telephone-based technical assistance and tools that are typically standard fixed priced offerings will continue to be funded as BMIC without an applicant having to demonstrate that work was performed).

applicants that requires them to divide the cost of a prepaid multi-year BMIC software-based service request across multiple funding years.¹⁴⁹ We therefore seek comment on the proposal to treat these particular software-based services (e.g., bug fixes, security patches, and software-based technical assistance) in the same way we currently treat eligible Internal Connections software-based services, like client access licenses. We also propose to allow applicants that sought bids on their FCC Form 470 only for Internal Connections software services to be permitted to request funding for their multi-year BMIC software-based services without being found to have violated our competitive bidding rules for failing to check the correct box for this software request, and to allow applicants requesting these types of software-based services to be funded based on how the software-based service is contracted and invoiced with the service provider (e.g., funding a multi-year software-based service for bug fixes in a single funding request during the first year of service if the service is paid for in that first year). We seek comment on these proposals.

44. *Transition of Services.* Applicants and service providers have also sought additional clarification on how to request E-Rate support when an applicant is transitioning services between two providers during the same funding year.¹⁵⁰ To prevent funding duplicative services, program procedures do not allow USAC to commit funding to two funding requests for the same service, to the same recipients, that overlap in time. At the same time, due to concerns about exceeding the E-Rate funding cap, the Commission's service substitution rules require that post-commitment service substitutions be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.¹⁵¹ As such, applicants are encouraged to work with their service providers to try to determine the cutover dates when transitioning service to a new provider during a funding year. We recognize, however, that this can be difficult to determine with accuracy, months in advance of the planned transition.

45. One approach is to allow applicants to request twelve months of service from the higher-priced service offering, and then file a post-commitment request to change the service provider once the cutover dates are known. We note that this suggestion results in the service request being funded higher than the actual costs of the services, and may inflate the overall demand for E-Rate support for that year. However, we seek comment on whether this is still the best way to allow for mid-year service provider transitions, or whether we should consider alternative guidance or a rule change regarding these types of mid-year transitions. For instance, should we consider amending our service substitution rules to allow applicants in this unique situation to request a service substitution that will result in an increase in the pre-discount price if the transition occurs at a different date than had been anticipated and requested? If so, should we require applicants to include an explanation in their service substitution request documenting the reasons that the change resulted in an increase in the pre-discount price? Should we limit USAC's ability to grant such a service substitution request on the availability of funding for the applicable funding year under the funding cap? Based on prior years' data, we do not expect this to be a large amount of funding, but we generally do not increase annual E-Rate demand post-commitment. Are there any other issues that we should take into account by allowing applicants to potentially receive a commitment amount higher than the one originally approved for the services? How might such increases in funding impact the annual E-Rate cap adopted by the Commission? Are there budget control measures that we should adopt to ensure this new proposal does not cause the Commission to exceed the cap? We seek comment on these questions and how mid-year service provider transitions should be handled in the E-Rate program.

¹⁴⁹ See Joint Commenters Comments at 22-23; see also Alaska Department of Education and Early Development and Alaska State Library Reply at 3.

¹⁵⁰ See ALA Comments at 9.

¹⁵¹ 47 CFR § 54.504(d)(2).

46. *Duplicative Services.* We next seek comment on the Joint Commenters' request for additional clarification regarding cost-effective purchasing on services from two different providers. In the *Second Report and Order*, the Commission found that requests for duplicative services, or services that provide the same functionality for the same population in the same location during the same time, are ineligible and contravene the program requirements that discounts be provided based on the reasonable needs and resources of the applicant.¹⁵² It also found that requests for duplicative services are not cost-effective, but the Commission recognized that determining whether particular requests are functionally equivalent depends on the circumstances.¹⁵³ In the *Macomb Order*, USAC denied a funding request from the Macomb Intermediate School District Technology Consortium, which requested T-3 connections to provide Internet access to its school district from three separate service providers.¹⁵⁴ The Commission agreed that the school district violated section 54.511 of the Commission's rules by not selecting the most cost-effective service offering among the bids considered,¹⁵⁵ but provided the school district with funding for all three T-3 connections at the amount associated with the least expensive of the three providers.¹⁵⁶

47. The Joint Commenters request clarification that applicants may seek needed services from multiple providers as part of the same procurement, so long as the applicant is limited to E-Rate funding based on the least expensive service when one provider could have met all the applicant's needs.¹⁵⁷ We seek comment on this proposal and the desire by schools to purchase services from multiple providers in the same procurement. How often is the scenario in the *Macomb Order* present in current school network configurations? How can USAC best evaluate whether applicants need the services requested from multiple providers, or whether the services are actually duplicative, such as requests for redundant or failover connections? What kind of documentation can applicants and/or service providers use to demonstrate that the services are not duplicative services (i.e., redundant or failover connections)? What safeguards can we use to only fund services that are needed and are being used by the applicant? The rules require that price must be the primary factor in considering which service offering is the most cost-effective, but should we require price to be the only factor in order to ensure applicants select the least expensive service option in these scenarios when the applicants wishes to use multiple providers for the requested services? Are additional safeguards needed to ensure competitive bidding is still effective for ensuring cost-effective services when applicants seek to contract with multiple service providers for the requested services? What information or data may need to be collected on the funding application forms to demonstrate the requested services are needed and are not duplicative services? Are there other issues that the Commission should consider in allowing multiple service providers to be selected for the same procurement and requested services? Finally, we also seek comment on whether further guidance is needed for applicants seeking redundant or resilient circuits provided by a single carrier.¹⁵⁸ While redundant circuits would be considered duplicative, are there any unique types of arrangements or network configurations being used that might be needed and how can applicants and/or service providers document the need?

¹⁵² *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (*Second Report and Order*) (codifying 47 CFR § 54.511(a)).

¹⁵³ *Id.* at 9210, para. 24.

¹⁵⁴ *Requests for Review by Macomb Intermediate Unit Technology Consortium, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8771 (2007) (*Macomb Order*).

¹⁵⁵ 47 CFR § 54.511(a).

¹⁵⁶ *Macomb Order*, 22 FCC Rcd at 8774, para. 9.

¹⁵⁷ See Joint Commenters Comments at 32.

¹⁵⁸ Letter from Steven Morris, Vice President and Deputy General Counsel, National Cable and Telecommunications Association (NCTA), to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21, 2 (filed July 12, 2023) (NCTA *Ex Parte*).

48. *Other Simplification Opportunities.* We seek comment on other changes to the eligible services list and cost allocation requirements that could simplify the E-Rate program, particularly for new and smaller applicants. For example, should we revise the eligible services list to use the same terms as used on FCC Form 470 or FCC Form 471? For instance, would it make more sense to use the terms from FCC Form 470 like fiber, cable, copper, wireless, and other in the eligible services list of data transmission and/or Internet access services, rather than listing out specific types, like “Broadband Over Power Lines”?¹⁵⁹ Are there terms in the eligible services list that should be updated or streamlined? Are there updates we could make to the eligible services list process to make it easier to approve and release the list with sufficient time for review, before applicants must submit their funding applications? For cost allocation requirements, are there additional changes we could make to clarify when applicants must cost allocate parts of their E-Rate funding requests? For example, are there other types of equipment similar to cabling, such as switches, for which cost allocation guidance is needed?¹⁶⁰ Are there other examples of challenging cost-allocation calculations that the Commission could further streamline for Tribal applicants? Are there other examples of ancillary use unique to Tribal libraries or small entities that share buildings on which the Commission could consider providing further guidance? Are there particular challenges with cost allocation of category two services used in multipurpose buildings, that we could simplify?¹⁶¹ We seek comment on these questions and other suggestions for simplifying the cost-allocation. Finally, should the Commission consider changes to the application process for certain eligible services? Specifically, we seek comment on whether a rolling category two application deadline or a second application filing window for category two services would simplify or complicate the E-Rate program.¹⁶² If the Commission were to consider changes to the deadline for filing for category two applications, what limits would be needed to ensure demand can be appropriately calculated?

B. Changing or Clarifying the E-Rate Competitive Bidding Requirements

49. The E-Rate program’s competitive bidding requirements reflect the Commission’s determination that competition is the most efficient and effective means for applicants to select the most cost-effective service offerings. The Commission has long held that a fair and open competitive bidding process is fundamental to the integrity of the E-Rate program.¹⁶³ Thus, the Commission has consistently required applicants to treat all potential bidders equally throughout the procurement process, provide all bidders access to the same information, and ensure that no bidder receives an unfair advantage.¹⁶⁴ Selecting the most cost-effective bid and ensuring that price of the eligible equipment and services is the primary factor considered in the bid evaluation process are other fundamental requirements of the Commission’s competitive bidding rules.¹⁶⁵

¹⁵⁹ See, e.g., *FY2023 Eligible Services List*, at Appendix B, 7.

¹⁶⁰ See *SHLB Ex Parte* at 3-4; *SECA Ex Parte* at 5.

¹⁶¹ See, e.g., *WTA Comments* at 5 (stating that cost allocations for category two services and associated facilities providing connectivity solely with the walls of eligible libraries and schools are unnecessary).

¹⁶² See *SHLB Ex Parte* at 6 (noting challenges applicants have in getting approvals for category two procurements in time to file for E-Rate support); *SECA Ex Parte* at 6.

¹⁶³ See *Universal Service First Report and Order*, 12 FCC Rcd at 9076-80, paras. 570-80 (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Fourth Order on Reconsideration*, 13 FCC Rcd at 5425-26, para. 185 (stating that competitive bidding is a key component of the Commission’s effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates).

¹⁶⁴ *Id.*; see also *Third Report and Order*, 18 FCC Rcd at 26939, para. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources).

¹⁶⁵ See *Ysleta Order*, 18 FCC Rcd at 26428, para. 47.

50. *Competitive Bidding Exemptions.* In their comments to the *Tribal E-Rate NPRM*, the American Library Association (ALA) recommends that small libraries requesting less than \$10,000 in E-Rate funding to be subject to fewer competitive bidding requirements and less rigorous review during the application process by treating funding requests under \$10,000 as *de minimis*.¹⁶⁶ Specifically, ALA explains that libraries rely on state and local procurement rules for these purchases and additional competitive bidding requirements are not needed because of the low amount of requested funding. We seek comment on this proposal to create a competitive bidding exemption for E-Rate funding requests under \$10,000 submitted by libraries. In the Report and Order, we adopted a competitive bidding exemption for Tribal and other small or rural libraries making category two purchases of \$3,600 or less, per funding year. We seek additional comment on expanding the exemption for libraries making smaller annual E-Rate requests (i.e., less than \$10,000), along with data to support such a change. For example, ALA notes that 62.3% of libraries requested less than \$10,000 in total support for category one and category two services in funding year 2023, and 100% of libraries in certain rural states, like Montana, did so.¹⁶⁷ However, the Commission also relies on fair and open competitive bidding to result in applicants making cost-effective purchases. If we adopt this proposal, how can the Commission ensure that applicants are still making cost-effective purchases? What state, local, or Tribal procurement rules are in place for purchases that are under \$10,000? Should we also consider permitting schools to use the competitive bidding exemption for category two purchases of \$3,600 or less, per funding year, or another exemption for school entities?¹⁶⁸ If the exemption is expanded to schools, how can we protect the E-Rate program from waste, fraud, and abuse? For example, ALA's proposal relies on the fact that libraries are subject to state and local procurement laws and requirements; are all school entities subject to state, local or Tribal procurement requirements? For example, are private schools subject to any specific state, local, or Tribal procurement requirements? We seek comment on these questions and supporting data for adopting a competitive bid exemption for E-Rate purchases under \$10,000 per funding year.

51. *Mid-Year Bandwidth Increases.* We next seek comment on adopting a limited exception to our competitive bidding rules to allow applicants to seek bandwidth increases in between E-Rate funding cycles. The E-Rate program rules require applicants to competitively bid services using FCC Form 470.¹⁶⁹ This process starts at least 28 days before the applicant files their E-Rate funding requests during the annual application filing window, but can occur six months before, or—in the case of multi-year contracts—years before the funding request is submitted.¹⁷⁰ Applicants are encouraged to seek bids for and sign contracts for a range of bandwidths in order to accommodate changes in bandwidth needs in the future, but applicants are not always able to anticipate changes in their bandwidth needs. In 2020, for example, the Bureau opened a second application filing window in September to address increased on-campus bandwidth needs as a result of remote learning challenges from the COVID-19 pandemic.¹⁷¹ However, in other instances, applicants may be unable to increase their bandwidth mid-funding year without potentially violating the E-Rate program competitive bidding rules.¹⁷²

¹⁶⁶ See ALA Comments at 7.

¹⁶⁷ See *id.*

¹⁶⁸ See SHLB *Ex Parte* at 2; SECA *Ex Parte* at 4.

¹⁶⁹ 47 CFR § 54.503.

¹⁷⁰ An applicant can enter into multi-year contracts or contracts with voluntary extensions without reposting an FCC Form 470 application and complying with the 28-day rule each year. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, paras. 10-12 (WCB 1999) (clarifying that applicants may sign multi-year contracts).

¹⁷¹ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 10347 (WCB 2020).

¹⁷² For example, if a school district competitively bids and requests E-Rate funding in January for services on a contract that provides pricing for 1 Gbps bandwidth, but the applicant determines in September that it requires 2
(continued....)

52. The Joint Commenters therefore suggest an exception to the competitive bidding rules to allow applicants to increase bandwidth during the school year (i.e., mid-funding year) by submitting a service substitution request to increase the bandwidth using their current provider at the existing committed amount without being found to have violated the program's competitive bidding rules.¹⁷³ We seek comment on this proposal and how to allow for bandwidth increases without opening the door to applicants avoiding our competitive bidding rules or unfairly favoring incumbent service providers. What limitations would need to be adopted in order to ensure that the exception for mid-funding year bandwidth increases is not misused? How can USAC keep track of such mid-funding year bandwidth increases? Do commenters agree that applicants be allowed to request a service substitution request increasing the bandwidth, limited at the original funding commitment cost?¹⁷⁴ Should such applicants be required to competitively bid for the increased bandwidth in the subsequent funding year? We seek comment on these questions and other issues the Commission should consider in adopting this exception to the E-Rate competitive bidding requirements.

53. *Providing Guidance to Applicants on When Competitive Bidding Must be Restarted.* We next seek comment on how to reduce confusion about when changes made to the information provided on FCC Form 470 or related requests for proposals (RFP) requires an applicant to restart the competitive bidding process and wait at least 28 days before selecting their service offering(s). Under the Commission's competitive bidding rules, applicants must conduct a fair and open competitive bidding process.¹⁷⁵ This means that applicants must treat all potential bidders equally throughout the entire procurement process, provide all bidders access to the same information, and ensure that no bidder receives an unfair advantage.¹⁷⁶ Furthermore, applicants must describe the requested services with sufficient specificity to enable potential service providers to submit responsive bids for such services.¹⁷⁷ Sometimes, the facts are clear that the requested E-Rate services were not fairly competitively bid and there was a violation of the competitive bidding rules. For example, applicants may not request E-Rate support for services that were not included on FCC Form 470.¹⁷⁸ Similarly, applicants that fail to indicate the existence of a RFP have also been denied E-Rate support for suppressing fair and open competitive bidding.¹⁷⁹ As such, in some instances, when applicants make a change to an FCC Form 470—such as by modifying the services being requested or by including an omitted RFP—that would change whether a

(Continued from previous page) _____

Gbps, there is no mechanism for the applicant to increase that bandwidth from the service provider on their E-Rate funding request.

¹⁷³ Joint Commenters Comments at 33-34.

¹⁷⁴ See 47 CFR § 54.504(d)(2).

¹⁷⁵ 47 CFR § 54.503(a).

¹⁷⁶ See *supra* note 30.

¹⁷⁷ 47 CFR § 54.503(c)(1)(2).

¹⁷⁸ See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Albert Lea Area Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 4533, 4541-42, paras. 14-15 (WCB 2009) (*Albert Lea Order*) (finding that petitioners violated the Commission's competitive bidding rules by not including the type of service on the FCC Form 470 the applicant requested on its FCC Form 471).

¹⁷⁹ See, e.g., *Request for Review of A Decision of the Universal Service Administrator by Spokane School District 81*, CC Docket No. 02-6, Order, 28 FCC Rcd 6023, 6024, para. 3 (WCB 2013) (denying appeal where applicant failed to indicate the existence of an RFP on its FCC Form 470, but issued an RFP to interested bidders, because "only those vendors receiving the RFP were privy to details and specific instructions concerning the procurement of the desired services" and "not all prospective service providers were on a level playing field"; further noting that "[b]y not indicating the existence of an RFP on its FCC Form 470, [the applicant's] noncompliance with the rules created the risk that it artificially constricted the potential pool of applicants that could meet its specific requirements").

service provider reviewing the original FCC Form 470 could submit responsive bids, the competitive bidding process should be restarted to allow all potential bidders the opportunity to bid based on the additional or modified information, and the applicant should wait at least 28 days after making these changes before selecting the most cost-effective service offering(s).¹⁸⁰ In other cases, the Commission has granted requests for review where an applicant changed information on FCC Form 470 or associated RFP without finding a competitive bidding violation because the change did not impact potential bidders' ability to be able to submit responsive bids.¹⁸¹

54. As these examples indicate, whether a change to FCC Form 470 or RFP results in an unfair competitive bidding process is often a fact-specific inquiry. We therefore seek comment on scenarios where we can provide more guidance on whether an applicant's changes to their FCC Form 470 or RFP requires it to restart the competitive bidding process and wait at least 28 days before selecting its service offering(s). E-Rate participants are encouraged to provide examples of instances where they believe changes to FCC Form 470 and/or RFP do not result in an unfair competitive bidding process as all potential bidders would still be able to submit responsive bids although certain information was modified in FCC Form 470 and/or RFP. Are there any presumptions or safe harbors the Commission could adopt so that applicants could have more certainty about whether and when they need to restart the competitive bidding process because of that specific change that was made to FCC Form 470 and/or RFP? For instance, should applicants correcting errors in their bandwidth requests by less than 50% not be required to restart the competitive bidding clock (i.e., the minimum 28 day waiting period)? Are there other types of common changes to FCC Form 470 and/or RFP that should not require applicants to restart their competitive bidding process? We seek comment on these questions and what type of guidance or clarifications would be helpful for the Commission to provide on when changes to FCC Form 470 and/or RFP would not result in an unfair competitive bid process and when the applicant would be required to restart their competitive bid process and wait a minimum of 28 days before selecting the most cost-effective service offering(s) after making the change or modification.

55. *Spam Bids and Bids Received After 28 Day Waiting Period.* Under the E-Rate competitive bidding rules, applicants are required to carefully consider all received bids, with price being the primary factor, and select the most cost-effective service offering.¹⁸² Applicants must also wait at least 28 days before selecting the most cost-effective service offerings.¹⁸³ Applicants are permitted to set deadlines to close the competitive bid process (of at least four weeks after FCC Form 470 is filed) or establish other disqualification factors in FCC Form 470.¹⁸⁴ The Joint Commenters explain that

¹⁸⁰ USAC, Ministerial & Clerical Errors, <https://www.usac.org/e-rate/applicant-process/competitive-bidding/ministerial-clerical-errors/> (last visited July 20, 2023) (providing examples based on E-Rate precedent for when a new FCC Form 470 should be filed).

¹⁸¹ See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, Public Notice, 35 FCC Rcd 6451, 6452 n.5 (WCB 2020) (finding that there was no violation of the minimum 28-day waiting period when all potential bidders had access to the same information, including information about five prospective locations that had been inadvertently omitted from one list but included in other lists to which all bidders had access); *Requests for Review of the Decisions of the Universal Service Administrator by Green Bay Area Public School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17036, para. 1 (WCB 2010) (granting relief after finding that all bidders had access to the same information during the competitive bidding process via the FCC Form 470 despite the school district's failure to indicate that it had issued a separate request for proposals for the services at issue).

¹⁸² 47 CFR § 54.511.

¹⁸³ 47 CFR § 54.503(c)(4) (stating that the entity "shall then wait at least four weeks from the date on which its description of services is posted...before making commitments with the selected providers of services").

¹⁸⁴ See, e.g., *Requests for Review of a Decision of the Universal Service Administrator by Baltimore City School District and Cobb County School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11193, 11199, para. 12 (WCB 2011) (explaining that applicants should provide notice (continued....))

applicants are receiving more spam bids and other automated or “robo” responses to their FCC Form 470 that do not contain the information on the specific services requested by the applicant and seek guidance on whether these bid responses have to be considered and retained.¹⁸⁵ They also seek guidance on whether and how long bids must be considered after the required four weeks have passed.¹⁸⁶ Specifically, the Joint Commenters explain that service providers have set up automated responses to be sent, often within 24 hours, after an FCC Form 470 has been posted on USAC’s website.¹⁸⁷ In addition, multiple automated bid responses may be sent to the applicant for a single FCC Form 470.¹⁸⁸ However, the automated bid responses do not contain the pricing and other information requested in FCC Form 470 and require the applicant to reach out to the service provider for additional information.¹⁸⁹ The Joint Commenters request that the Commission clarify that spam and other automated bid responses do not meet the definition of an authentic bid and that applicants may, but are not required to, consider spam or other automated bid responses or be required to retain copies of the spam and other automated bid responses pursuant to the document retention rule.¹⁹⁰ The Joint Commenters further explain that requiring applicants to acknowledge and retain spam and other automated bid responses is an onerous burden, and that the Commission should impose some minimal responsibility on service providers to submit responsive bids to the applicants and the automated bid responses should not be used as a basis to deny funding because of a non-compliant competitive bid process.¹⁹¹

56. For purposes of disqualifying spam or other automated bid responses or consideration of bids received after a deadline set in FCC Form 470, the Joint Commenters request that the Commission clarify the requirements and confirm that spam and other automated bid responses do not need to be treated as bids and that applicants may rely on the 28 day allowable contract date (ACD) as the deadline for submitting bids when FCC Form 470 is silent on the bid submission deadline.¹⁹² In general, we would expect applicants to carefully consider all bids received before the bid selection process has occurred, unless they provided a specific bid submission deadline and noted that bids received after the deadline would be disqualified on FCC Form 470. In light of the concerns raised by the Joint Commenters, we first seek comment on the types of spam and other automated bid responses that are being generated and sent to the applicant once or soon after their FCC Form 470 is posted. Please include examples of these types of bid automated bid response communications and other data regarding the frequency and number of automated responses that applicants receive after posting their FCC Form 470. We seek further comment on the Joint Commenters’ request that the ACD be used as the bid response deadline when FCC Form 470 is silent on the bid submission deadline. We note that applicants are already allowed to state that bids that do not include all of the required information and/or are received after a specific deadline will be disqualified on their FCC Form 470 or in the accompanying RFP. We request further comment on why applicants are not able to add language to their FCC Form 470 that non-responsive bids will be disqualified or that bids received after the 28-day minimum waiting period will be considered late and will also be disqualified. Are changes to FCC Form 470 needed to include specific disqualification

(Continued from previous page) _____
to all potential bidders as to the specific criteria to be evaluated, which criteria will be used as disqualification criteria, and the circumstances under which bidders will be disqualified from further consideration).

¹⁸⁵ See Joint Commenters Comments at 29.

¹⁸⁶ *Id.* at 30-31.

¹⁸⁷ *Id.* at 28.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 29.

¹⁹¹ *Id.*

¹⁹² *Id.* at 29-31.

criteria that could be checked by the applicant? For example, should we add a field to FCC Form 470 to allow applicants to indicate the deadline for submitting bids and any other requirement that will result in a bid being disqualified from consideration? We also note that we have an open proceeding related to a competitive bidding portal that could collect all bids that are received by the applicant and reduce confusion about these types of bids and deadlines.¹⁹³ Procedurally, should we delay taking action on the treatment of spam and other automated bid responses until after we take action in that open proceeding, or should we consider these proposals while that proceeding is still pending before the Commission? Would the proposed bidding portal be helpful as a competitive bid document repository to reduce the documentation retention related burdens on applicants? We further seek comment on how to ensure applicants are complying with program rules to carefully consider all bids received and retain them for the appropriate ten-year document retention period, if spam or other automated bid responses are not treated as “bids.”¹⁹⁴ If exceptions are made regarding the consideration and retention of certain types of bid responses, how do we ensure the exception is not misused and responsive bids are not considered or retained as required by the Commission’s rules? We seek comment on all of these questions, as well as any other issues the Commission should consider to ensure the E-Rate competitive bidding process remains fair and open, and compliant with the Commission’s rules if changes or clarification is provided about what response is a bid.

57. *Evidence of a Legally Binding Agreement.* Our E-Rate rules also require that the applicant have a signed contract or legally binding agreement before requesting E-Rate funding.¹⁹⁵ When modifying this rule in 2014 to allow for legally binding agreements rather than requiring only signed contracts, the Commission explained that USAC would consider the existence of a written offer from the service provider containing all the material terms and conditions and a written acceptance of that offer as evidence of a legally binding agreement.¹⁹⁶ The Joint Commenters now suggest that board minutes approving a contract offer should be evidence of an applicant’s acceptance, demonstrating a legally binding agreement. We seek comment on this proposal and whether there are additional examples that USAC should consider as evidence of a legally binding agreement. Conversely, ALA suggests removing the legally binding agreement requirement and suggests that E-Rate applicants be allowed to rely on a price quotation before submitting their E-Rate applications.¹⁹⁷ In the Emergency Connectivity Fund program, applicants were allowed to rely on price quotations due to the emergency nature of the program and the lack of significant advance notice before the first application filing window opened.¹⁹⁸ We also seek comment on this request and how accepting a price quotation would streamline the application process. We also seek comment on whether modifying this requirement, and allowing a price quotation to be used, may lead to greater potential of waste, fraud, and abuse, and we invite comments on how to minimize that risk.

58. *Ensuring Our Rules Recognize Tribal Law.* We seek comment on whether the E-Rate program rules should be updated to recognize that competitive bidding regulations are often imposed by Tribal as well as state and local governments. For example, our competitive bidding rules state that the program-specific rules “apply in addition to state and local competitive bid requirements and are not

¹⁹³ *E-Rate Bidding Portal Notice*, 36 FCC Rcd 17892.

¹⁹⁴ 47 CFR §§ 54.511(a); 54.516(a).

¹⁹⁵ 47 CFR § 54.504(a).

¹⁹⁶ *2014 First E-Rate Order*, 29 FCC Rcd at 8951, para. 204.

¹⁹⁷ See ALA Comments at 8.

¹⁹⁸ See 47 CFR § 54.1710(a)(1)(x); *Wireline Competition Bureau Sets Service Delivery Date for Emergency Connectivity Fund Program Initial Application Filing Window and Modifies Funding Application Certification Language*, WC Docket No. 21-93, Public Notice, 36 FCC Rcd 11450 (WCB 2021) (modifying the certification to account for requests for equipment or services that have not yet been ordered when the requests are made).

intended to preempt such state or local requirements.”¹⁹⁹ Recognizing that Tribal governments may also have procurement rules in place, should we add Tribal to this list? Are there other areas of our program rules that should be updated to recognize the Tribal government role?

59. Finally, we seek comment on other competitive bidding-related requirements the Commission should consider updating or otherwise modifying. For example, we seek comment on how product demonstrations are conducted for applicants in the E-Rate program. Should the Commission modify or provide guidance related to its gift rules to provide additional clarity around product demonstrations? What safeguards should we adopt to ensure applicants are not ultimately receiving free equipment through a product demonstration that would impact conducting a fair and open competitive bidding process? In considering any such changes to the competitive bidding rules, we are mindful of our commitment to protect E-Rate funds. As we continue our efforts to safeguard the program and assess fraud risks to the E-Rate program,²⁰⁰ should we consider how to sequence any potential modifications to our rules in light of our ongoing work to protect the program’s integrity?

C. Streamlining the E-Rate Program Forms

60. We seek comment on a number of proposals to modify the E-Rate program forms to streamline the application process. First, we seek comment on what modifications to FCC Form 470 (Description of Services Requested and Certification Form),²⁰¹ which opens the competitive bidding process for E-Rate applicants, would reduce confusion for both applicants and service providers. Second, we seek comment on reducing the number of E-Rate forms by moving the information currently collected on FCC Form 486 (Receipt of Service Confirmation and Children’s Internet Protection Act Certification (CIPA) Form), which notifies USAC that services have started and that the applicant is in compliance with CIPA requirements, to other E-Rate forms.

61. *Creating an “EZ” Application Form.* In comments to the *Tribal E-Rate NPRM*, E-Rate participants explained that small library entities often require technical assistance to complete the FCC Form 471 application. ALA suggests that the Commission “create an ‘EZ’ form with simple to understand language that also includes context-sensitive guidance and best practices to support applicants, such as including checklists and prompts to help users navigate and raise any flags for potentially incorrect entry of information.”²⁰² We seek comment on this proposal and how to implement it effectively. Would such a form be available to all applicants, or would it be preferable to have a form targeted to Tribal entities or libraries? Is there any language on the FCC Form 471 application in particular that should be changed? Is any information collected on the form no longer needed? Is there additional information that should be collected to help streamline the application process? For example, should we add the information currently collected on FCC Form 486 to FCC Form 471 instead? What questions are confusing to small entities, and what type of questions do small applicants require technical assistance with? Would additional system pop-ups and guidance within the online application form make a significant difference in encouraging new, small entities to apply and request funding through the E-Rate program?

62. *Simplifying the FCC Form 470 Drop-Down Menu Options.* In 2014, the Commission required all applicants and service providers to electronically file all E-Rate-related documents with USAC, adopted changes to the competitive bidding requirements for certain category one services, and

¹⁹⁹ See 47 CFR § 54.503(b).

²⁰⁰ See, e.g., *E-Rate Bidding Portal Notice*, 36 FCC Rcd 17892; GAO, *Telecommunications: FCC Should Take Action to Better Manage Persistent Fraud Risks in the E-rate Program*, GAO-20-606, 19 (Sept. 16, 2020) (2020 GAO E-Rate Report).

²⁰¹ See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

²⁰² ALA Comments at 9.

amended the category two rules to fund additional services, such as managed internal broadband services (MIBS).²⁰³ As a result of those changes, FCC Form 470 currently has drop-down menu options that allow applicants to pick the services for which they are seeking bids in order to make it easier for service providers to search and locate relevant FCC Forms 470 to submit bids for. Despite efforts to improve the drop-down menu options,²⁰⁴ applicants and service providers continue to request changes to the drop-down menu options, and express concerns that selecting the wrong drop-down menu option(s) can result in a funding denial.²⁰⁵ Under the E-Rate program rules, applicants must conduct a fair and open competitive bidding process, seeking bids on FCC Form 470 with, at a minimum, a list of specified services for which the entity is requesting bids and sufficient information to enable bidders to reasonably determine the needs of the applicant.²⁰⁶ Under this rule, the Bureau has denied requests for review from petitioners denied funding for failing to seek competitive bids on their FCC Forms 470 for services requested on the FCC Forms 471.²⁰⁷ In addition, the Commission has established certain competitive bidding requirements for certain services, like managed internal broadband services and self-provisioned networks, in order to ensure applicants select the most cost-effective service option.²⁰⁸ We therefore seek comment on proposals from the Joint Commenters for changes to the drop-down menu options.²⁰⁹

63. First, for category two services, the Joint Commenters propose that the three separate Service Types: (1) Internal Connections; (2) Managed Internal Broadband Services (MIBS); and (3) Basic Maintenance of Internal Connections (BMIC) be combined or revised in order to reduce the likelihood that applicants select the wrong Service Type by accident. We seek comment on this approach from both applicants and service providers. Are the category two services subcategories useful in determining the needs of the applicant? Or would a category two services narrative section be sufficient to ensure that applicants are providing sufficient information regarding the specified equipment and services requested? For software-based services and licenses, as explained above, we understand that it is sometimes challenging for new applicants to determine which subcategory to use for the software or licenses needed for the category two internal connections equipment. However, if an applicant is seeking bids for specific pieces of equipment or for basic maintenance in the form of physical repair of the equipment, is information included in a narrative box sufficient for service providers to find and understand precisely what service(s) are being requested? Should we consider a method for applicants to tag requests as potentially one particular type of service to assist service providers in finding the relevant requests for bids? How do we weigh the benefits of a drop-down menu to service providers in finding and responding to FCC Forms 470 against the burden on applicants to determine the correct menu option(s) to use for the requested equipment and services?

64. Second, the Joint Commenters propose that the Commission again modify the FCC Form 470 drop-down menu options for category one services.²¹⁰ Over the last several funding years, the Bureau and USAC have taken steps to improve the category one drop-down menu options to reduce applicant

²⁰³ 2014 First E-Rate Order, 29 FCC Rcd at 8951, para. 205.

²⁰⁴ See, e.g., *Wireline Competition Bureau and Office of the Managing Director Seek Comment on Improving FCC Form 470 Drop-Down Menu*, Public Notice, 34 FCC Rcd 8719 (WCB 2019).

²⁰⁵ Joint Commenters Comments at 19-20.

²⁰⁶ 47 CFR § 54.503(c)(1).

²⁰⁷ See, e.g., *Albert Lea Order*, 24 FCC Rcd at 4541-42, paras. 14-15 (finding that petitioners violated the Commission's competitive bidding rules by not including the type of service on the FCC Form 470 the applicant requested on its FCC Form 471).

²⁰⁸ See, e.g., 47 CFR § 54.503(c)(1)(iv).

²⁰⁹ See Joint Commenters Comments at 19-21.

²¹⁰ *Id.* at 20-21.

confusion.²¹¹ In funding year 2022, after seeking comment from E-Rate participants, the drop-down menu options specifically listing “Leased Lit Fiber” were modified as a result of continued confusion.²¹² The Joint Commenters now seek new drop-down menu options for “internet service over fiber facilities” and “data transmission over fiber facilities.”²¹³ For instance, the Joint Commenters state that the USAC guidance on seeking bids for data transmission without Internet access over fiber is unclear.²¹⁴ We seek comment on this proposal. Based on the continued confusion from changes to FCC Form 470, we are concerned that further changes to the drop-down menu options could result in greater applicant confusion. Are there ways to capture concerns about the drop-down options language without making additional changes? For example, can USAC add more guidance within the online FCC Form 470 or in trainings? Finally, are there any other ways we could improve existing drop-down menu options for E-Rate applicants or participants?

65. *Modifying or Eliminating FCC Form 486.* We seek comment on whether to eliminate FCC Form 486 and move the information collected on that form to FCC Form 471 or remove some of the information collected on the form. FCC Form 486 notifies USAC that services have started for the recipients of service included on an approved funding request and the status of compliance with CIPA for the recipients of service for the funding requests.²¹⁵ It must be filed after USAC issues a funding commitment decision letter, but no later than 120 days after the service start date or 120 days after the funding commitment decision letter, whichever date is later.²¹⁶ Invoicing cannot begin until FCC Form 486 is filed by the applicant.²¹⁷

66. FCC Form 486 has included a number of program certifications over the years, such as whether technology plans are in place, but currently only collects information related to the services’ start dates and CIPA compliance. These certifications now occur in the middle of the application cycle and

²¹¹ See, e.g., *Wireline Competition Bureau and Office of the Managing Director Seek Comment on Improving FCC Form 470 Drop-Down Menu*, WC Docket No. 13-184, Public Notice, 34 FCC Rcd 8719 (WCB 2019) (seeking comment on whether and how the FCC Form 470 drop-down menu options, including the way in which applicants are guided to the appropriate menu option, may be improved); Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau and Mark Stephens, Director, Office of the Managing Director, to Radha Sekar, Chief Executive Officer, USAC, 35 FCC Rcd 5763 (WCB & OMD 2020) (directing USAC not to deny or issue a commitment adjustment solely because the funding year 2020 applicant selected the “Internet Access: ISP Service Only (No Transport Circuit Included)” drop-down menu option and subsequently requested funding for a service with data transmission); Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau, and Mark Stephens, Director, Office of the Managing Director, to Radha Sekar, Chief Executive Officer, USAC, 34 FCC Rcd 8716 (WCB & OMD 2019) (providing same guidance to USAC for funding year 2019).

²¹² See, e.g., USAC, FY2022-FY2023 FCC Form 470 Services Guiding Statements Table, https://www.usac.org/wp-content/uploads/e-rate/documents/Webinars/2023/FCC_Form_470_Guiding_Statements_Table_FY22-FY23.pdf (last visited July 20, 2023).

²¹³ Joint Commenters Comments at 21-22.

²¹⁴ In this case, applicants are encouraged to use “I seek data transmission service without internet access service.”. The other option is available for applicants that wish to consider bids for Leased Dark Fiber and therefore under our rules must also seek bids for Leased Lit Fiber. 47 CFR § 54.503(c)(1)(v). https://www.usac.org/wp-content/uploads/e-rate/documents/Forms/FCC_Form_470_Guiding_Statements_Table_FY22.pdf (last visited July 20, 2023).

²¹⁵ See Schools and Libraries Universal Service, Receipt of Service Confirmation and Children’s Internet Protection Act Certification Form, OMB 3060-0853 (FCC Form 486).

²¹⁶ USAC, FCC Form 486 Filing, <https://www.usac.org/e-rate/applicant-process/starting-services/fcc-form-486-filing/> (last visited July 20, 2023).

²¹⁷ *Id.*

can result in funding reductions due to ministerial or clerical errors.²¹⁸ We seek comment on moving the CIPA certifications to FCC Form 471 and removing the requirement to notify USAC that services have started. The Joint Commenters explain that this would be a “simple, yet effective way to streamline the program for all applicants and the Administrator, but particularly for small and new applicants.”²¹⁹ For the vast majority of applicants that are already in compliance with CIPA, the location of this CIPA certification should make no difference. While removing the requirement to notify USAC that services have started removes one possible check for USAC, the certifications on the requests for reimbursement forms already require services to have been delivered in order to seek funding, potentially making the additional notification about the start of services duplicative. If FCC Form 486 is removed for future funding years, how should we modify the certifications on FCC Form 472 or FCC Form 474 to ensure services and/or equipment were delivered to and used by eligible entities? If we make changes to FCC Form 486, should we also make changes to the invoice filing deadline to link the deadline to the date of the funding commitment decision letter? The rules currently reference the date of the FCC Form 486 Notification Letter.²²⁰ Alternatively, the Joint Commenters suggest that the CIPA certifications be moved to FCC Form 471 but allow FCC Form 486 to remain as an option. While we may need to retain FCC Form 486 for prior funding years where the certifications were not included on that funding year’s FCC Form 471, we seek more detailed comment about the benefits of keeping FCC Form 486 as an optional form for future funding years.

67. Are there other E-Rate form changes that could help streamline application and reimbursement processes for the program? We seek comment on other E-Rate form modifications, particularly those that would help a new entity or a small or Tribal entity to apply for and receive E-Rate support. We encourage commenters to provide sufficient detail for us to adopt changes to the E-Rate forms in upcoming funding years.

D. Validating Discount Rates

68. We next seek comment on potential ways to streamline the discount rate validation for E-Rate applicants. Eligible schools and libraries may receive discounts ranging from 20% to 90% of the pre-discount price of eligible equipment and services, based on indicators of need.²²¹ Schools and libraries in areas with higher percentages of students eligible for free or reduced price lunch through the National School Lunch Program (NSLP) or an alternative mechanism qualify for higher discounts for E-Rate eligible services and equipment than applicants with lower levels of eligibility for such programs.²²² For example, the most disadvantaged schools, where at least 75% of students are eligible for free or reduced price school lunch, receive E-Rate support for 90% of the cost of their eligible category one purchases (that is referred to as a 90% discount). Libraries receive funding at the discount level of the school district in which they are located.²²³ Schools and libraries located in rural areas also may receive an additional 5% to 10% discount compared to entities located in urban areas.²²⁴ During the application

²¹⁸ See, e.g., *Requests for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 21 FCC Rcd 10182 (WCB 2006) (*Alaska Gateway Order*) (describing the procedures surrounding the FCC Form 486 filing, along with the potential penalties for violation).

²¹⁹ Joint Commenters Comments at 35-36.

²²⁰ See 47 CFR § 54.514(a)(2).

²²¹ 47 CFR § 54.505(a)-(c). For category one services, eligible schools and libraries may receive discounts ranging from 20% to 90%. For category two services, eligible schools and libraries may receive discounts ranging from 20% to 85%. See 47 CFR § 54.505(c).

²²² 47 CFR § 54.505(b).

²²³ 47 CFR § 54.505(b)(2).

²²⁴ 47 CFR § 54.505(b)(3).

review, USAC may seek data to validate an entity's discount rate, which is typically based on student enrollment and NSLP data as of October 1 prior to the filing of the application.²²⁵

69. We now seek comment on how to streamline the discount rate validation process for E-Rate applicants. For the majority of applicants, their discounts do not change from funding year to funding year.²²⁶ Absent a request for an increase in an entity's discount rate, should the Commission adopt a presumption that discount rates do not require validation for a certain period of time (e.g., three or five funding years)?²²⁷ Under such a presumption, we would still need to occasionally check for certain aspects of the calculation, like when new rurality data becomes available from the U.S. Census. How do we factor in such changes? Alternatively are there other changes to the discount rate we should consider? We also seek comment on any relevant changes to the Community Eligibility Provision (CEP), how it may impact the E-Rate program discounts, and whether any procedures should be changed.²²⁸ Are there any changes we should consider for states and schools in states with statewide CEP or statewide free lunch calculating their discount?²²⁹

E. Seeking Information on Other College Libraries Acting as Public Libraries

70. We also seek comment on whether there are other college or university libraries, similar to the TCU libraries, that act as the public library in their community. While we continue to monitor whether TCU libraries participate successfully in the E-Rate program, we seek data and examples from stakeholders about whether this is common in other types of college or university libraries and whether we should consider further changes to our eligibility rules for libraries. One commenter suggested expanding eligibility to other college libraries that serve as public libraries in their communities.²³⁰ If we do, what other additional restrictions or limitations should be considered? Are colleges that specifically serve communities that have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, such as Historically Black Colleges and Universities (HBCUs)²³¹ or Hispanic-Serving institutions (HSIs),²³² also serving as public libraries in any instances?

F. Modifying E-Rate Invoice and Disbursement Standards

71. *Modifying the Invoice Filing Deadline Rule.* Before 2014, invoice filing deadlines were procedural, and applicants or service providers could request and receive a 120-day invoice filing extension under certain conditions.²³³ USAC granted invoice filing extension requests that met the

²²⁵ But see *Wireline Competition Bureau Provides Guidance on E-Rate Program Category Two Budgets*, WC Docket No. 13-184, Public Notice, 35 FCC Rcd 11508, 11510 (WCB 2020) (permitting USAC to rely on formerly validated enrollment numbers due to challenges related to the COVID-19 pandemic).

²²⁶ Universal Service Administrative Company, *E-Rate Request for Discount on Services: Basic Information (FCC Form 471 and Related Information)*, <https://opendata.usac.org/E-Rate/E-Rate-Request-for-Discount-on-Services-Basic-Info/9s6i-myen/data> (last visited July 20, 2023) (calculating that discounts remained the same for 89.8% of applicants from funding year 2018 to funding year 2019).

²²⁷ See SECA *Ex Parte* at 5-6.

²²⁸ See *id.*

²²⁹ *Id.*

²³⁰ See ADS Comments at 1 (suggesting small or rural college libraries also be made eligible); ADS Reply at 1 (reiterating their suggestion from their initial comments).

²³¹ US Department of Education, *What is an HBCU?*, <https://sites.ed.gov/whhbcu/one-hundred-and-five-historically-black-colleges-and-universities/> (last visited July 20, 2023).

²³² US Department of Education, *Hispanic-Serving Institutions*, <https://sites.ed.gov/hispanic-initiative/hispanic-serving-institutions-hsis/> (last visited July 20, 2023).

²³³ See, e.g., *Third Report and Order*, 18 FCC Rcd at 26950, para. 93.

criteria, including requests made up to a year after the original invoice filing deadline.²³⁴ In the *First 2014 E-Rate Order*, the Commission codified the invoice filing deadline,²³⁵ and adopted a strict standard for waiving the rule and granting extensions of the applicable invoice filing deadline.²³⁶ Specifically, the Commission's rules only permit USAC to grant a single 120-day extension of an invoice filing deadline, provided that the applicant or service provider submits the request on or before the invoice filing deadline for that request.²³⁷ USAC will automatically grant timely filed invoice filing deadline extension requests.²³⁸ In the interest of efficient program administration, however, the Commission prohibited USAC from granting any additional invoice filing deadline extensions.²³⁹ As a result, if applicants and service providers require more time than the single 120-day extension to complete the invoicing process, they may only obtain it by seeking a waiver of the invoice filing deadline extension rule from the Commission.²⁴⁰ The Commission concluded, however, that "it is generally not in the public interest to waive [the] invoicing rules,"²⁴¹ and the Bureau should grant waivers of the invoice filing deadline rules only under "extraordinary circumstances."²⁴²

72. As a result of this standard, applicants and service providers have filed large numbers of waivers related to invoicing errors.²⁴³ Under the extraordinary circumstances standard, the Bureau has denied many of those waiver requests.²⁴⁴ We now seek comment on the Joint Commenters' proposal to slightly modify the invoice filing deadline extension rule. Specifically, they propose that applicants be allowed to seek an extension of the original invoice deadline from USAC when the request is made within 15 days of the original invoice filing deadline date. This change would allow applicants or service providers to request a one-time 120 day extension if they realize they just missed an invoice filing deadline, reducing the number of denied requests for reimbursements and waiver requests, while maintaining the codified invoice filing deadline, as the new invoice filing deadline would remain 120 days from the original invoice filing deadline, and not based on the date the extension request was filed

²³⁴ See, e.g., *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3835, para. 3 (WCB 2016).

²³⁵ See *First 2014 E-Rate Order*, 29 FCC Rcd at 8965-66, para. 238-39. The Commission's E-Rate rules now require applicants and service providers to submit invoicing forms for reimbursement to USAC no later than 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later. 47 CFR § 54.514(a).

²³⁶ See *First 2014 E-Rate Order*, 29 FCC Rcd at 8965-66, paras. 238-40.

²³⁷ 47 CFR § 54.514(b).

²³⁸ *Id.*

²³⁹ *First 2014 E-Rate Order*, 29 FCC Rcd at 8966, para. 240.

²⁴⁰ *Id.*

²⁴¹ The Commission has concluded that its invoice deadline rules are necessary to ensure the efficient operation of the program, provide certainty for program participants, and allow USAC and the Commission to identify unused E-Rate funds that may be carried forward to future funding years. *Id.* at 8965-66, paras. 238-39.

²⁴² *Id.* at 8966, para. 240.

²⁴³ See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 23-48, paras. 7-9 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (granting a waiver where the E-Rate invoice filer entered the wrong application and funding request number on the request for reimbursement form).

²⁴⁴ See, e.g., *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Hancock County Library System et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 30 FCC Rcd 4723, 4726, para. 9 (WCB 2015) (*Hancock County Library Order*).

with USAC. Because we are revisiting our overall approach to the invoice filing deadline, we also modify, on an interim basis, the prior guidance provided to the Bureau regarding waivers of the existing deadline.²⁴⁵ In particular, the Bureau remains free to grant waivers that would have been granted under the prior Commission guidance as meeting the extraordinary circumstances standard. We direct the Bureau to leave pending any waiver requests related to applicants or service providers that were filed within 15 days of the original invoice filing deadline for now, and we will provide further guidance regarding the disposition of those waiver requests at the resolution of this proceeding. While we decline to waive the invoice deadline rule during the pendency of the rulemaking,²⁴⁶ we seek comment on the extraordinary circumstances standard.

73. Consistent with this proposal, we also seek comment on other ways to simplify or streamline the E-Rate invoicing and disbursement process.²⁴⁷ Should the Commission consider a 30-day grace period for applicants or service providers to resubmit invoices that were timely filed before the invoice filing deadline, but rejected in whole or part after the deadline has passed?²⁴⁸ Currently, applicants and service providers may appeal a rejected or denied invoice, but cannot resubmit the invoice filing if the deadline has passed. Applicants and service providers are encouraged to provide examples of why filing an appeal after the invoice filing deadline is not the most straightforward approach. Are there processes and requirements in the program that we should consider changing in order to reduce the amount of work required by small applicants regarding the E-Rate reimbursement process? Are there particular situations where one extension is insufficient for requesting reimbursement from the E-Rate program?

74. We also seek comment on a billing issue that could complicate service provider invoicing for some applicants. E-Rate applicants may select one of two ways to seek reimbursement of the costs of eligible E-Rate equipment and services.²⁴⁹ If an applicant pays the full cost of the equipment and services upfront, then the applicant must submit an FCC Form 472, the Billed Entity Applicant Reimbursement (BEAR) form, to request reimbursement for the discounted share of the costs from USAC.²⁵⁰ If an applicant only pays its service provider the non-discounted share of the cost of the eligible equipment and services, then the service provider must file an FCC Form 474, the Service Provider Invoice (SPI) form, to receive reimbursement of the discounted share of the costs directly from USAC. Although the BEAR invoicing rules were modified in the *First 2014 E-Rate Order*, to allow applicants to receive direct reimbursement from USAC,²⁵¹ service providers have continued invoicing applicants for the full cost of the E-Rate services and then provide a credit to the applicant after receiving reimbursement of the discounted share of costs for the equipment and services through SPI invoicing from USAC.

75. This practice by certain service providers of requiring the applicant to pay the full cost of the E-Rate services upfront when the applicant has elected SPI billing and is only required to pay the service the non-discounted share of costs is contrary to the clear intent of allowing SPI billing and our rules. As the Commission explained in the *Second Report and Order*, “requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would

²⁴⁵ *First 2014 E-Rate Order*, 30 FCC Rcd at 8966, para. 240.

²⁴⁶ See *SHLB Ex Parte* at 4-5; *SECA Ex Parte* at 2-3.

²⁴⁷ See, e.g., *id.* (both seeking a change to the invoicing rules for applicants or service providers that file within a certain period of time of the invoice deadline).

²⁴⁸ Joint Commenters Comments at 39-40.

²⁴⁹ 47 CFR § 54.514(c).

²⁵⁰ USAC, Invoicing: FCC Form 472 Filing, <https://www.usac.org/e-rate/applicant-process/invoicing/fcc-form-472-filing/> (last visited July 20, 2023).

²⁵¹ See *First 2014 E-Rate Order*, 29 FCC Rcd at 8963-65, paras. 233-35 (modifying the reimbursement rules to allow applicants to receive funding directly from USAC instead of being passed through the service provider).

disproportionately affect the most disadvantaged schools and libraries.”²⁵² The Commission explained that “many applicants cannot afford to make the upfront payments that the BEAR method requires” and concluded “the potential harm to schools and libraries from being required to make full payment upfront, if they are not prepared to, justifies giving applicants the choice of payment method.”²⁵³ We therefore seek comment on amending our rules and certifications to make them consistent with the Commission’s intent that applicants who select the SPI invoicing method must only pay their service provider for the non-discounted share of the costs of the eligible equipment and services, and the service provider must seek the remaining discounted portion of costs from USAC and may not require full payment from the applicant as well when the SPI invoicing method is used.

G. Seeking Comment on Program Recoveries

76. In 2000, the Commission adopted the *Commitment Adjustment Implementation Order*, which, consistent with the Debt Collection Improvement Act (DCIA), set up a framework for recovering funds committed or disbursed in violation of the Act and our rules.²⁵⁴ USAC implemented a process for recovering funds disbursed in violation of statutory and rule violations and, in 2004, as part of the *Fifth Report and Order*, the Commission largely affirmed and further refined USAC’s approach when determining what amounts should be recovered by USAC and the Commission when funds have been disbursed in violation of the Commission’s E-Rate program rules.²⁵⁵ In particular, the Commission amended its rules to apply the red light rule to E-Rate applicants and service providers.²⁵⁶ Commenters note that the recovery process can be confusing, leading to untimely appeals and applications being dismissed.²⁵⁷ Specifically, commenters raised challenges with USAC dismissing pending “requests for funding commitments” if a delinquent debt is not paid within 30 days of the notice provided for in the commitment adjustment procedures.”²⁵⁸ We therefore seek comment on whether deferring action on pending E-Rate submissions without dismissing them would be appropriate while participants are on red light status.²⁵⁹ If so, what limits should be imposed to ensure timely action on the delinquent debt?

H. Updating E-Rate Program Definitions

77. Finally, we seek comment on changes to some of the program’s definitions that may be causing confusion or no longer be as relevant to the current program. We also encourage E-Rate participants to provide other cleanup suggestions for the program rules.

78. *Wiring Between Buildings.* We next seek comment on amending the definition of “internal connections” and “wide area network” to allow applicants to seek funding for wiring between different schools in the same contiguous area as an internal connection.²⁶⁰ In funding year 2017, the

²⁵² See *Second Report and Order*, 18 FCC Rcd at 9217, para. 47 (*Second Report and Order*) (citing the *Universal Service First Report and Order*, 12 FCC Rcd at 9083, para. 586).

²⁵³ See *Second Report and Order*, 18 FCC Rcd at 9217 at para. 47.

²⁵⁴ 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, Order, 15 FCC Rcd 22975, 22980, para. 13 (2000) (*Commitment Adjustment Implementation Order*).

²⁵⁵ *Id.* at 22977, para. 4. See *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15812, 15808, at paras. 10, 16 (2004) (*Fifth Report and Order*).

²⁵⁶ *Id.* at para. 42.

²⁵⁷ See SHLB *Ex Parte* at 6-8.

²⁵⁸ See *id.* at 7.

²⁵⁹ See *id.* at 8.

²⁶⁰ 47 CFR § 54.500 (defining services to be eligible as “internal connections” “if such service is necessary to transport or distribute broadband within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch” and defining “wide area network” as “a
(continued....)

Bureau modified the Eligible Services List to provide guidance on the classifications of connections between buildings of a single school.²⁶¹ In that guidance, the Bureau noted that “[c]onnections between different schools with campuses located at the same property (e.g., an elementary school and middle school located on the same property) are considered to be category one digital transmission services.”²⁶² In funding year 2018, the Bureau further clarified that connections between two schools in a single building may be classified as a category two service, but rejected requests to allow the term “single school campus” in the definition of “internal connections” as allowing for a single campus containing multiple schools.²⁶³ Applicants remain frustrated that cabling between two schools (e.g., a high school and an elementary school) in the same location be considered category one services, which under current rules, has separate competitive bidding requirements.

79. The Joint Commenters suggest that applicants should be permitted to use their category two funding to pay for cabling between two different schools located in the same contiguous area, if desired. We therefore propose to modify the definitions of “internal connections” and “wide area network” to allow multiple schools (e.g., a high school and a middle school) to share a campus by removed the word “single” from each definition.²⁶⁴ We seek comment on this proposal or on alternative ways to modify the rules governing which category of service wiring should be considered. Would this raise new issues for these types of connections? Are there simpler ways to handle this issue? For instance, would it be more straightforward to draw the line between Internal Connections and WANs at the building? The issue identified by the Joint Commenters would remain, but the overall policy determination would be simpler. We also seek comment on removing references to “voice” in the definition of “wide area network.”

80. *Definition of Consortium.* We also seek comment on amending the definition of “consortium” and whether to align it with the definition of “consortium” used in the Emergency Connectivity Fund program.²⁶⁵ Our E-Rate rules only allow ineligible private sector entities to join consortia if the pre-discount prices for interstate services are at tariffed rates.²⁶⁶ Given that many services have been de-tariffed over the years, we seek comment on whether this language should be removed from the E-Rate definition of consortium and the definition be aligned with the ECF definition of consortium. If so, should we continue to allow private entities to be in an E-Rate consortium? If we were to allow ineligible entities to remain in E-Rate consortia should the limitation of “pre-discount prices for interstate services are at tariffed rates” be changed to another limitation as many services continue to be de-tariffed?

(Continued from previous page)

voice or data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a voice or data network that provides connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch.”).

²⁶¹ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 31 FCC Rcd 9767, 9780 (WCB 2016) (*FY2017 Eligible Services List*) (describing the classifications of connections between buildings).

²⁶² *Id.*

²⁶³ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 32 FCC Rcd 7414, 7416, paras. 6-7 (WCB 2017) (*FY2018 Eligible Services List Order*).

²⁶⁴ 47 CFR § 54.500.

²⁶⁵ 47 CFR § 54.1700(d) (defining “consortium” as any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for Emergency Connectivity Fund support that seeks funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.”).

²⁶⁶ 47 CFR § 54.500.

We also seek comment on the potential advantages and disadvantages of permitting private sector entities to join E-Rate consortia. Is there any data or other information showing the impact on connectivity or pricing by allowing private sector entities to be in E-Rate consortia? What safeguards would we have to put in place to ensure that the E-Rate program does not support services used by ineligible entities and to ensure ineligible entities are paying for their share of the consortium's costs? We seek comment on our proposal to remove this language and align the E-Rate definition of consortium with the ECF definition of consortium. If we are to continue to include ineligible entities as member of E-Rate consortia, what limitations and restrictions should be adopted to ensure E-Rate funding is not being used to pay for the services of the ineligible consortia members? We seek comment on these questions.

81. The Commission, as part of its continuing effort to advance digital equity for all,²⁶⁷ 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 considerations²⁶⁸ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

V. PROCEDURAL MATTERS

82. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²⁶⁹ 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."²⁷⁰ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

83. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *E-Rate FNPRM*. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *E-Rate FNPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

84. *Paperwork Reduction Act.* This Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It 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 revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small

²⁶⁷ 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.

²⁶⁸ 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).

²⁶⁹ 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).

²⁷⁰ 5 U.S.C. § 605(b).

Business Paperwork Relief Act of 2002, Public Law 107-198,²⁷¹ the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees. The Further Noticed of Proposed Rulemaking seeks comment on possible modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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

86. *Ex Parte Rules – Permit but Disclose.* Pursuant to section 1.1200(a) of the Commission’s rules,²⁷² this Further Notice of Proposed Rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁷³ 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.

87. In light of the Commission’s trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in this proceeding.²⁷⁴ Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.²⁷⁵ However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly

²⁷¹ *See* 44 U.S.C. § 3506(c)(4).

²⁷² 47 CFR § 1.1200(a).

²⁷³ 47 CFR §§ 1.1200 *et seq.*

²⁷⁴ *See id.* § 1.1200(a).

²⁷⁵ 5 U.S.C. §§ 551 *et seq.*

appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings²⁷⁶ and exempt from the prohibitions during the Sunshine Agenda period.²⁷⁷ To be clear, while the Commission recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

88. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings must refer to CC Docket Nos. 02-6.

- Electronic filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs>.²⁷⁸
- 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, N.E., 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-19.²⁷⁹

89. *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.

90. *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.²⁸⁰

91. For additional information on this proceeding, contact Johnny Roddy at (202) 418-2539 or Kate Dumouchel at (202) 418-1839 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

VI. ORDERING CLAUSES

92. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 201-202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403, this Report and Order and Further Notice of Proposed

²⁷⁶ See generally 47 CFR § 1.1206.

²⁷⁷ See *id.* § 1.1203.

²⁷⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

²⁷⁹ 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>.

²⁸⁰ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Rulemaking IS ADOPTED effective thirty (30) days after the publication of this Report and Order and Further Notice of Proposed Rulemaking in the Federal Register.

93. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective (30) days after the publication of this Report and Order and Further Notice of Proposed Rulemaking in the Federal Register, except for sections 54.503(c)(2)(i)(B) and 54.504(a)(1)(ii), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the Federal Register announcing the effective date for those sections.

94. IT IS FURTHER ORDERED, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 CFR § 1.429, that the Petition for Reconsideration filed by the State E-Rate Coordinators' Alliance on January 21, 2020, IS DISMISSED.

95. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

96. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed above, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Section 54.500 is amended by adding the definition of “*Tribal*” to read as follows:

§ 54.500 Terms and definitions.

* * * * *

Tribal. An entity is “Tribal” for purposes of E-Rate funding if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

3. Section 54.501 is amended by revising paragraph (b)(2) and adding paragraph (b)(4) to read as follows:

§ 54.501 Eligible recipients.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(4), a library’s eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.

* * * * *

(4) A Tribal college or university library that serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community shall be eligible for discounts under this subpart.

* * * * *

4. Section 54.502 is amended by revising paragraphs (d)(4) and (6) to read as follows:

§ 54.502 Eligible Services.

* * * * *

(d) * * *

(4) Funding floor. Each eligible school and library shall be eligible for support for category two services of at least a pre-discount price of \$25,000 over five funding years. Tribal libraries shall be eligible for support for category two services of at least a pre-discount price of \$55,000 over five funding years.

* * * * *

(6) ***Non-instructional buildings.*** Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services within a non-instructional school building or library administrative building, the applicant shall not be required to deduct the cost of the non-instructional building's use of the category two services or equipment.

* * * * *

5. Section 54.503 is amended by revising paragraph (c)(2)(i)(B) and (e) and adding paragraph (e)(2) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal colleges or universities, have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

* * * * *

(e) *Exemption to competitive bidding requirements.*

(1) An applicant that seeks support for commercially available high-speed Internet access services for a pre-discount price of \$3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

(i) Internet access, as defined in § 54.5, is eligible for this exemption only if the purchased service offers at least 100 Mbps downstream and 10 Mbps upstream.

(ii) The Chief, Wireline Competition Bureau, is delegated authority to lower the annual cost of high-speed Internet access services or raise the speed threshold of broadband services eligible for this competitive bidding exemption, based on a determination of what rates and speeds are commercially available prior to the start of the funding year.

(2) A library applicant that seeks support for category two services for a total pre-discount price of \$3,600 or less per library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section. Applicants must select a cost-effective service offering, based on the price of the equipment or services.

6. Section 54.504 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 54.504 Requests for services.

(a) * * *

(1) * * *

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not

operate as for-profit businesses and, except for the limited case of Tribal college or universities, their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

* * * * *

7. Section 54.505 is amended by revising paragraph (c) and adding paragraph (g) to read as follows:

§ 54.505 Discounts.

* * * * *

(c) *Matrices.* Except as provided in paragraphs (d), (f), and (g) of this section, the Administrator shall use the following matrices to set discount rates to be applied to eligible category one and category two services purchased by eligible schools, school districts, libraries, or consortia based on the institution's level of poverty and location in an "urban" or "rural" area.

* * * * *

(g) *Tribal Library Category Two Discount Level.* For the costs of category two services, Tribal libraries at the highest discount level shall receive a 90 percent discount.

8. Section 54.701 is amended by revising paragraph (b) introductory text to read as follows:

§54.701 The Administrator of universal service support mechanisms.

* * * * *

(b) The Administrator shall establish a twenty (20) member Board of Directors, as set forth in § 54.703. The Administrator's Board of Directors shall establish three Committees of the Board of Directors, as set forth in § 54.705:

* * * * *

9. Section 54.703 is amended by revising paragraph (b) introductory text and paragraph (b)(12), redesignating paragraph (b)(13) as paragraph (b)(14), and adding new paragraph (b)(13) to read as follows:

§ 54.703 The Administrator's Board of Directors.

* * * * *

(b) *Board composition.* The independent subsidiary's Board of Directors shall consist of twenty (20) directors:

* * * * *

(12) One director shall represent state consumer advocates;

(13) One director shall represent Tribal communities; and

* * * * *

10. Section 54.705 is amended by redesignating paragraph (a)(2)(iv) and (v) as paragraphs (a)(2)(v) and (vi), and adding new paragraph (a)(2)(iv) to read as follows:

§ 54.705 Committees of the Administrator's Board of Directors.

(a) * * *

(2) * * *

(iv) One Tribal community representative;

* * * * *

APPENDIX B**Proposed Rules**

For the reasons discussed above, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Section 54.500 is amended by revising the definitions of “Consortium,” “Internal Connections,” and “Wide Area Network” to read as follows:

§ 54.500 Terms and definitions.

* * * * *

Consortium. A “consortium” is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for E-rate support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

* * * * *

Internal Connections. A service is eligible for support as a component of an institution’s “internal connections” if such service is necessary to transport or distribute broadband within one or more instructional buildings of a school campus or within one or more non-administrative buildings that comprise a single library branch.

* * * * *

Wide Area Network. For purposes of this subpart, a “wide area network” is a data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a data network that provides connections between or among instructional buildings of a school campus or between or among non-administrative buildings of a single library branch.

3. Section § 54.503 is amended by revising paragraph (b) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(b) *Competitive bid requirements.* Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state, local, and Tribal competitive bid requirements and are not intended to preempt such state, local, or Tribal requirements.

* * * * *

4. Section 54.504 is amended by revising paragraphs (d)(1)(iv) and (d)(2) to read as follows:

§ 54.504 Requests for services.

(d) * * *

(1) * * *

(iv) The applicant certifies that the requested change is either within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services, or is the result of an unanticipated need for additional bandwidth and the applicant will seek competitive bids prior to the next funding year.

(2) Except for documented cases of transitioning from one service provider to another service provider, in the event that a service substitution results in a change in the pre-discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

* * * * *

5. Section 54.514 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

§ 54.514 Payment for discounted services.

(a) * * *

(2) 120 days after the date of the Funding Commitment Decision Letter; or

* * * * *

(b) *Invoice deadline extension.* Service providers or billed entities may request a one-time extension of the invoicing filing deadline if such request is filed within 15 days after the deadline calculated pursuant to paragraph (a) of this section. The Administrator shall grant a 120-day extension of the invoice filing deadline, if it is timely requested.

(c) *Choice of payment method.* Service providers providing discounted services under this subpart in any funding year shall, prior to the submission of the FCC Form 471, permit the billed entity to choose the method of payment for the discounted services from those methods approved by the Administrator, including by making a full, undiscounted payment and receiving subsequent reimbursement of the discount amount from the Administrator or by making a discounted payment and the service provider receiving subsequent reimbursement of the remaining amount from the Administrator.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Schools and Libraries Universal Service Support Mechanism, et al., Notice of Proposed Rulemaking (Tribal E-Rate NPRM)*.² The Commission sought written public comment on the proposals in the *Tribal E-Rate NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.⁴ On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.⁵ Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate Program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.⁶

3. Taking steps to close the digital divide is a top priority for the Commission. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides vital support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. In the *Report and Order*, we enhance Tribal access to E-Rate funding by making both Tribal library specific rule changes and program wide changes that will help all applicants, including Tribal libraries. We modify our rules to allow Tribal college and university (TCU) libraries to become eligible for E-Rate funding if they are serving a public library function in their Tribal community. We simplify the program by eliminating competitive bidding requirements for Tribal libraries seeking funding for \$3,600 total or less of category two funding, increasing the category two maximum discount rate from 85% to 90%, and increasing the category two funding floor from \$25,000 to \$55,000 for Tribal libraries. We also provide guidance related to cost allocation by establishing a presumption that if at least 90% of an applicant's Internet usage is for an eligible use the remaining ineligible portion is presumed to be ancillary and, therefore, does not need to be cost allocated. We clarify that cabling that is a part of a local area network is eligible for funding and does not need to be cost allocated. We also modify our rules to no longer require applicants to cost allocate the costs associated with a non-instructional facility's (NIF) use of shared equipment in NIFs and related library administrative buildings. We direct the Universal Service Administrative Company (USAC) to increase training and outreach to Tribal libraries and to provide additional support to applicants and registered users of the E-Rate Productivity Center. Lastly, we amend our rules to adopt a

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 *Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Notice of Proposed Rulemaking, FCC 23-10, 2023 WL 2124459 (2023) (*Tribal E-Rate NPRM*).

³ 5 U.S.C. § 604.

⁴ See generally 47 U.S.C. § 254.

⁵ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Red 8776 (1997) (*Universal Service First Report and Order*).

⁶ 47 CFR § 54.502.

definition for “Tribal” and modify our rules to add an additional Director to the USAC Board to represent Tribal communities.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically address the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.⁷

6. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁰ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹¹

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹² First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹³ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁴

⁷ 5 U.S.C. § 604(a)(3).

⁸ *Id.* § 604 (a)(4).

⁹ *Id.* § 601(6).

¹⁰ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632(a)). 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).

¹¹ Small Business Act, 15 U.S.C. § 632.

¹² 5 U.S.C. § 601(3)-(6).

¹³ SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁴ *Id.*

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁵ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁶ Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁷

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁸ U.S. Census Bureau data from the 2017 Census of Governments¹⁹ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁰ Of this number, there were 36,931 general purpose governments (county,²¹ municipal, and town or township²²) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts²³ with enrollment

¹⁵ 5 U.S.C. § 601(4).

¹⁶ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁷ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁸ 5 U.S.C. § 601(5).

¹⁹ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

²⁰ U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

²¹ *Id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²² *Id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²³ *Id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

populations of less than 50,000.²⁴ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁵

1. Schools and Libraries

11. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.²⁶ This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education.²⁷ A basic preparatory education ordinarily constitutes kindergarten through 12th grade.²⁸ The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of \$17.5 million or less as small.²⁹ The Commission does not have a size standard for small entities specifically applicable to schools. The Commission’s definition of schools pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service.

12. Under the E-Rate program an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”³⁰ A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.³¹ For-profit schools, and schools with endowments in excess of \$50,000,000, are not eligible to receive discounts under the E-Rate program.³² In calendar year 2017, the E-Rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.³³ While we do not have financial information that would allow us to estimate the number of schools that would qualify as small entities under SBA’s small business size standard, because of the nature of these entities we estimate that the majority of schools in the E-Rate program are small entities under the SBA size standard.

13. *Libraries.* The closest applicable industry with a SBA small business size standard is Libraries and Archives.³⁴ This industry comprises establishments primarily engaged in providing library

²⁴ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²⁵ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

²⁶ U.S. Census Bureau, *2017 NAICS Definition*, “611110 Elementary and Secondary Schools,” <https://www.census.gov/naics/?input=611110&year=2017&details=611110>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 13 CFR § 121.201, NAICS Code 611110.

³⁰ 47 CFR § 54.500.

³¹ *Id.*

³² 47 CFR § 54.501.

³³ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

³⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “519120 Libraries and Archives,” <https://www.census.gov/naics/?input=519120&year=2017&details=519120>.

or archive services.³⁵ These establishments are engaged in maintaining collections of documents (e.g., books, journals, newspapers, and music) and facilitating the use of such documents (recorded information regardless of its physical form and characteristics) as required to meet the informational, research, educational, or recreational needs of their user.³⁶ These establishments may also acquire, research, store, preserve, and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material, and other archival material of historical interest.³⁷ All or portions of these collections may be accessible electronically.³⁸ The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of \$18.5 million or less as small.³⁹ For this industry, U.S. Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.⁴⁰ Of this number, 1,228 firms had revenues of less than \$10 million.⁴¹ Based on this data, the majority of firms in this industry can be considered small.

14. The Commission does not have a size standard for small entities specifically applicable to libraries. The Commission's definition of libraries pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service. Under the E-Rate program, a library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) a Tribal library, (4) an academic library, (5) a research library [] and (6) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition."⁴² For-profit libraries, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.⁴³ In calendar year 2017, the E-Rate program provided funding to approximately 11,475 libraries throughout the U.S. and its territories.⁴⁴ While we do not have financial information which would allow us to estimate the number of libraries that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of libraries in the E-Rate program are small entities under the SBA size standard.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ 13 CFR § 121.201, NAICS Code 519120 (as of 10/1/22 NAICS Code 519210).

⁴⁰ 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 519120, <https://data.census.gov/cedsci/table?y=2017&n=519120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that the U.S. Census Bureau economic data includes sales, value of shipments or revenue information reported by firms. 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.

⁴² 47 CFR § 54.500.

⁴³ *Id.* § 54.501.

⁴⁴ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

2. Telecommunications Service Providers

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.⁴⁵ 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.⁴⁶ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁴⁷ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁸

16. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁵¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.⁵² Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁵³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *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.⁵⁴ 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,

⁴⁵ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ 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.

⁴⁹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁰ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁵³ *Id.*

⁵⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

satellite systems.⁵⁵ 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.⁵⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁵⁷ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁵⁸ Of those firms, 1,039 had revenue of less than \$25 million.⁵⁹ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

18. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁶⁰ 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.⁶¹ The SBA 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 in this industry that operated for the entire year.⁶³ Of that number, 2,837 firms employed fewer than 250 employees.⁶⁴ 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.⁶⁵ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁶⁶ Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

19. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁵⁸ 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>.

⁵⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

⁶⁰ 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>.

⁶¹ *Id.*

⁶² 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶³ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁶ *Id.*

small business size standard is Wireless Telecommunications Carriers (except Satellite).⁶⁷ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.⁶⁸ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.⁶⁹ Of this number, 2,837 firms employed fewer than 250 employees.⁷⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.⁷¹ Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.⁷² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Internet Service Providers (ISPs)

20. *Wired Broadband Internet Access Service Providers (Wired ISPs).*⁷³ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁷⁴ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.⁷⁵ The SBA small business size standard for this industry 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

21. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least

⁶⁷ 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>.

⁶⁸ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶⁹ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

⁷⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

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 Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

⁷⁴ 47 CFR § 1.7001(a)(1).

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 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=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.

one direction using various wireline technologies.⁷⁹ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,⁸⁰ we believe that the majority of wireline Internet access service providers can be considered small entities.

22. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*⁸¹ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"⁸² Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁸³ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁸⁴ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁸⁶ Of that number, 2,837 firms employed fewer than 250 employees.⁸⁷

23. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.⁸⁸ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of

⁷⁹ See Federal Communications Commission, Internet Access Services: Status as of December 31, 2018, Fig. 30, Industry Analysis Division, Office of Economics & Analytics (September 2020) (*IAS Status 2018*). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP. Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

⁸⁰ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7 (2022) (*2022 Communications Marketplace Report*).

⁸¹ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

⁸² See *IAS Status 2018* at 61.

⁸³ See 47 CFR § 1.7001(a)(1).

⁸⁴ 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>.

⁸⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁸⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁸⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁸ See *IAS Status 2018*, Fig. 30.

large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,⁸⁹ as well as on terrestrial fixed wireless broadband providers in general,⁹⁰ we believe that the majority of wireless Internet access service providers can be considered small entities.

24. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.⁹¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁹² For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁹³ Of those firms, 1,039 had revenue of less than \$25 million.⁹⁴ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

4. Vendors of Internal Connections

25. *Vendors of Infrastructure Development or Network Buildout*. The Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are “Radio and Television Broadcasting and Wireless Communications Equipment”⁹⁵ with a SBA small business size standard of 1,250 employees or less,⁹⁶ and “Other Communications Equipment Manufacturing”⁹⁷ with a SBA small business size standard of 750 employees or less.⁹⁸ U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.⁹⁹ Of this number, 624 firms had fewer than 250

⁸⁹ 2022 Communications Marketplace Report at 27, paras. 64-68.

⁹⁰ *Id.* at 8, para. 22.

⁹¹ See U.S. Census Bureau, 2017 NAICS Definition, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁹² 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁹³ U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>.

⁹⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁹⁵ 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>.

⁹⁶ 13 CFR § 121.201, NAICS Code 334220.

⁹⁷ See U.S. Census Bureau, 2017 NAICS Definition, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

⁹⁸ 13 CFR § 121.201, NAICS Code 334290.

⁹⁹ U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

employees.¹⁰⁰ For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year.¹⁰¹ Of that number, 310 firms operated with fewer than 250 employees.¹⁰² Based on this data, we conclude that the majority of firms in this industry are small.

26. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.¹⁰³ These products may be stand-alone or board-level components of a larger system.¹⁰⁴ Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.¹⁰⁵ The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.¹⁰⁶ U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.¹⁰⁷ Of this number, 177 firms operated with fewer than 250 employees.¹⁰⁸ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

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.¹⁰⁹ 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.¹¹⁰ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹¹¹ U.S. Census Bureau data for 2017 show that there were 656

¹⁰⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰¹ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

¹⁰² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰³ See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ 13 CFR § 121.201, NAICS Code 334210.

¹⁰⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334210, <https://data.census.gov/cedsci/table?y=2017&n=334210&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

¹⁰⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁹ See 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>.

¹¹⁰ *Id.*

¹¹¹ 13 CFR § 121.201, NAICS Code 334220.

firms in this industry that operated for the entire year.¹¹² Of this number, 624 firms had fewer than 250 employees.¹¹³ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

28. The purpose of the *Report and Order* is to streamline and simplify procedures, and improve the E-Rate program processes. As such, the Commission's rule modifications will reduce the economic impact of current compliance obligations on small entities. For example, TCU libraries will not have to perform cost-allocation calculations of the college student usage at the library versus public usage of bandwidth, reducing compliance obligations. The changes we make will also reduce current compliance obligations by exempting certain small entity library applicants seeking E-Rate support for category two equipment or services of \$3,600 or less in a single funding year from the competitive bidding process.

29. New procedures direct USAC to provide specific support for TCU libraries, outreach to first-time applicants, and invoice reminders for funding requests, which will ease operations and implementation costs for applicants and participants that are small entities. Additionally, the Wireline Competition Bureau will continue to provide leniency to Tribal library applicants that file waiver requests of the FCC Form 471 application filing deadline, easing the compliance burden for these small entities. We are requesting additional information for Tribal affiliation as part of the application process, and this information request is simple enough that it will not increase the burden of applying for relevant applicants that are small entities. Small entities will not be required to hire professionals to comply with any rule modifications. Although the Commission cannot quantify the cost of compliance for small entities, we anticipate the approaches we have taken in the *Report and Order* to streamline and simplify procedures, and improve the E-Rate program processes will have minimal or *de minimis* cost implications and should significantly reduce compliance requirements for small entities that may have smaller staff and fewer resources.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."¹¹⁴

31. In the *Report and Order*, we take steps to minimize the economic impact on small entities with the rule changes that we have adopted. We made rule changes that will lower the burden for applicants to the E-Rate program. By granting Tribal libraries an exemption from the competitive bidding process for category two purchases totaling under \$3,600, we greatly simplify the process of receiving funding for these small purchases, making it easier for Tribal libraries with a small staff to apply for E-Rate. We also made changes to category two funding for Tribal libraries, increasing the maximum discount they can be eligible for from 85% to 90%, and increasing the minimum funding budget,

¹¹² U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹¹³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁴ 5 U.S.C. § 604(a)(6).

increasing the funding floor from \$25,000 to \$55,000 for Tribal libraries. This will reduce the share that they must pay for Wi-Fi networks, increase the amount of support that is eligible for reimbursement, and allow small libraries to have greater access to funding at a lower cost to themselves.

32. We also clarify our cost allocation rules to limit the burden on all applicants, including small entities, adopting a presumption that if at least 90% of an applicant's requested Internet service is being used for eligible purposes, the remaining ineligible portion is presumed to be ancillary and, therefore, cost allocation is not required. We considered but rejected alternatives for removing cost allocation requirements for Tribal libraries in multipurpose rooms because of concerns that this would lead to funding ineligible services. Finally, we have directed USAC to provide enhanced support to all applicants, with particular attention being paid to small entities such as small libraries who work with their small, local governments to secure funding.

G. Report to Congress

33. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹¹⁵ In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.¹¹⁶

¹¹⁵ *Id.* § 801(a)(1)(A).

¹¹⁶ *Id.* § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Schools and Libraries Universal Service Support Mechanism, et al., Further Notice of Proposed Rulemaking (E-Rate 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 in the *E-Rate FNPRM*. The Commission will send a copy of the *E-Rate FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *E-Rate FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rules

2. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. In the *Tribal E-Rate NPRM*, the Commission's primary objectives were to address the underrepresentation of Tribal applicants and increase participation of Tribal libraries. To achieve these objectives, the *Tribal E-Rate NPRM* explored ways to further simplify the E-Rate program rules, reduce program barriers and burdens, and encourage greater Tribal participation and community representation.

3. In response to the *Tribal E-Rate NPRM*, the Commission received several comments suggesting ways to streamline or simplify aspects of the E-Rate program overall for all schools and libraries. In order to develop the record further on those comments, we are now seeking further comment on a series of proposed ways to improve the program for schools and libraries. First, we seek comment on updating the eligible services list by modifying the distinction between two types of eligible software, Internal Connections, such as the license to access software, and Basic Maintenance of Internal Connections (BMIC), which includes bug fixes, security patches, and technical assistance. The modification would allow applicants to receive full funding for BMIC services in the first year of the contract, instead of splitting it across multiple years. We also seek comment on the best method to aid applicants that are transitioning between two service providers during the same funding year. We request comment on ways applicants may seek services from multiple suppliers without being deemed duplicative services. We also seek information on other changes to help simplify the program, particularly for new and smaller applicants, such as revising the list of eligible services to the same terms used on FCC Forms 470 or 471. We also seek comment on changing or clarifying the competitive bidding requirements in order to streamline aspects of the application process.

4. In addition, we request comment on creating a competitive bidding exemption for E-Rate funding requests under \$10,000. In an effort to allow applicants flexibility in anticipating changes in bandwidth needs, we seek comment on how to increase bandwidth during the school year without requiring competitive bidding for the service. We also seek comment on when an applicant's change to FCC Form 470 or a related request for proposals (RFP) will require it to restart the competitive bidding process. We request information on automated bid and spam bid responses, and bid deadlines, and whether to expand evidence of a legally binding agreement to include board minutes approving a contract.

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.*

5. To streamline the E-Rate program forms, we request comment on modifications such as creating an “EZ” application form in plain language, adding navigation prompts that alert for potential entry errors, and updating drop down menu options on FCC Form 470, which is used to seek competitive bids, to reduce applicant confusion. We also seek comment on modifying FCC Form 470, or eliminating FCC Form 486, which is used to notify the Universal Service Administrative Company (USAC) that services have started and collect a certification of compliance with the Children’s Internet Protection Act Certification (CIPA).

6. We seek comment on streamlining how often we calculate and validate discount rates for applicants, and on modifying the deadline for requesting an invoice deadline extension, in order to reduce the number of applicants that are unable to get a program disbursement due to small errors near the invoice deadline. We also request information on amending our rules to address billing issues that would change requiring applicants to make full, up-front payments under certain billing methods. Finally, we seek comment on updating E-Rate program definitions to make it easier to build local networks in areas where two schools share a location, and reflect Tribal procurement rules.

B. Legal Basis

7. The proposed action is authorized pursuant to sections 1 through 4, 201-202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁷

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.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

⁴ *Id.* § 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(a)). 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).

⁷ Small Business Act, 15 U.S.C. § 632.

⁸ 5 U.S.C. § 601(3)-(6).

⁹ SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁰

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”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

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴ U.S. Census Bureau data from the 2017 Census of Governments¹⁵ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,931 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of

¹⁰ *Id.*

¹¹ 5 U.S.C. § 601(4).

¹² The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁴ 5 U.S.C. § 601(5).

¹⁵ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁶ U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ *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 *Id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

less than 50,000 and 12,040 special purpose governments—independent school districts¹⁹ with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²¹

1. Schools and Libraries

12. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.²² This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education.²³ A basic preparatory education ordinarily constitutes kindergarten through 12th grade.²⁴ The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of \$17.5 million or less as small.²⁵ The Commission does not have a size standard for small entities specifically applicable to schools. The Commission’s definition of schools pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service.

13. Under the E-Rate program an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”²⁶ A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.²⁷ For-profit schools, and schools with endowments in excess of \$50,000,000, are not eligible to receive discounts under the E-Rate program.²⁸ In calendar year 2017, the E-Rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.²⁹ While we do not have financial information that would allow us to estimate the number of schools that would qualify as small entities

¹⁹ *Id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²⁰ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

²² *See* U.S. Census Bureau, 2017 NAICS Definition, “611110 Elementary and Secondary Schools,” <https://www.census.gov/naics/?input=611110&year=2017&details=611110>.

²³ *Id.*

²⁴ *Id.*

²⁵ 13 CFR § 121.201, NAICS Code 611110.

²⁶ 47 CFR § 54.500.

²⁷ *Id.*

²⁸ *Id.* § 54.501.

²⁹ *See* Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

under SBA's small business size standard, because of the nature of these entities we estimate that the majority of schools in the E-Rate program are small entities under the SBA size standard.

14. *Libraries.* The closest applicable industry with a SBA small business size standard is Libraries and Archives.³⁰ This industry comprises establishments primarily engaged in providing library or archive services.³¹ These establishments are engaged in maintaining collections of documents (e.g., books, journals, newspapers, and music) and facilitating the use of such documents (recorded information regardless of its physical form and characteristics) as required to meet the informational, research, educational, or recreational needs of their user.³² These establishments may also acquire, research, store, preserve, and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material, and other archival material of historical interest.³³ All or portions of these collections may be accessible electronically.³⁴ The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of \$18.5 million or less as small.³⁵ For this industry, U.S. Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.³⁶ Of this number, 1,228 firms had revenues of less than \$10 million.³⁷ Based on this data, the majority of firms in this industry can be considered small.

15. The Commission does not have a size standard for small entities specifically applicable to libraries. The Commission's definition of libraries pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service. Under the E-Rate program, a library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) a Tribal library, (4) an academic library, (5) a research library . . . and (6) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition."³⁸ For-profit libraries, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.³⁹ In calendar year 2017, the E-Rate program provided funding to approximately 11,475

³⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "519120 Libraries and Archives," <https://www.census.gov/naics/?input=519120&year=2017&details=519120>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ 13 CFR § 121.201, NAICS Code 519120 (as of 10/1/22 NAICS Code 519210).

³⁶ 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 519120, <https://data.census.gov/cedsci/table?y=2017&n=519120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that the U.S. Census Bureau economic data includes sales, value of shipments or revenue information reported by firms. 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.

³⁸ 47 CFR § 54.500.

³⁹ *Id.* § 54.501.

libraries throughout the U.S. and its territories.⁴⁰ While we do not have financial information which would allow us to estimate the number of libraries that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of libraries in the E-Rate program are small entities under the SBA size standard.

2. Telecommunications Service Providers

16. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.⁴¹ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.⁴² By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁴³ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁴

17. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.⁴⁸ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

⁴⁰ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

⁴¹ U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

⁴⁵ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁶ U.S. Census Bureau, 2017 *Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁴⁹ *Id.*

18. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁵⁰ 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.⁵¹ 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.⁵² The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁵³ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁵⁴ Of those firms, 1,039 had revenue of less than \$25 million.⁵⁵ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

19. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁵⁶ 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.⁵⁷ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁵⁸ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁵⁹ Of that number, 2,837 firms employed fewer than 250 employees.⁶⁰ 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.⁶¹ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer

⁵⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁵⁴ 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&hidePrevious=false>.

⁵⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

⁵⁶ 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>.

⁵⁷ *Id.*

⁵⁸ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁵⁹ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

⁶⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

employees.⁶² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *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).⁶³ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.⁶⁴ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.⁶⁵ Of this number, 2,837 firms employed fewer than 250 employees.⁶⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.⁶⁷ Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.⁶⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Internet Service Providers (ISPs)

21. *Wired Broadband Internet Access Service Providers (Wired ISPs).*⁶⁹ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁷⁰ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.⁷¹ The SBA small business size standard for this industry 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 that operated in this industry for the entire year.⁷³ Of this number, 2,964 firms operated with fewer than 250 employees.⁷⁴

⁶² *Id.*

⁶³ 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>.

⁶⁴ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶⁵ U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

⁶⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁸ *Id.*

⁶⁹ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

⁷⁰ 47 CFR § 1.7001(a)(1).

⁷¹ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷² 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷³ U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,

(continued....)

22. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.⁷⁵ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 *Communications Marketplace Report*,⁷⁶ we believe that the majority of wireline Internet access service providers can be considered small entities.

23. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*⁷⁷ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"⁷⁸ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁷⁹ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁸⁰ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁸² Of that number, 2,837 firms employed fewer than 250 employees.⁸³

(Continued from previous page)

<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=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 Communications Commission, Internet Access Services: Status as of December 31, 2018, Fig. 30, Industry Analysis Division, Office of Economics & Analytics (September 2020) (*IAS Status 2018*). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. (The technologies used by providers include DSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

⁷⁶ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

⁷⁷ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

⁷⁸ See *IAS Status 2018*.

⁷⁹ 47 CFR § 1.7001(a)(1).

⁸⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁸¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁸² U.S. Census Bureau, 2017 *Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

⁸³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

24. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.⁸⁴ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's 2022 *Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,⁸⁵ as well as on terrestrial fixed wireless broadband providers in general,⁸⁶ we believe that the majority of wireless Internet access service providers can be considered small entities.

25. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.⁸⁷ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁸⁸ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁸⁹ Of those firms, 1,039 had revenue of less than \$25 million.⁹⁰ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

4. Vendors of Internal Connections

26. *Vendors of Infrastructure Development or Network Buildout*. The Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are "Radio and Television Broadcasting and Wireless Communications Equipment"⁹¹ with a SBA small business size standard of 1,250 employees or less,⁹² and "Other Communications Equipment Manufacturing"⁹³ with a SBA small business size standard of 750 employees or less.⁹⁴ U.S. Census Bureau data for 2017 show

⁸⁴ See *IAS Status 2018*, Fig. 30.

⁸⁵ 2022 *Communications Marketplace Report*, 2022 WL 18110553 at 27, paras. 64-68.

⁸⁶ *Id.* at 8, para. 22.

⁸⁷ See U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁸⁸ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁸⁹ U.S. Census Bureau, 2017 *Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>.

⁹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁹¹ 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>.

⁹² 13 CFR § 121.201, NAICS Code 334220.

⁹³ See U.S. Census Bureau, 2017 NAICS Definition, "334290 Other Communications Equipment Manufacturing," <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

⁹⁴ 13 CFR § 121.201, NAICS Code 334290.

that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.⁹⁵ Of this number, 624 firms had fewer than 250 employees.⁹⁶ For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year.⁹⁷ Of that number, 310 firms operated with fewer than 250 employees.⁹⁸ Based on this data, we conclude that the majority of firms in this industry are small.

27. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.⁹⁹ These products may be stand-alone or board-level components of a larger system.¹⁰⁰ Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.¹⁰¹ The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.¹⁰² U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.¹⁰³ Of this number, 177 firms operated with fewer than 250 employees.¹⁰⁴ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

28. *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.¹⁰⁵ Examples of products made by these

⁹⁵ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁹⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁹⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁹⁹ See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² 13 CFR § 121.201, NAICS Code 334210.

¹⁰³ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334210, <https://data.census.gov/cedsci/table?y=2017&n=334210&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹⁰⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹⁰⁶ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹⁰⁷ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹⁰⁸ Of this number, 624 firms had fewer than 250 employees.¹⁰⁹ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

29. The potential rule changes discussed in the *E-Rate FNPRM* if adopted, could impose some new or modified reporting, recordkeeping or other compliance requirements on small entities. However, since the purpose of the *E-Rate FNPRM* is to streamline and simplify procedures, and improve the E-Rate program processes, the Commission anticipates that the rule modifications that may result from the matters upon which we are seeking comment should reduce the economic impact of current compliance obligations on small entities. For example, modifications to funding for BMIC services would allow applicants that are small entities to receive full funding for these services during the first year of the contract, instead of splitting funding across multiple years, reducing operational costs. Revising the list of eligible services to the same terms used on FCC Forms 470 or 471 could simplify the application process for new and small applicants. Exempting small libraries from the competitive bidding process when requested funding is less than \$10,000 would ease compliance burdens for these small entities. We also seek comment on eliminating the need to file a form before beginning to invoice the program.

30. In the *E-Rate FNPRM* we inquire whether there are other rule changes to the application, invoicing, or other administrative processes in the E-Rate program that could be made to specifically help new and smaller schools and libraries. For example, creating an “EZ” application form in plain language and navigation prompts that alert for potential entry errors, as well as updating drop down menu options on FCC Form 470, may reduce operational and implementation costs for small applicants. Moving CIPA certifications to FCC Form 471 and removing USAC notification through FCC Form 486 would reduce reporting obligations for small entities. In response to comments to the *E-Rate FNPRM* or this IRFA, we may simplify and change the forms that applicants use to apply for the E-Rate program as well as modify filing and other administrative requirements, which should ease reporting, recordkeeping, and other compliance requirements for small entities.

31. 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. Additionally, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment in the *E-Rate FNPRM* will require small entities to hire professionals to comply. However, consistent with our objectives to streamline and simplify the E-Rate program processes and procedures, we do not anticipate that small entities will be required to hire professionals to comply with any rule modifications we adopt. We expect the information we receive in comments including where requested, cost information, will help the Commission identify and evaluate relevant compliance matters

¹⁰⁶ *Id.*

¹⁰⁷ 13 CFR § 121.201, NAICS Code 334220.

¹⁰⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹⁰⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *E-Rate FNPRM*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹¹⁰

33. In the *E-Rate FNPRM*, the Commission takes steps to minimize the economic impact on small entities from the changes to the E-Rate program on which we seek comment. Specifically, each of the subjects on which we seek comment was identified by an E-Rate participant as a potential way to simplify the program in large or small ways and should lessen the economic impact on small entities. The Commission expects the comments received in response will allow us to consider ways to minimize the economic impact and explore alternatives to improve and simplify how small entities participate in the E-Rate program.

34. For example, in the *E-Rate FNPRM*, we explore ways to improve the process for applicants that have struggled with distinguishing how to apply for two different types of eligible software in the program, Internal Connections and BMIC, which is administratively more burdensome to request. If the applicant fails to file the competitive bidding forms for the right type of software, it can be denied funding even if the applicant otherwise applies correctly. If adopted some of the competitive bidding changes, such as exempting certain funding requests below \$10,000, could result in less paperwork for small entities making low-cost purchases, and some of the form changes, such as creating the “EZ” application and adding plain-language to FCC Forms 470 and 471, while eliminating filing FCC Form 486, could reduce the number of forms that must be filed for all applicants, as well as reduce the number of applicants penalized for filing such forms past their deadline.

35. We considered and seek comment to the invoice deadline extension rule, beyond the single 120-day extension, in order to reduce the number of applicants and service providers that have invoices denied because they missed the deadline by a short period of time. All of these, and the other proposals on which we seek comment, would reduce costs for small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

36. None.

¹¹⁰ 5 U.S.C. § 603(c)(1) – (c)(4).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Report and Order and Further Notice of Proposed Rulemaking (July 20, 2023).

Last December, I drove west from Albuquerque to the Pueblo of Laguna. I visited the Tribal library. When I was there, tarps and plastic sheeting covered the bookshelves and computers. This space, which the library aide assured me was usually bright and warm, was damp and drafty due to water damage. But repairs were underway. The same library aide explained just how vital it was to fix this facility. In a typical year 20,000 patrons visit the library and hold more than 10,000 internet sessions. For so many people in this rural community, this Tribal library was how they connect to the larger world.

What stayed with me most from this visit, however, was a binder on a shelf by the desk of the head librarian. It was bulky. It was chock-filled with papers and forms. It was labeled “E-Rate.”

The binder made clear what conversation alone did not. Tribal libraries like this one are working—with so many constraints—to figure out how to get support for broadband connections they know their patrons need. But navigating the program is not easy for so many of the facilities that need it most.

This was a theme that came up again and again during the Tribal Libraries Tour that the Office of Native Affairs and Policy recently held. It included discussions and visits with Alaska Native Communities and the Morongo Band of Mission Indians as well as listening sessions with representatives from nearly two dozen Tribes.

Now we are acting on what we heard and what I saw that day at the library in the Pueblo of Laguna. We are taking steps to make it easier for Tribal Libraries to participate in the E-Rate program. Remember these are facilities in some of the most remote areas, where broadband is scarce and community access at the library is essential. So we are cleaning up our rules and streamlining our process so that more Tribal libraries can seek support through E-Rate. To this end, we expand eligibility for more Tribal facilities. We simplify forms and procedures.

On top of this, I am pleased to announce we are extending our existing Tribal Libraries Pilot Program for an additional funding year. This program, which offers Tribal libraries one-on-one assistance navigating the E-Rate application process, has been well-received and we believe it can help more Tribal libraries in more places. But the benefits flow in two directions. Because along the way, we can learn more about what in our rules impedes small libraries in Native communities from participating.

For this effort, and for coordinating our engagement with Tribes and developing the Tribal Libraries Tour, I want to thank Bambi Kraus, who leads our Office of Native Affairs and Policy. I also want to thank Max Atkins, Callie Coker, Kate Dumouchel, Jodie Griffin, Trent Harkrader, Sue McNeil, Molly O’Conor, Johnny Roddy, Johnnay Schrieber, Hayley Steffen, and Lisa Zaina from the Wireline Competition Bureau; Edyael Casaperalta, Lloyd Collier, Derik Goatson, Alejandro Roark, Jill Springer, and Cara Voth from the Consumer and Governmental Affairs Bureau; Malena Barzilai, Michele Ellison, Richard Mallen, William Richardson, Anjali Singh, and Chin Yoo from the Office of General Counsel; Warren Firschein, Eugene Kiselev, and Shane Taylor from the Office of Economics and Analytics; Daniel Daly from the Office of the Managing Director; and Michael Gussow, Joycelyn James, Joy Ragsdale, and Chana Wilkerson from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Report and Order and Further Notice of Proposed Rulemaking (July 20, 2023).

I was excited when we adopted a Notice of Proposed Rulemaking earlier this year to update our E-Rate rules – supporting those living on Tribal lands is imperative given how many struggle with access to broadband. In approving the Notice, I wrote that I hoped that we could move quickly, and I’m proud that we have done just that here today. I strongly support today’s item, which continues our efforts to expand broadband access in unserved and underserved locations, making the Tribal college and university libraries that serve a wider public eligible for E-Rate funding. It also implements changes which will ensure that all eligible applicants can easily access E-Rate benefits.

E-Rate is a crucial source of support for schools and libraries on Tribal lands, and their surrounding communities. I heard and saw this in May traveling with Senator Ben Ray Lujan to visit the Pueblo of Santa Clara. There, we met with Governor Chavarria and heard firsthand the importance of E-Rate funds in the Pueblo.

I also experienced this last month in Alaska, where I was fortunate to be able to visit several remote villages of indigenous Yup’ik people. I visited Oscarville, a village of about a hundred people, and Napaskiak, a village of about 400, both on the banks of the Kuskokwim River. As we pulled up in our motorboat – neither of the villages is accessible by road – I was immediately struck by the number of kids running around. Or should I say riding! The villages are built around a boardwalk, because the ground is permafrost, and I saw kids’ bikes all along the side of the path. Instead of car many residents also travel via ATV, and a local dad drove by on his ATV, with five children hanging off the back. These communities may be remote, but their educational and connectivity needs are real. Napaskiak is home to the K-12 school serving the area villages – it was the largest building I saw, and rightly so.

On the same trip, I had the opportunity to visit with leaders of the Kenai Peninsula Borough School District, a district as large as West Virginia, and a proud recipient of E-Rate funding. Everyone I met with, from the assistant superintendent to the IT manager, spoke about the vital role E-Rate funding plays in their students’ success. I got to see the district’s network room – those humming racks of servers were literally being powered by E-Rate dollars. I always find it valuable to get out and see how our programs are actually doing at connecting Americans. These trips helped crystalize the need to act, and act quickly, for the benefit of our nation’s young learners.

I’m glad we have quickly taken this step to promote additional broadband deployment and adoption on Tribal lands. It should expand the E-Rate program on Tribal lands, and accordingly help ensure more reliable internet in these vital communities. I am proud to support this result, and thank the Chairwoman for her leadership and the FCC staff for their continued great work.

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

In the Matter of	)	
	)	
Ensuring the Reliability and Resiliency of the 988	)	PS Docket No. 23-5
Suicide & Crisis Lifeline	)	
	)	
Amendments to Part 4 of the Commission's Rules	)	PS Docket No. 15-80
Concerning Disruptions to Communications	)	
	)	
Implementation of the National Suicide Hotline	)	WC Docket No. 18-336
Improvement Act of 2018	)	

REPORT AND ORDER

Adopted: July 20, 2023

Released: July 21, 2023

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	3
III. DISCUSSION.....	12
A. Reporting 988 Outages in NORS	12
B. Providing 988 Special Facilities with Notice of Outages	23
C. Assessing the Benefits and Costs.....	41
D. Legal Authority	48
E. Timelines for Compliance.....	54
IV. PROCEDURAL MATTERS.....	56
V. ORDERING CLAUSES.....	61
APPENDIX A – Final Rules	
APPENDIX B – Final Regulatory Flexibility Analysis	

I. INTRODUCTION

1. On July 16, 2022, Federal Communications Commission (Commission) rules went into effect establishing 988 as the universal telephone number for the 988 Suicide & Crisis Lifeline (988 Lifeline or Lifeline), which is a national network of more than 200 crisis centers that helps thousands of people overcome crisis situations every day. Since then, the 988 Lifeline has answered nearly five

million calls, chats, and texts to the Veterans Crisis Line and other crisis centers across the country.¹ Dialing “9-8-8” now serves as a crucial lifeline for people in need of immediate help. The ability to call or text 988 and reach help on a timely, consistent basis is of utmost importance to provide support and care to those who may be experiencing a suicidal crisis or mental health-related distress.

2. Today, we adopt rules to strengthen this vital service by ensuring that when there is a communications service outage that potentially affects people’s ability to reach the 988 Lifeline, the Commission and those who provide life-saving 988 crisis intervention services receive timely and actionable information. With this information, the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Veterans Affairs (VA), and the 988 Lifeline administrator can provide the public with notice of outages impacting 988 services, and how they can access the 988 Lifeline and Veterans Crisis Line despite the outage. SAMHSA, the VA, and the 988 Lifeline administrator can also take steps to reroute 988 calls to available crisis centers and take other steps to reduce the amount of time that individuals would need to wait before they receive assistance. This notice will allow SAMHSA, the VA, and the Lifeline administrator to continue meeting the immediate health needs of people in suicidal crisis and mental health distress. The Commission will also be able to improve 988 reliability by using this information to analyze outage trends and identify best practices to prevent and mitigate outages.

II. BACKGROUND

3. According to the Centers for Disease Control and Prevention (CDC), the suicide rate in this country increased by 35% from 1999 to 2018.² In 2021, suicide was a leading cause of death in the United States for people aged 10 to 64 and the second leading cause of death among people aged 10-14 and 20-34.³ Suicide claimed the lives of over 48,000 Americans in 2021, resulting in about one death every 11 minutes.⁴ For every one person who dies by suicide annually, 316 people seriously consider suicide.⁵

4. Suicide also disproportionately impacts various at-risk populations. In 2020, there were 6,146 Veteran suicides – an average of 16.8 per day – and adjusting for population age and sex

¹ See SAMHSA Substance Abuse and Mental Health Services Administration, 988 Suicide & Crisis Lifeline, 988 Suicide & Crisis Lifeline Adds Spanish Text and Chat Service Ahead of One-Year Anniversary (July 13, 2023), <https://www.samhsa.gov/newsroom/press-announcements/20230713/988-suicide-crisis-lifeline-adds-spanish-text-chat-service-ahead-one-year-anniversary>.

² Holly Hedegaard, Sally C. Curtin, and Margaret Warner, *Increase in Suicide Mortality in the United States, 1999-2018*, National Center for Health Statistics (NCHS) Data Brief No. 362, at 1 (Apr. 2020), <https://www.cdc.gov/nchs/data/databriefs/db362-h.pdf>.

³ Centers for Disease Control and Prevention, *Suicide Prevention*, <https://www.cdc.gov/suicide/> (last visited June 12, 2023). See also The Trevor Project, *Facts About LGBTQ Youth Suicide* (Dec. 15, 2021), <https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/>.

⁴ Centers for Disease Control and Prevention, *Facts About Suicide*, <https://www.cdc.gov/suicide/facts/index.html> (last visited June 12, 2023).

⁵ 988 Suicide & Crisis Lifeline, *Suicide Prevention by the Numbers*, <https://988lifeline.org/by-the-numbers/> (last visited June 12, 2023).

differences, the suicide rate for Veterans was 57.3% greater than for non-veteran U.S. adults.⁶ A large proportion of youths ages 13-24 have attempted suicide, with the proportion particularly high among Native/Indigenous youths or youths who are members of certain minorities. LGBTQ youth are “four times more likely to seriously consider suicide, to make a plan for suicide, and to attempt suicide versus their peers.”⁷ Among LGBTQ youth, twelve percent of white youth attempted suicide compared to 31% of Native/Indigenous youth, 21% of Black youth, 21% of multiracial youth, 18% of Latinx youth, and 12% of Asian/Pacific Islander youth.⁸ Suicide rates are higher in rural, less densely populated areas.⁹ A 2021 survey found that adults with disabilities are three times more likely to report suicidal ideation in the past month compared to persons without disabilities.¹⁰

5. The 988 Suicide & Crisis Lifeline (988 Lifeline) is a 24/7 hotline that can be accessed by dialing 9-8-8 or by directly dialing a toll-free number (1-800-273-TALK). The 988 Lifeline is overseen by the Substance Abuse and Mental Health Services Administration (SAMHSA), a public health agency housed in the U.S. Department of Health and Human Services, and administered by Vibrant Emotional Health (Vibrant), a New York-based mental health non-profit (988 Lifeline administrator), under a grant from SAMHSA. The 988 Lifeline, is “available to people in suicidal crisis or emotional distress at any time of the day or night.”¹¹ Since its inception in 2005, the 988 Lifeline has received over 23 million calls from people in distress looking for support.¹² In May 2023, 262,920 calls, 68,507 chats, and 71,067 texts (totaling 402,494 contacts) were routed to a 988 Lifeline counseling center.¹³ According to SAMHSA,

⁶ U.S. Dept. of Veterans Affairs, Veterans Health Administration, Office of Mental Health and Suicide Prevention, *National Veteran Suicide Prevention Annual Report* at 7 (2022), <https://www.mentalhealth.va.gov/docs/data-sheets/2022/2022-National-Veteran-Suicide-Prevention-Annual-Report-FINAL-508.pdf>.

⁷ The Trevor Project, *Estimate of How Often LGBTQ Youth Attempt Suicide in the U.S* (Mar. 11, 2021), <https://www.thetrevorproject.org/research-briefs/estimate-of-how-often-lgbtq-youth-attempt-suicide-in-the-u-s/>.

⁸ The Trevor Project, *National Survey on LGBTQ Youth Mental Health 2021*, <https://www.thetrevorproject.org/survey-2021/> (last visited Dec. 15, 2022).

⁹ See Centers for Disease Control and Prevention, *Disparities in Suicide*, <https://www.cdc.gov/suicide/facts/disparities-in-suicide.html> (last visited June 12, 2023) (2021 suicide rates based on population density range from 11.6 per 100,000 in large central metropolitan areas to 21.7 per 100,000 in noncore, non-metro areas); see also Letter from Brandon E. Presley, Commissioner, Northern District, Miss. Public Service Commission, to Hon. Ajit Pai, Chairman, FCC, WC Docket No. 18-336, at 1 (Feb. 26, 2020) (expressing concern about how the suicide rates are affecting the health and welfare of rural communities throughout Mississippi and across the nation).

¹⁰ Mark É. Czeisler, Amy Board, JoAnn M. Thierry, Charles A. Czeisler, Shantha M.W. Rajaratnam, Mark E. Howard, and Kristie E.N. Clarke, *Mental Health and Substance Use Among Adults with Disabilities During the COVID-19 Pandemic — United States, February–March 2021*, Morbidity and Mortality Weekly Report, Centers for Disease Control and Prevention, 70(34), at 1142 (Aug. 27, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7034a3-H.pdf>.

¹¹ See National Suicide Prevention Lifeline, *Our Network*, <https://988lifeline.org/our-network/> (last visited Dec. 9, 2022) (explaining that the Lifeline “is a national network of over 200 local crisis centers, allowing the Lifeline to provide local resources with innovative best practices and quality care across the United States”).

¹² 988 Suicide & Crisis Lifeline, *Suicide Prevention By the Numbers*, <https://988lifeline.org/by-the-numbers/> (last visited June 12, 2023).

¹³ SAMHSA Substance Abuse and Mental Health Services Administration, 988 Suicide & Crisis Lifeline, *988 Lifeline Performance Metrics*, <https://www.samhsa.gov/find-help/988/performance-metrics#answered> (last visited June 12, 2023). These figures exclude the 66,529 calls offered to the Veterans Crisis Line.

“the Lifeline works. . . . Almost 98% of people who call, chat or text the 988 Lifeline get the crisis support they need and do not require additional services in that moment.”¹⁴

6. Responding to a Congressional directive,¹⁵ the Commission adopted rules establishing 988 as the national suicide prevention and mental health crisis hotline and required all telecommunications carriers, interconnected Voice over Internet Protocol (VoIP) providers, and one-way VoIP providers (those that permit users generally to receive calls from, or terminate calls to, the public switched telephone network) to make any network changes necessary to ensure that people were able to dial 988 to reach the 988 Lifeline by July 16, 2022.¹⁶ The Commission subsequently expanded the availability of critical mental health and crisis counseling resources by requiring covered text providers¹⁷ to allow callers to reach the 988 Lifeline by texting 988.¹⁸ The Commission’s rules require covered text providers to route covered 988 text messages to the 988 Lifeline’s current 10-digit number,¹⁹ and the Wireline Competition Bureau granted a waiver to allow covered text providers to route covered 988 text messages²⁰ to the Lifeline using the short code protocol without translation to the Lifeline’s current toll free access number. This allows return texts from the Lifeline to appear on consumer devices as coming from 988 rather than 1-800-273-TALK.²¹

7. *Contacting the 988 Lifeline.* When someone dials 988, the call is routed by the calling party’s originating service provider (OSP) – such as a cable, satellite, wireless, wireline, or interconnected VoIP provider – to 1-800-273-8255, which is the toll free access number for the 988 Lifeline and Veterans Crisis Line.²² Once a call is received at the 988 Lifeline, the caller encounters an interactive voice response system, where the caller selects routing options. A caller may press “1” for Veterans Affairs, press “2” for services in Spanish, or stay on the line for services in English. The call is then routed to the Veterans Crisis Line or the closest accredited local crisis center according to the caller’s area code, and if the closest center is unable to respond due to call volume, is experiencing a disruption in service, or the center has temporarily removed itself from the network, the system automatically routes

¹⁴ SAMHSA, *988 Suicide & Crisis Lifeline, 988 Frequently Asked Questions, Does calling/texting/chatting the 988 Lifeline really help?*, <https://www.samhsa.gov/find-help/988/faqs> (last visited June 12, 2023).

¹⁵ See National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, 134 Stat. 832 § 3 (2020) (adding subsection (e)(4) to section 251 of the Communications Act of 1934, as amended (the Act)).

¹⁶ 47 CFR § 52.200; *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Report and Order, 35 FCC Rcd 7373, 7385-92, paras. 28-36 and 41-45 (2020) (*988 Report and Order*).

¹⁷ For purposes of the 988 rules, a covered text provider “includes 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 § 52.201(c)(3).

¹⁸ *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Second Report and Order, 36 FCC Rcd 16901, para. 2 (2021) (*Text to 988 Second Report and Order*); see also 47 CFR § 52.201.

¹⁹ 47 CFR § 52.201(a).

²⁰ A “covered 988 text message means a 988 text message in SMS format and any other format that the Wireline Competition Bureau has determined must be supported by covered text providers.” 47 CFR § 52.201(c)(2).

²¹ *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Order, DA-22-519 (WCB 2022).

²² 47 CFR § 52.200(b). The Commission’s rules do not require multi-line telephone systems (MLTS) to allow callers to reach the Lifeline by dialing 988 and no other digits. *988 Report and Order*, 35 FCC Rcd at 3795, n.187.

callers to a backup center.²³ In addition to taking calls and text messages, 30 crisis centers answer online chats on a 24/7 basis.²⁴

8. *Outage Reporting and Notification to 911 Special Facilities.* Promoting network reliability is a critical priority for the Commission. To that end, the Commission's existing rules require certain service providers to report and send notifications about network outages. Under Part 4 of the Commission's rules, cable, satellite, wireless, wireline, interconnected VoIP and other communications providers are required to file reports with the Commission when they experience outages to their communications services that meet certain magnitude and duration thresholds.²⁵ Providers must report the outage in the Commission's Network Outage Reporting System (NORS) within 120 minutes of discovery of the outage, which must include: the name of the reporting entity; the date and time of onset of the outage; a brief description of the problem; service effects; the geographic area affected by the outage; and a contact name and contact telephone number by which the Commission's technical staff may contact the reporting entity.²⁶ The Commission monitors the reliability of communications services, which includes access to 911 networks, through these mandatory outage reporting requirements that, among other things, provide the federal government with situational awareness when outages occur, enable statistical analysis of outage trends, and inform recommendations to improve network reliability. This information is also shared with other agencies of the federal government, the 50 states, the District of Columbia, Tribal Nations, and the U.S. territories that have a need to know.²⁷

9. For disruptions that potentially affect access to 911, the Commission's adopted rules require providers that deliver traffic to 911 special facilities (i.e., covered 911 service providers)²⁸ and cable, satellite, wireless, wireline, and interconnected VoIP providers that handle other aspects of 911 call processing (originating service providers or OSPs)²⁹ to notify 911 special facilities when an outage

²³ *The Substance Abuse and Mental Health Services Administration Report to the Federal Communications Commission*, WC Docket No. 18-336, CC Docket No. 92-105, at 5 (Feb. 7, 2019) (SAMHSA Report).

²⁴ *Id.*

²⁵ 47 CFR § 4.9.

²⁶ See 47 CFR §§ 4.9(a), (c)(1)-(2), (d), I(1), (f), 4.11. *But see* 47 CFR § 4.9(g) (allowing interconnected VoIP service providers 240 minutes to submit a notification when the outage potentially affects a 911 special facility, and 24 hours for other outages). Providers must also submit an initial report within 72 hours of discovery of the outage that contains all pertinent information then available, and final report within 30 days of discovery that contains all pertinent information on the outage, including any information that was not contained in, or that has changed from the information provided in, the initial report. See 47 CFR §§ 4.9(a)(4), (c)(3), (d), (e)(4), (f)(4), (g)(2), 4.11. Interconnected VoIP service providers are not required to submit initial reports.

²⁷ See 47 CFR § 4.2.

²⁸ 47 CFR § 9.19(a)(4); *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13-75 and 11-60, Report and Order, 28 FCC Rcd 17476, 17488-91, paras. 36-43 (2013) (*911 Reliability Report and Order*); *id.* at 17529-29, para. 147.

²⁹ 47 CFR §§ 4.3(a), (d), (f), (g), (h). The *Third Notice* referred to cable, satellite, wireless, wireline, and interconnected VoIP providers collectively as "originating service providers." *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 No. 13-75, Third Notice of Proposed Rulemaking, 36 FCC Rcd 7860 (2021) (*Third Notice*). We continue to use that term here, but note that the communications services that they provide are not limited to call origination. These providers are subject to our part 4 outage reporting rules including when they experience outage in a location other than their call origination networks (e.g., in "middle mile" or wholesale transport network facilities).

potentially affects the 911 special facility.³⁰ Notifications must be sent as soon as possible, but no later than 30 minutes after the outage's discovery, and contain all available material information about the outage, which includes, among other information, the date and time when the incident began, the types of communications services affected, the geographic area affected by the outage, how the outage affects the 911 special facility, the expected date and time of restoration, and the best-known cause of the outage.³¹ The adopted rules require providers to notify 911 special facilities by telephone and in writing via electronic means in the absence of another method mutually agreed upon in writing in advance by the 911 special facility and the provider.³² Providers must also exercise special diligence to identify, maintain, and, on an annual basis, confirm current contact information appropriate for 911 outage notification for each 911 special facility that covers areas that the service provider serves.³³ Requiring providers to notify 911 special facilities of outages enables those facilities to take steps to maintain the public's access to emergency services when it would otherwise be interrupted.³⁴ As the Commission has developed experience and a depth of situational awareness about outages that potentially affect 911 special facilities, it has refined these requirements and built on what it has learned.

10. On December 1, 2022, the 988 Lifeline suffered a nationwide outage that lasted several hours, rendering this vital service inaccessible to voice callers.³⁵ The Department of Health and Human Services announced the outage on Twitter, indicating they were “tracking a widespread national system outage at Intrado, a contractor for crisis providers that supports emergency response needs across the country, including the 988 Suicide & Crisis Lifeline”³⁶ The outage left callers reliant on alternative

³⁰ 47 CFR § 4.5(e); *see also* 47 CFR §§ 4.9(a)(4), (c)(2)(iv), (e)(1)(v), (f)(4), (g)(1)(i), (h).

³¹ 47 CFR §§ 4.9(h)(2), (4). Additional material information to potentially affected 911 special facilities as the information becomes available, but no later than two hours after the initial notification. 47 CFR § 4.9(h)(5). For outages lasting longer than two hours, service providers will need to continue to follow up with additional material information as soon as possible after it becomes available, which continues until the outage is completely repaired and service is fully restored. *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, 04-35, Second Report and Order, FCC 22-88 at 14, para. 23 (Nov. 18, 2022) (*PSAP Notification Order*).

³² 47 CFR § 4.9(h)(3).

³³ 47 CFR § 4.9(h)(1).

³⁴ *PSAP Notification Order* at 19, para. 37.

³⁵ *See, e.g.*, Associated Press, *Widespread outage shuts down 988 mental health hotline*, (Dec. 1, 2022), <https://apnews.com/article/health-mental-service-outages-government-and-politics-d39ecadd27541c7c37c71caf95f975e> (“Those trying to reach the line for help with suicide, depression, or other mental health crises [were] greeted with a message that [said] the line is ‘experiencing a service outage’”).

³⁶ Sarah Lovenheim (@HHS-Spox), Twitter (Dec. 1, 2022, 2:02 PM), https://twitter.com/HHS_Spox/status/1598392052903026689. Intrado Life & Safety, Inc. notes that as of January 31, 2023, it is a distinct entity from West Technology Group, LLC, which was known as Intrado Corporation at the time of the outage. Intrado Life & Safety Reply Comments at 1. West Technology Group was and remains the parent company of CX360, which provides voice and SMS-based services to the 988 Lifeline pursuant to a contract with the Lifeline administrator. CX360 d/b/a Mosaicx Comments at 2 (CX360 Comments); CX360 Reply Comments at 6, n.11. Intrado Life & Safety clarifies that although it was formerly a West Technology Group subsidiary, it retained the “Intrado” brand after January 31 but did not provide 988 services to SAMHSA or the 988 Lifeline administrator. *Id.* at 1.

means to contact the hotline, such as text or webchat hosted at 988lifeline.org, to which the public was directed by SAMHSA once it was made aware of the outage.³⁷

11. On January 26, 2023, the Commission adopted a Notice of Proposed Rulemaking (*988 Outage NPRM*) that proposed rules designed to ensure that the Commission and those parties that provide life-saving crisis intervention services to people calling the 988 Lifeline receive timely and actionable information about 988 service outages that potentially affect those services' ability to meet the immediate health needs of people in suicidal crisis and mental health distress.³⁸ In response to the *988 Outage NPRM*, the Commission received 16 comments and 13 reply comments representing 21 different entities and individuals, including a range of public safety organizations, state and local entities, service providers, and trade and advocacy organizations.

III. DISCUSSION

A. Reporting 988 Outages in NORS

12. In the *988 Outage NPRM*, the Commission proposed to require entities that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls to report outages that potentially affect the 988 special facilities to the Commission's NORS.³⁹ We adopt this proposal, which is overwhelmingly supported by commenters.⁴⁰ We believe this outage reporting requirement will both improve the resiliency of the 988 Lifeline system, and through the Commission's NORS information sharing rules,⁴¹ ensure that SAMHSA, the Department of Veterans Affairs (the VA), and the Lifeline administrator have timely outage information so they can provide the public with alternative ways to access the Lifeline.⁴² We agree with the Boulder Regional Emergency Telephone Service Authority that requiring the reporting of 988 outages will enable the tracking of outage trends, the identification of best practices to help preemptively address the common causes of outages, and the ability to anticipate and

³⁷ See Amanda Seitz, Associated Press, *National 911 mental health hotline back up after outage*, (Dec. 2, 2022), <https://apnews.com/article/health-business-mental-government-and-politics-f94c8b5d5bc74e7df254bb5e846bf3a1>.

³⁸ *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Implementation of the National Suicide Hotline Improvement Act of 2018*, PS Docket Nos. 23-5 and 15-80, WC Docket No. 18-336, Notice of Proposed Rulemaking, FCC 23-7 (Jan. 27, 2023) (*988 Outage NPRM*).

³⁹ *988 Outage NPRM* at 8-9, paras. 13-14. Below, we define "988 special facilities" to include SAMHSA, the VA, and the 988 Lifeline administrator. We decline to designate local crisis centers as 988 special facilities at this time.

⁴⁰ See, e.g., SAMHSA Comments at 1; Washington State Department of Health and Health Care Authority Comments at 2 (WA Dept. Health and HCA Comments); Mental Health America Comments at 1-2; NENA Comments at 2; T-Mobile Comments at 3; National Alliance on Mental Illness Comments at 1 (NAMI Comments); Southern Communications Services, Inc. d/b/a Southern Linc Reply Comments at 2 (Southern Linc Reply Comments); NCTA – The Internet & Television Association Reply Comments at 1-2 (NCTA Reply Comments). We continue to consider whether reporting and notification requirements should also be applicable to text messaging outages. See *988 Outage NPRM* at 10, para. 18 (seeking comment on whether and how outages of text to 988 services should be reported to the Commission). This proceeding does not address reporting or notification about outages of the 988 Lifeline's online chat services.

⁴¹ See 47 CFR § 4.2.

⁴² NAMI Comments at 1.

plan for future outages.⁴³ We also agree with Mental Health America that in helping promote timely access to the 988 Lifeline, these requirements will promote equity for at-risk populations.⁴⁴

13. We observe that a person in suicidal crisis or emotional distress who cannot successfully reach a crisis center due to an outage continues to be at risk, regardless of whether the outage occurs before or after a call reaches the 988 Lifeline. This includes outages that prevent calls from being routed to the intended local crisis center or the Veterans Crisis Line. We agree with commenters that it is appropriate to require covered 988 service providers to report outages in NORS because the services they offer, which ensure that calls are routed to the correct destination after they reach the 988 Lifeline, are essential to the Lifeline's availability.⁴⁵ Vibrant, the 988 Lifeline administrator, has indicated that it can use outage information to quickly update routing tables used by covered 988 service providers in order to avoid routing calls to crisis centers that are experiencing an outage.⁴⁶ Because this outage information would be used to increase the availability and resiliency of 988 services, we therefore disagree with CX360 that it is not necessary for the FCC to adopt rules to provide the Commission and the parties responsible for operation of the 988 Lifeline with timely and actionable information about outages that occur after those communications reach the Lifeline.⁴⁷ While CX360 argues that "SAMHSA and the 988 Lifeline Administrator already are capable of operating the 988 Lifeline effectively" without such

⁴³ Boulder Regional Emergency Telephone Service Authority Comments at 7 (BRETSA Comments). *See also* NAMI Comments at 1 ("[T]his rule will help information gathering for any future outages, supporting technical and procedural improvements that will strengthen 988 as a resource for people in emotional distress"); Vibrant Emotional Health Comments at 2 (Vibrant Comments) ("Vibrant agrees with the Commission's beliefs that improving situational awareness of significant network outage issues affecting 988 Lifeline services would provide stakeholders with critical insight into the availability and reliability of the vital public health services of the 988 Lifeline."); T-Mobile USA, Inc. Comments at 3-4 (T-Mobile Comments) ("[N]ew rules requiring entities that directly and contractually provide critical services to the 988 Lifeline to file reports for outages impacting 988 services will assist the FCC in evaluating the resiliency of the critical services necessary to keep the 988 Lifeline operational.").

⁴⁴ Mental Health America Comments at 2 ("In 2022, 40% of all screeners reported frequent suicidal ideation. All BIPOC populations had higher rates of suicidal ideation than white people. LGBTQ+ youth and adults had 10% higher rates of moderate and severe depression. In addition, the 988 Lifeline helps individuals avoid police involvement in mental health and substance use crises. If the Lifeline is unavailable, more people may call 911, leading to harms that disproportionately affect people of color, including death and injury."). *See also* Vibrant Comments at 6.

⁴⁵ *See* T-Mobile Comments at 3-4 ("[T]his proceeding was initiated in response to a service outage experienced by Intrado, the company that provides telecommunications services to the 988 Lifeline, that rendered the 988 service inaccessible nationwide. . . . Simply put, outage reporting by 988 CSPs is appropriate because there is a direct link between services provided by 988 CSPs and the availability of the 988 Lifeline."); CTIA Comments at 3-4; AT&T Comments at 6 ("Because Covered 988 Service Providers provide service directly to the agencies overseeing the 988 Lifeline . . . , they would be in a better position than Originating Service Providers to notify the FCC of outages impacting 988, because they actually offer special services that are specific to the provision of the 988 Lifeline."); Verizon Comments at 2 ("The scope of the proposed codified rule is appropriately focused on 'Covered 988 providers' These are the entities that provide the 988 Lifeline with service through direct contractual arrangements, and are directly accountable to the 988 Lifeline and the local help centers it supports.").

⁴⁶ *See infra* para. 25; Vibrant Comments at 3.

⁴⁷ CX360 Comments at 3.

reporting,⁴⁸ we note that SAMHSA and Vibrant both support the reporting requirement.⁴⁹ We also reject CX360's argument that reporting requirements are not necessary because SAMHSA and the VA already have visibility into outages that occur after calls reach the 988 Lifeline.⁵⁰ Because CX360 offers no supporting details as to what information SAMHSA and the VA are receiving and whether its substance and timing is comparable to the requirements we adopt today, we are not persuaded that this visibility, if it exists, undercuts the justification for the rules that we adopt.⁵¹

14. We define "covered 988 service providers" as those providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls.⁵² We find that the scope of this definition is appropriately limited in that it covers only those providers that are essential to the capabilities of the 988 Lifeline.⁵³ We agree with SAMHSA that "covered 988 service providers" should not include 988 crisis centers themselves nor the Veterans Crisis Line.⁵⁴ Crisis centers do not receive, process, or forward calls and lack the expertise and access to information that would be necessary to make such reports. In addition, a requirement for crisis centers to make such reports would place significant additional burdens on them during outages, which would run contrary to the goals of this proceeding. We also find that covered 988 service providers should not include originating service providers that originate 988 calls and deliver calls to the 988 Lifeline but otherwise do not provide services for the Lifeline. Commenters point out that originating service providers do not generally provide the 988 Lifeline with capabilities such as receiving, processing, or forwarding calls, while the service providers that do offer these capabilities will likely do so through direct contractual arrangements.⁵⁵ We agree with USTelecom that "defining 'covered service provider' in this way is consistent with the Commission's definition in the

⁴⁸ CX360 Comments at 5. *See also* CX360 Comments at 6 ("SAMHSA and the 988 Lifeline Administrator are capable of maintaining the 988 Lifeline through these direct contracts, without Commission intervention.").

⁴⁹ SAMHSA Comments at 1; Vibrant at 2-3.

⁵⁰ CX360 Reply Comments at 5.

⁵¹ Contrary to CX360's view, we find that Voice on the Net Coalition's (VON's) explanation that 988 Lifeline calls are capable of being rerouted to a back-up crisis center in the event of an outage is not evidence that SAMHSA, the VA, or the 988 Lifeline administrator is already receiving sufficient information about 988 outages. *See* CX360 Reply Comments at 5-6 (citing VON Comments at 2-3). We also have no reason to believe CX360's assertion, unsupported by any evidence, that any information known by vendors to the 988 Lifeline will also inherently be known by the 988 Lifeline administrator and SAMHSA. CX360 Reply Comments at 6.

⁵² *See 988 Outage NPRM* at 9, para. 15 (proposing to define "covered 988 service providers" as those providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls). We respond to commenters that question the scope of the new rules by clarifying that, consistent with longstanding practice in the 911 context, the new paragraph (f) of section 4.5 does require outage reporting from those entities that provide a communications network or service that facilitates the receipt, processing, or forwarding of the call, including from the 988 Lifeline to the local 988 crisis center. *See New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order, 19 FCC Rcd 16830, 16873-76, paras. 76-81 (2004).

⁵³ *See* T-Mobile Comments at 3-4; CTIA Comments at 3-4; CTIA Reply Comments at 2-3; AT&T Comments at 6; Verizon Comments at 2.

⁵⁴ SAMHSA Comments at 1.

⁵⁵ Verizon Comments at 2; CTIA Comments at 4; CTIA Reply Comments at 2-3; WA Dept. Health and HCA Comments at 3; ATIS Comments at 6; USTelecom Reply Comments at 2; Southern Linc Reply Comments at 2-3. We note that the rules we adopt today would place requirements on entities that provide the 988 Lifeline with capabilities such as receiving, processing, or forwarding calls, regardless of whether they have a direct contractual relationship with the Lifeline.

911 context, and keeping definitions of key terms consistent across these public safety contexts will prevent confusion and facilitate regulatory certainty.”⁵⁶ Finally, we agree with Voice on the Net Coalition that covered 988 service providers should not include providers of capabilities that are provided directly to local crisis centers,⁵⁷ as those are not services that are provided directly to the 988 Lifeline.

15. Although we are excluding them from the definition of covered 988 service providers, we also find that originating service providers are critical in providing 988 service and thus require cable, satellite, wireless, wireline, and interconnected VoIP providers to report in NORS outages that potentially affect the 988 special facilities.⁵⁸ We agree with Mental Health America that these originating service providers, like covered 988 service providers, “have a role to play in ensuring that people get their responses when they need crisis counseling,”⁵⁹ and agree with Vibrant that “having the same requirements for covered service providers and OSPs ensures the delivery of timely, actionable information while also reducing the burden of reporting by streamlining requirements.”⁶⁰ We also agree with the Washington State Department of Health and Health Care Authority that reporting requirements “should not be different for originating service providers that deliver calls to the 988 Lifeline in the first instance versus the covered 988 service provider that handles the call thereafter.”⁶¹ As we state above, a person in suicidal crisis or emotional distress who cannot successfully reach a crisis center due to an outage continues to be at risk, regardless of whether the outage occurs before or after the call reaches the 988 Lifeline. For that reason, the reporting of outages that occur in originating service providers’ networks are essential to improving the resiliency of the 988 Lifeline and ensure that SAMHSA, the VA, and the Lifeline administrator have timely outage information so they can provide the public with alternative ways to access the Lifeline. We also find, consistent with the views of the National Alliance on Mental Illness, that “having more sources of data regarding outages will enhance the ability of the FCC and the 988 administrator to identify what is needed to create a more reliable network.”⁶²

16. We disagree with those commenters that argue that it is premature for the Commission to consider the adoption of 988 outage reporting requirements.⁶³ The record reflects the serious impact of the December 2022 covered 988 service provider outage, and nothing in that record indicates that such an outage could not happen again, or that originating service provider outages do not affect the delivery of 988 calls. We also disagree with Southern Linc, which argues that originating service providers should not be required to report 988 outages because they do not have visibility into the delivery of 988

⁵⁶ USTelecom – The Broadband Association Comments at 2-3 (USTelecom Comments); Alliance for Telecommunications Industry Solutions Comments at 4-5 (ATIS Comments); T-Mobile Comments at 4.

⁵⁷ VON Comments at 3.

⁵⁸ See *988 Outage NPRM* at 9-10, para. 17.

⁵⁹ Mental Health America Comments at 1-2 (recommending that both covered providers and originating site providers be required to report 988 outages in NORS).

⁶⁰ Vibrant Comments at 3.

⁶¹ WA Dept. Health and HCA Comments at 4.

⁶² NAMI Comments at 2.

⁶³ CTIA Comments at 5 (“The FCC has not yet undertaken the information-gathering process needed to determine whether OSP 988 outage reporting requirements would be useful at all and, if so, how to structure them effectively in the context of the unique operations of 988.”); CTIA Reply Comments at 3-4; Intrado Life & Safety Reply Comments at 2; Southern Linc Reply Comments at 4. We observe that gathering information about the usefulness and appropriate structure of 988 outage reporting requirements are the functions served by this very proceeding.

communications after those communications leave their networks.⁶⁴ Originating service providers nonetheless have visibility into whether 988 calls are disrupted due to outages in their own network or the networks of third parties with which they contract for service before being delivered to Lifeline.⁶⁵ We therefore believe that originating service providers should be required to report those outages for the reasons explained above.

17. The record informs us that originating service providers currently lack the capability to distinguish outages that prevent the completion of a 988 call from outages on their network that prevent the completion of other calls.⁶⁶ For the purposes of the rules we adopt today, this is immaterial because outages that prevent the completion of all calls are necessarily outages that potentially affect 988 special facilities.⁶⁷ We find that reports about service-wide outages, like reports that are specific to 988 Lifeline outages, provide insight into 988's reliability and can provide information to SAMHSA, the VA, and the Lifeline administrator that would allow them to effectively respond to outages (e.g., notify the public of alternate ways to contact the 988 Lifeline). We also believe that this approach acknowledges the current capabilities of existing networks, gives service providers flexibility as to how they can satisfy the requirements, and potentially reduces compliance costs by leveraging providers' existing technical capabilities and systems.⁶⁸ We note that originating service providers are already required to report voice service outages in NORS, regardless of a call's destination.⁶⁹ As a consequence, we find that providers complying with this existing outage reporting requirement will only need to take nominal action to report voice telephony outages that potentially affect the 988 Lifeline to the Commission. As recommended by ATIS and NCTA, we will add a checkbox to NORS so that reporting providers can clearly indicate whether a reported outage potentially affects a 988 special facility.⁷⁰ We believe this field will improve

⁶⁴ Southern Linc Reply Comments at 3-4.

⁶⁵ See *PSAP Notification R&O* at 7, para. 20 (explaining that reliance upon a third-party service provider to manage, route, or otherwise contribute to 911 call processing does not relieve a service provider of its obligations—even if the discovery is first made by the third party).

⁶⁶ See AT&T Services, Inc. Comments at 5 (AT&T Comments) (“There is simply no way for Originating Service Providers to differentiate between 988 and non-988 calls and texts in their networks. Voice calls to 988 are routed like any other call without any special processing or dedicated facilities. Text-to-988 primarily uses wireless Short Message Service (“SMS”), a best-efforts service without guarantees for delivery. Like 988 voice calls, there are no dedicated network elements built into the Originating Service Provider networks for text and the text is routed just like any other text short code, which is sent directly to an aggregator along with other carrier texts.”); Verizon Comments at 3 (“Unlike 911 calls, originating service providers do not maintain facilities or functions in their networks that are unique to 988 calls. As such, originating service providers cannot distinguish 988 calls from other voice traffic.”).

⁶⁷ See *PSAP Notification R&O* at 7, para. 11 (explaining that outages that “potentially affects a 911 special facility” under 47 CFR § 4.5(e)(1) include outages that affect general calling, as these outages prevent 911 calls from being transmitted to the PSAP).

⁶⁸ See ATIS Comments at 5 (“ATIS NRSC points out that general voice outages impacting 911 dialing will similarly impact a user’s ability to dial 988. The industry already has systems in place to facilitate the identification and reporting of voice outages based on this threshold.”).

⁶⁹ 47 CFR §§ 4.9(a)(1), (c)(2)(ii), (e)(1)(ii), (f)(1), (g)(1)(ii); Verizon Comments at 3 (“[B]ecause the rules already apply to the major originating access network outages that affect 988 dialing, new rules for originating service providers would be redundant.”).

⁷⁰ ATIS Comments at 5; NCTA Reply Comments at 2.

the ability of the Commission and the agencies with which it shares NORS data to quickly recognize and more effectively analyze the effects of reported outages.

18. We define “outages that potentially affect a 988 special facility” as events that result in the loss of the ability of the 988 Lifeline to receive, process, or forward calls, potentially affecting at least 900,000 user-minutes and lasting at least 30 minutes duration.⁷¹ The majority of commenters support using the same outage reporting thresholds for 988 as those previously adopted for 911 outages.⁷² We agree with USTelecom that “[s]tandardizing the threshold across [988 and 911] will facilitate efficient, timely compliance, and is consistent with the Notice’s objective of imposing ‘only minor changes to existing procedures’ by ‘closely align[ing]’ them with rules for 911-related outages.”⁷³ We acknowledge the concerns of the Veterans Crisis Line, which argues that outages shorter than 30 minutes in duration should be reported because, statistically, as many as three deaths by suicide may occur within 30 minutes.⁷⁴ However, we believe that the benefits of awareness and opportunities for action that arise from the reporting of outages must be balanced against the burden of reporting those outages. Based on the record before us, we are unable to determine whether reducing the minimum or user-minute durations of reportable outages would improve upon that balance. At this time, it is unclear to what extent reduced thresholds would increase the number of 988 outage reports received, the extent to which additional reporting would contribute to public safety and the reliability of the 988 Lifeline, and whether those benefits would outweigh the burdens associated with increased reporting. For these reasons, we believe it is sensible to adopt 988 outage reporting requirements that are consistent with existing 911 outage reporting requirements and providers’ existing reporting procedures. As noted by APCO, we have recently directed the Public Safety and Homeland Security Bureau (Bureau) to gather information on the volume of 911 outages that may go unreported under the Commission’s existing outage notification thresholds and have sought additional comment on possible alternative outage reporting thresholds.⁷⁵ We direct the Bureau to add 988 Lifeline outages to its examination.

19. We clarify, as requested by SAMHSA, that outages that potentially affect the 988 Lifeline include partial service disruptions, as well as outages with a duration of more than 30 minutes.⁷⁶ We note that Section 4.5(a) of our rules defines an outage as “a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider’s network.”⁷⁷ For example, any circumstances in which the ability of the 988 Lifeline to receive, process, or forward calls is significantly degraded for at least 30 minutes and potentially affects at least 900,000 user-minutes must be reported in NORS. This includes circumstances in which the degradation lasts longer than 30 minutes and circumstances in which 988 calls

⁷¹ We note that “loss of the ability of the 988 Lifeline to receive . . . calls” includes outages in originating service providers’ networks that prevent successful transmission of calls to the Lifeline.

⁷² USTelecom Comments at 3-4; ATIS Comments at 5; Verizon Comments at 2 n.5; NENA Comments at 7; Veterans Crisis Line Comments at 1. *See also* SAMHSA Reply Comments at 1 (“SAMHSA is okay with a single NORS update that covers both 988 and 911.”).

⁷³ USTelecom Comments at 3-4 (“Practicality, predictability, and efficiency favor reliance on this reporting threshold.”).

⁷⁴ Veterans Crisis Line Comments at 1.

⁷⁵ APCO Reply Comments at 2; *PSAP Notification Order* at 14, n.86.

⁷⁶ SAMHSA Comments at 1; *see also* Mental Health America Comments at 2.

⁷⁷ 47 CFR § 4.5(a).

are received by a call-taker despite the degradation.⁷⁸ We disagree with USTelecom's view that partial outages and service disruptions should not be subject to 988 outage reporting and notification requirements, which it argues would complicate the outage reporting process and result in over-notification.⁷⁹ Because the Commission's existing outage reporting and notification rules already define "outages" to include partial service disruptions, exempting partial service disruptions from 988 reporting and notification requirements would make our rules more complicated, not less complicated. We also find little evidence in the record supporting the conclusion that the reporting of partial outages would result in too many notifications, particularly since SAMHSA and Vibrant, which are two of the three of the entities who would receive notifications under the rules that we adopt below, are specifically requesting notifications about partial outages.⁸⁰

20. We require 988 outage reports be filed with the Commission in NORS, consistent with our current requirements for outage report filing processes and timing. No commenter objected to the use of NORS for this purpose. We agree with ATIS that "industry is already familiar with NORS and believes that the use of NORS will reduce implementation costs associated with 988 outage reporting and would be significantly less costly and burdensome than the implementation of a new or different reporting system."⁸¹ We further agree with USTelecom that reporting in NORS "will streamline the reporting process and allow providers to devote maximum attention to addressing the outage itself and getting service back up and running, rather than diverting time and resources to more complex or cumbersome reporting requirements."⁸²

21. We decline to allow alternatives to NORS reporting, such as reporting by e-mail, as requested by CX360.⁸³ We do not agree that alternatives would reduce administrative burdens on providers.⁸⁴ NORS is a well-established system that facilitates the filing of outage reports in a streamlined and uniform manner with all information required by our rules. NORS supports the filing of outage data through Application Program Interfaces (API), which can facilitate the automated filing of outage reports.⁸⁵ Submission of outage reports via e-mail would create opportunities for inconsistently styled filings with incomplete or confusing information, which would lead to Commission staff taking up providers' time with numerous calls and questions about their filings. The submission of reports by e-mail would also greatly diminish the Commission's ability to record historic outage data, analyze outage trends, and share outage information with federal, state, Tribal, and territorial agencies. For these

⁷⁸ See Vibrant Comments at 2 ("[C]onnection drops, timeouts, and other issues representing 50% partial degradation or more should also trigger NORs reporting.").

⁷⁹ USTelecom Reply Comments at 4.

⁸⁰ SAMHSA Comments at 1; Vibrant Comments at 2.

⁸¹ ATIS Comments at 5.

⁸² USTelecom Comments at 3. *See also* USTelecom Reply Comments at 3; Veterans Crisis Line Comments at 1 ("988 reporting requirements should be consistent with the 911 reporting requirements. . . . Service providers should report to the NORS system.").

⁸³ CX360 Reply Comments at 8.

⁸⁴ *See id.*; Letter from Debra McGuire Mercer, Counsel to CX360, Inc., to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-5 et al., at 2-3 (filed July 14, 2023) (CX360 Ex Parte) (arguing that NORS filing is burdensome, inefficient, and requires an individual to manually enter information into NORS).

⁸⁵ *See* FCC, Network Outage Reporting System (NORS) Application Programming Interface (API) Developer Guide (Mar. 2, 2017), https://transition.fcc.gov/pshs/docs/NORS/NORS_APIGuide_v1.pdf.

reasons, both efficiency and effectiveness weigh in favor of requiring all outage reports to be filed in NORS.

22. We allow direct read-only access to NORS data by SAMHSA and the VA, consistent with our existing NORS outage information sharing procedures.⁸⁶ In the *988 Outage NPRM*, we stated our belief that improving situational awareness of significant network outage issues affecting 988 Lifeline services would not only provide the Commission with critical insight into the availability and reliability of a vital public health service, but would also provide that insight to the other federal, state, Tribal, and territorial agencies with whom NORS data is shared.⁸⁷ We agree with SAMHSA that having access to outage reports and related analysis on network reliability will better enable these stakeholders to prepare and respond to network disruptions and better ensure the 988 Lifeline's availability.⁸⁸ We also agree with the Washington State Department of Health and Health Care Authority that these 988 stakeholders would benefit from having access to outage reports that indicate whether 988 calls affected by an outage are being rerouted to other crisis centers.⁸⁹ We further agree with BRETSA that improving the availability of information about 988 network reliability would empower 988 stakeholders to take additional steps to make the 988 Lifeline even more reliable.⁹⁰ For these reasons, we clarify that we consider the lifesaving services offered by the 988 Lifeline⁹¹ to be emergency management and first responder support

⁸⁶ 47 CFR § 4.2; *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80, Second Report and Order, 36 FCC Rcd 6136 (2021) (*NORS/DIRS Information Sharing R&O*) (describing the "need to know" requirement for eligibility); FCC, Outage Information Sharing (Sept. 30, 2022), <https://www.fcc.gov/outage-information-sharing>.

⁸⁷ *988 Outage NPRM* at 9, para. 14; 47 CFR § 4.2.

⁸⁸ See SAMHSA Comments at 1 ("SAMHSA proposes network reliability trends and mitigation strategies analyzed and produced by the Commission as a result of NORS reporting be shared on a consistent basis with SAMHSA, VA, and the Network Administrator.").

⁸⁹ See WA Dept. Health and HCA Comments at 2 (arguing that it would be helpful for the provider to report whether 988 calls affected by an outage are being rerouted to the National Backup Center or if calls are being routed to other in-state providers). See also Verizon Comments at 5 ("If 988 Lifeline stakeholders learn of (or perceive) issues concerning a particular provider's services, e.g. due to a noticeable drop in its inbound 988 call traffic, the stakeholders could access such information and contact Bureau staff to ensure any communication to the reporting service provider is coordinated among the Federal government agencies involved. This would minimize the Commission's, service providers' and 988 Lifeline stakeholders' need to allocate additional resources to meet this objective.").

⁹⁰ BRETSA Comment at 9 ("Notification of the cause of an outage, or that a crisis center or PSAP is subject to service impairment, will alert these entities to their vulnerability to outages and allow them to explore the potential for placement of diverse call paths, subscription to standby satellite services, or other means enhancing service reliability, and put in place contingency plans to deal appropriately with potential outages.").

⁹¹ The national suicide prevention mental health crisis hotline system operates through the National Suicide Prevention Lifeline maintained by the Assistant Secretary for Mental Health and Substance Use Section 520E-3 of *The Public Health Service Act*, *National Suicide Prevention Lifeline Program*, 42 U.S.C. § 290bb-36c, and through the Veterans Crisis Line maintained by the Secretary of Veterans Affairs under *The Comprehensive Program for Suicide Prevention Among Veterans and Members of the Reserve Components of the Armed Forces*, 38 U.S.C. § 1720F(h). See also National Suicide Hotline Designation Act of 2020 (Congress deemed "life-saving resources" such as crisis lines "essential" and recognized the need for a 3-digit phone number for such services to be readily available in emergency situations.).

functions.⁹² Accordingly, in order for SAMHSA and the VA to mitigate the impacts service outages may have on access to the 988 Lifeline and VA Crisis Line, and ensure these services remain available to support the safety of the general public seeking crisis support and to prevent suicide among veterans, we find that both SAMHSA and the VA have a “need to know” and are eligible to apply for direct access to the Commission’s outage reports. While the 988 Lifeline administrator is not itself eligible for direct access to these reports because it is not a government agency, we observe that the Commission’s outage information sharing rules would allow SAMHSA and the VA to share information with them about specific outages, subject to certain confidentiality requirements and other safeguards.⁹³

B. Providing 988 Special Facilities with Notice of Outages

23. We require covered 988 service providers to directly notify 988 special facilities about outages that potentially affect those facilities.⁹⁴ Commenters generally support the adoption of such a requirement.⁹⁵ We agree with USTelecom that this requirement “strike[s] the right balance of getting relevant, actionable information to the proposed 988 special facilities” that will allow them to take steps to maintain the public’s access to crisis intervention services “without overloading them.”⁹⁶ We agree with BRETSA that 988 outage notifications can help provide information that will allow 988 special facilities to route calls to alternative crisis centers and to help those centers make necessary staffing adjustments.⁹⁷ As Vibrant highlights, it can use information about outages in its capacity as the 988 Lifeline administrator to quickly update routing tables to avoid routing calls to crisis centers that are experiencing an outage.⁹⁸ Notifications would also allow 988 callers to receive assistance faster, as they would help ensure that those individuals timely connect to a crisis counselor by reducing the amount of time they would have to wait for assistance as a result of having calls fail to be received by a crisis center.⁹⁹ The 988 Lifeline administrator is also able to “effectively and quickly inform all centers in the network of an outage that may impact service and lead to an increase in volume for centers in the areas that are not impacted by the outage. This insight allows time for those unaffected centers to quickly scale to the needed capacity in order to handle the anticipated increased volume that needs to be re-routed.”¹⁰⁰ We also continue to believe that timely notice of a 988 Lifeline outage will assist SAMHSA, the VA, and the 988 Lifeline administrator to quickly inform the public of alternative ways of contacting the Lifeline while one type of communication is unavailable, such as texting or using the online chat function if calls

⁹² *NORS/DIRS Information Sharing R&O*, 36 FCC Rcd at 6146-47, paras. 32-39 (describing the “need to know” requirement for eligibility).

⁹³ See 47 CFR § 4.2(b).

⁹⁴ See *988 Outage NPRM* at para 20 (proposing to require covered 988 service providers to notify 988 special facilities about outages that potentially affect a 988 special facility).

⁹⁵ SAMHSA Comments at 1-2; ATIS Comments at 6; NENA Comments at 2; USTelecom Comments at 5; NAMI Comments at 2; Vibrant Comments at 4.

⁹⁶ USTelecom Comments at 5; see also *988 Outage NPRM* at 10, para. 21.

⁹⁷ BRETSA Comments at 2, 7 (“Notification is also necessary as crisis centers to which 988 calls are contingently routed during an outage may need to call in extra staff to handle the increased volume of calls.”).

⁹⁸ Vibrant Comments at 3.

⁹⁹ *Id.*

¹⁰⁰ Vibrant Comments at 4.

are not getting through.¹⁰¹ We disagree with CX360, who implies that 988 outage notifications should be handled through contracts between the 988 Lifeline administrator and its service providers rather than by rule.¹⁰² We find that it is more efficient and better serves the public interest to establish a single, uniform rule for 988 outage notifications that will apply to all service providers with which the Lifeline administrator may contract in the future rather than make the occurrence, frequency, and content of those notifications a repeated subject of negotiation. We further believe that it will not serve the public interest to make 988 outage notifications dependent on the 988 Lifeline administrator's renegotiation of contracts that are in place today, which would have an uncertain result and likely require considerable time to complete. The notification requirements we adopt today are similar to the notification requirements we have adopted for covered 911 service providers, which we have found to be effective.¹⁰³

24. We find that reliance upon a third-party service provider to manage, route, or otherwise contribute to 988 call processing does not relieve providers of the obligation to provide outage notification to 988 special facilities. We agree with NENA that "the fact that a third party service may specialize in supporting outage notifications, and may have a business relationship with a provider, should not change any reporting requirements for the provider."¹⁰⁴ We disagree with CX360's view that covered 988 service providers should only be responsible for reporting outages on facilities over which they have direct control.¹⁰⁵ In this regard, "[t]he Commission has long held that licensees and other regulatees are responsible for the acts and omissions of their employees and independent contractors," and has recognized that "under long established principles of common law, statutory duties are nondelegable."¹⁰⁶ We note that this approach mirrors the requirements we have adopted for outages that potentially affect 911 special facilities,¹⁰⁷ which should promote consistency in how notifications are made by service providers.

25. We designate SAMHSA, the VA, and the 988 Lifeline administrator as the 988 special facilities that must receive notifications of 988 outages.¹⁰⁸ Commenters agree that it is appropriate for

¹⁰¹ 988 Outage NPRM at 10, para. 21.

¹⁰² CX360 Comments at 6 ("Given the contractual relationships between the 988 Lifeline Administrator and entities that provide services to it, the 988 Lifeline Administrator is best suited to determine the forms of notices that should be required from its service providers and to enforce such notifications through contractual means.").

¹⁰³ See *PSAP Notification R&O* at 19, para. 37 (discussing how the harmonizing the 911 special facility notification requirements for OSPs with those for covered 911 service providers will "facilitate the prompt ability of 911 special facilities to manage those outages' impacts on operations and on the public, resulting in more prompt dispatch of service").

¹⁰⁴ NENA Comments at 3 ("The fact that a third party service may specialize in supporting outage notifications, and may have a business relationship with a provider, should not change any reporting requirements for the provider. The third-party service acts only as an agent of the service provider."). See also Vibrant Comments at 4.

¹⁰⁵ CX360 Reply Comments at 13.

¹⁰⁶ See *Eure Family Limited Partnership, Memorandum Opinion and Order*, 17 FCC Rcd 21861, 21863-64 (2002), citing *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991), *Wagenvoord Broadcasting Co.*, 35 F.C.C.2d 361 (1972). See also Amendment of the Commission's Rules to Provide Spectrum for the Operation of Medical Body Area Networks, *First Report and Order and Further Notice of Proposed Rulemaking*, 17 FCC Rcd 6422, 6439 n.108 (2012); *Courier Communications Corp.*, 23 FCC Rcd 2593, 2595 n.25 (EB 2008).

¹⁰⁷ *PSAP Notification Order* at 8-9, para. 13.

¹⁰⁸ See 988 Outage NPRM at para 20.

these three entities to receive outage notifications.¹⁰⁹ We agree with USTelecom that this requirement will “assist these entities, which oversee and administer the 988 Lifeline, in quickly informing the public of alternative ways to contact the 988 Lifeline as needed.”¹¹⁰ We also note, as highlighted by SAMHSA, that such an approach to outage notification will allow the 988 Lifeline administrator to identify and inform the appropriate crisis centers about outages, as it will have the most updated routing tables and patterns on any given day.¹¹¹

26. At this time, we find that 988 special facilities that are required to receive 988 outage notifications should not include the local crisis centers to which some 988 calls are routed. The record establishes that the 988 Lifeline’s current approach of routing calls based on the area code associated with the user’s device makes effective notification of this type extremely challenging. As commenters explain, many users’ mobile devices have an area code that is different from the area code in which they are located,¹¹² which would mean that outages limited to a specific geographic region could nonetheless potentially affect every single local crisis center across the country.¹¹³ We agree with those commenters that argue that notifications provided to local crisis centers under these circumstances are likely to be overbroad, too frequent, or not provide information that the local crisis center would be capable of acting on.¹¹⁴

27. Based on the record before us, we find that regardless of the scope of an outage, SAMHSA, the VA, and the 988 Lifeline administrator are in the best position to identify what information about a specific outage may be relevant to local crisis centers (including changes in local crisis center routing) and use existing points of contact to convey that information.¹¹⁵ As Vibrant

¹⁰⁹ SAMHSA Comments at 1-2; USTelecom Comments at 4; CTIA Comments at 6; Vibrant Comments at 4; CX360 Reply Comments at 9; NCTA Reply Comments at 3-4.

¹¹⁰ USTelecom Comments at 4.

¹¹¹ SAMHSA Comments at 1-2.

¹¹² See Vibrant Comments at 4-5 (stating that “[n]early 40% of individuals live in a metropolitan statistical area that does not match their cell phone”); BRETSA Reply Comments at 2 (“[N]umber-portability enables people to keep their numbers when they move from the geographic area to which their area code is assigned.”).

¹¹³ See, e.g., T-Mobile Comments at 6 (“For example, if an accredited local crisis center located in Alexandria, Virginia is the closest center for callers with a 703 area code, an OSP network outage in Alexandria and surrounding areas will not prevent all 988 calls from reaching the center. Only calls placed from within the outage area will be prevented from reaching these services. Calls placed by callers with a 703 area code that are physically outside the outage area will still be able to place 988 calls that will be routed to the Alexandria center and the center should receive those calls. Further, calls placed by callers with non-703 area codes that are physically located within the outage area will be unable to complete calls to the calling centers associated with their area codes.”).

¹¹⁴ See ATIS Comments at 7; CCA Comments at 5; AT&T Comments at 7; CTIA Comments at 6-7; CTIA Reply Comments at 4-5; USTelecom Reply Comments at 2-3; CX360 Reply Comments at 9-11; NCTA Reply Comments at 3.

¹¹⁵ ATIS Comments at 7 (“ATIS NRSC believes that, if such notice to other entities is required, it should be provided by the 988 Special Facilities, not by service providers. These entities have direct relationships with the local crisis centers”); USTelecom Comments at 4-5 (“[I]f analogizing to the 911 setting, the Lifeline Administrator and its call routing platform is more akin to the PSAP and its serving selective router. Thus, the 988 Lifeline Administrator would be in the best position to act on information received in an outage notification. As Vibrant, the current 988 Lifeline Administrator, has previously explained, the 988 Lifeline handles call routing; therefore, notifying the Administrator of outages would enable it to take action in response to an outage, such as allowing for

(continued....)

explains, crisis centers will be notified about outages by the 988 Lifeline administrator irrespective of contact by a covered 988 service provider or originating service provider.¹¹⁶ While several commenters support notification of local crisis centers in some or all situations,¹¹⁷ the record does not offer a convincing explanation of how local crisis centers would be able to effectively act upon 988 outage notifications to ensure that 988 callers receive assistance. The record also does not provide clarity on how any benefits arising from those challenges should be weighed against the challenges to providers arising from the need to maintain updated contact information for those centers.¹¹⁸ While BRETSA argues that outage notifications could assist local crisis centers in making decisions about appropriate staffing levels,¹¹⁹ we believe that direct notification by service providers would not supply sufficient information for this purpose because, in addition to the geographic routing challenges discussed above, the notifications would not offer any visibility into any related routing changes made by the 988 Lifeline administrator that would ultimately affect call volume to those centers. BRETSA also argues that notifications can assist local crisis centers with making long-term network reliability decisions,¹²⁰ but we observe that outage notifications are intended to support imminent action during outages rather than long-term decision-making.

28. We also require originating service providers, that is, cable, satellite, wireless, wireline, and interconnected VoIP providers, to notify 988 special facilities about outages that potentially affect those facilities.¹²¹ As discussed above, a person in suicidal crisis or emotional distress that cannot successfully reach a crisis center due to an outage continues to be at risk, regardless of whether the outage occurs before or after the call reaches the 988 Lifeline. For that reason, outage notifications are essential to ensuring that SAMHSA, the VA, and the Lifeline administrator have timely outage information so they

rerouting calls to areas not affected by the outage.”); CTIA Comments at 6-7 (“It is also not clear how outage notifications from OSPs would further the mission of local crisis centers as 988 communications are routed on a nationwide basis.”); AT&T Comments at 7 (“Originating Service Providers would not be able to determine with any degree of confidence which local crisis centers might benefit from direct notification in the event of an outage.”); Verizon Comments at 4 (“And any associated outage reporting and notification responsibilities for events affecting local crisis centers should lie solely with the 988 Lifeline and its underlying service/toll-free platform provider(s) responsible for routing the calls, as the latter would have exclusive control of routing tables and other functions necessary to direct the call to the local call center.”).

¹¹⁶ Vibrant Comments at 4.

¹¹⁷ SAMHSA Comments at 1 (“SAMHSA believes that impacted 988 crisis centers should be notified of any global outages at the same time SAMHSA, VA, and the Network Administrator are notified.”); WA Dept. Health and HCA Comments at 4-5; BRETSA Comments at 7, 9.

¹¹⁸ See USTelecom Comments at 4-5 (“Unlike in the 911 context, where calls are handled locally and the identity of local government-administered Public Safety Answering Points (“PSAPs”) is known and fairly constant, the number and identities of 988 local crisis centers can change without notice. In addition, these local crisis centers take many forms and are independently operated by many different organizations, making tracking them a challenge.”); CCA Comments at 5 (“CCA members believe that administering broad 988 notifications would be similar to or perhaps even more difficult than in the 911 PSAP context. They anticipate significant issues such as problems gathering and maintaining reliable contact information and experiencing an elevated level of unanswered (e.g., non-24/7) phone numbers and/or un-monitored email addresses.”).

¹¹⁹ BRETSA Comments at 7.

¹²⁰ BRETSA Comments at 9.

¹²¹ See *988 Outage NPRM* at para 23.

effectively respond to outages. We therefore agree with those commenters that argue that originating service providers should be required to provide notifications of 988 outages.¹²²

29. We disagree with Southern Linc’s opinion that the area code-based routing of 988 makes it “highly doubtful that OSPs would be able to provide any actionable outage information to 988 special facilities.”¹²³ As discussed above, the 988 Lifeline administrator can use outage notifications to update routing tables to avoid routing calls to crisis centers that are themselves experiencing outages, as well as inform crisis centers about increases or decreases of incoming calls so they can appropriately scale capacity.¹²⁴ If needed, SAMHSA, the VA, and the 988 Lifeline administrator could also use information about an outage to inform the public of alternative ways of contacting the Lifeline while a means of communication is unavailable. These actions are available regardless of whether an outage occurs within the network of a covered 988 service provider or an originating service provider. We also disagree with T-Mobile’s argument that 988 special facilities should not receive notifications, but should instead obtain outage information from NORS data.¹²⁵ NORS data is generally received two hours after the discovery of an outage and would have to be actively checked throughout the day by 988 special facilities to stay aware of outages.¹²⁶ We find that this approach is far less likely to be effective at providing timely information than the direct notifications that we require today, which must be delivered within 30 minutes and are provided directly to the affected special facilities. This approach is also consistent with the existing requirement that originating service providers must notify 911 special facilities, which will help minimize costs, promote efficiency, and avoid confusion among providers.¹²⁷

30. We acknowledge concerns that a 988 outage notification requirement for originating service providers could result in SAMHSA, the VA, and the 988 Lifeline administrator receiving “tens of thousands” of outage notifications annually, which could be overwhelming and could undermine effective outage response.¹²⁸ As Verizon notes, hundreds of outages occur on originating service providers’ networks every day, and notifications for those outages are split across thousands of PSAPs across the country.¹²⁹ If every one of those outage notifications were sent to SAMHSA, the VA, and the 988

¹²² Veterans Crisis Line Comments at 1; SAMHSA Comments at 1-2.

¹²³ Southern Linc Reply Comments at 4. *See also* NCTA Reply Comments at 2-3, T-Mobile Reply Comments at 5.

¹²⁴ Vibrant Comments at 3-4. ATIS argues that “[e]ven if a caller’s area code is the same as a crisis center that is located in a current outage area, that call will be processed and forwarded to that center because 988 is functioning as expected.” ATIS Reply Comments at 2. We find that this will not be true in situations in which there is an outage in the network that provides telecommunications service to the local crisis center. In those situations, local crisis centers will be unable to receive any calls and a reroute would be necessary. Further, it may nonetheless be necessary to reroute 988 calls to other crisis centers if an outage significantly degrades, but does not completely prevent, the delivery of calls to a crisis center.

¹²⁵ T-Mobile Reply Comments at 3.

¹²⁶ *See* 47 CFR § 4.9.

¹²⁷ *See* ATIS Comments at 8; USTelecom Comments at 6; CTIA Comments at 6; CTIA Reply Comments at 7-10; WA Dept. Health and HCA Comments at 5; Vibrant Comments at 5.

¹²⁸ Verizon Comments at 3-4. *See also* USTelecom Comments at 5-6; T-Mobile Comments at 5-7; CTIA Reply Comments at 8 (asserting that ATIS has estimated that 988 special facilities may receive up to 79 notifications of 988 outages per day, 2,400 per month, and 28,800 per year). USTelecom argues that the actual number of outage notifications could be up to three times ATIS’s estimate if there is an initial notification, and update, and a final resolution notification. USTelecom Reply Comments at 4.

¹²⁹ Verizon Comments at 3-4.

Lifeline administrator by phone and e-mail daily, then they presumably would need significant, dedicated resources to receive and act on those notifications.¹³⁰ However, the record supports the conclusion that 988 special facilities have such resources in place and will be able to handle the volume of notifications. SAMHSA and Vibrant state that despite the high volume, Vibrant has access to continuous monitoring tools and can develop the necessary capabilities to be able to ingest these notifications.¹³¹ We urge service providers to collaborate with 988 special facilities to ensure that 988 notifications are provided in a format that best facilitates rapid analysis and action.¹³²

31. We decline to require covered 988 service providers to notify originating service providers about 988 Lifeline outages and decline to require originating service providers to notify covered 988 service providers about 988 Lifeline outages. As some commenters note, covered 988 service providers often compete with originating service providers or provide services to their competitors.¹³³ As a consequence, a notification requirement would mandate the sharing of competitively sensitive information.¹³⁴ We share this concern, as well as the concern that the risk of sharing sensitive information directly with competitors and other individuals unnecessarily may slow down providers' notification processes or lead to the removal of information from outage reports that might otherwise be beneficial to a 988 special facility.¹³⁵ We note that the Washington State Department of Health and Health Care Authority supports a requirement that originating service providers provide notice to covered 988 service providers of 988 outages as "these notices would provide for increased coordination between the carriers for remedying the outage and coordinating workarounds."¹³⁶ CX360 argues that originating service providers should be required to notify covered 988 service providers about outages because the latter "lack[s] independent insight into the operations on OSPs' networks"¹³⁷ and notifications will allow it to "better understand what is happening upstream so it can react quickly and ensure its service is working correctly," and "troubleshoot any issues without needing to contact a provider earlier in the call path, leading to a more efficient resolution of any problems."¹³⁸ We disagree, as we find it unlikely that these actions will help ensure the availability of the 988 Lifeline. If an outage occurs in an originating service provider's network, we do not see how it would be beneficial for a covered 988 service provider to begin "troubleshooting issues" within its own separate, downstream network, nor is it clear how those actions

¹³⁰ See USTelecom Comments at 5-6; CTIA Reply Comments at 6.

¹³¹ SAMHSA Reply Comments at 2; Vibrant Reply Comments at 2.

¹³² *Id.* (stating that electronic notifications must come through in a machine-readable format to facilitate automated review).

¹³³ T-Mobile Comments at 7; CCA Comments at 6.

¹³⁴ *Id.*; see also *NORS/DIRS Information Sharing R&O*, 36 FCC Rcd at 6137, para. 2 (noting that outage information reported in NORS is given presumptively confidential treatment due to reasons related to competitive competitiveness and national security).

¹³⁵ CX360 argues that it should receive outage notifications from originating service providers because it is not a telecommunications service provider and therefore competitive concerns do not arise. CX360 Ex Parte at 1-2. Even if CX360's characterization of its own position in the market is accurate, we find that the record supports the conclusion that, in general, covered 988 service providers often compete with originating service providers or provide services to their competitors.

¹³⁶ WA Dept. Health and HCA Comments at 5. See also Vibrant Comments at 5.

¹³⁷ CX360 Reply Comments at 3.

¹³⁸ CX360 Ex Parte at 2.

would help resolve the originating provider's outage or otherwise help 988 callers successfully reach the Lifeline. In any event, we believe the potential negative impacts on the effectiveness of outage notifications outweigh these possible benefits.

32. We also decline to require that PSAPs be notified about 988 outages. While some commenters argue that 988 outage notifications would prepare PSAPs for potential call volume increases and give them the necessary situational awareness to handle those calls in an appropriate manner,¹³⁹ our rules already require PSAPs to be notified about outages that potentially affect 911 special facilities, including general network outages.¹⁴⁰ In addition, these notifications will not provide PSAPs with situational awareness about any routing decisions made by the 988 Lifeline administrator to address the outage. To the extent that an outage might occur in the network of a covered 988 service provider, it is unclear that the benefit of preparing PSAPs for potential call volume increases related to an outage would outweigh the burden of requiring the provider to maintain contact information and then notify thousands of PSAPs nationwide. Moreover, because call routing for 988 is currently based on area code of the caller, rather than geographic location, the ability to identify the appropriate PSAP for such notice may not be logistically feasible in all instances. We also decline to adopt the approach supported by APCO, which would only require 988 outage notifications be made to those PSAPs that opt-in to receiving them.¹⁴¹ We believe it would be too administratively burdensome for each service provider to continuously track and update the list of PSAPs across the country that have opted-in to receiving 988 outage notifications, particularly in light of the limited benefits.

33. We require covered 988 service providers and originating service providers to notify 988 special facilities with the same content, by the same means, with the same timing, and with the same frequency as our rules require for 911 outage notifications.¹⁴² Most commenters agree that harmonizing these requirements will have the effect of minimizing the cost and other impacts of the new notification requirements on service providers by allowing them to make notifications by efficiently using existing systems and processes.¹⁴³ We further note that here, as in the 911 context, parties may mutually agree to alternate means of notification.

34. We decline to require certain modifications to these requirements proposed by commenters. We reject CX360's proposal that we adopt a "safe harbor" or otherwise modify the content of outage notifications to allow providers to merely notify 988 facilities within 30 minutes that "an issue has been identified and is being actively investigated, with additional information to be provided later."¹⁴⁴

¹³⁹ Mental Health America Comments at 2; WA Dept. Health and HCA Comments at 5; NENA Comments at 2-3; BRETSA Comments at 9.

¹⁴⁰ See 47 CFR § 4.5(e)(1); *PSAP Notification Order* at 7-8, para. 11.

¹⁴¹ APCO Reply Comments at 2-3.

¹⁴² See 47 CFR § 4.9.

¹⁴³ See ATIS Comments at 8; USTelecom Comments at 6; CTIA Comments at 6; CTIA Reply Comments at 7-10; WA Dept. Health and HCA Comments at 5; Vibrant Comments at 5.

¹⁴⁴ CX360 Reply Comments at 12. See also *id.* at 15, n.35 (arguing that covered 988 service providers should only be required to report the following information and only to the extent it is known at the time of the outage notification is made: an identifier unique to each outage; the name, telephone number, and email address at which the notifying service provider can be reached for follow-up; the name of the service provider(s) experiencing the outage; the date and time when the incident began (including a notation of the relevant time zone); the type of (continued....)

This approach would greatly reduce the amount of actionable information available to 988 special facilities and therefore would not serve as an effective notification. We also decline to require notifications to include contact information for those callers that failed to connect to the 988 Lifeline since the outage began.¹⁴⁵ We agree with commenters that it is important for those individuals to receive the support they need, but believe more study is needed to determine whether it is technically feasible to require service providers to obtain and share that information as part of the outage notification process, as well as to understand any costs that might be attendant in obtaining and sharing such information. We acknowledge, as CTIA asserts, that wireless network equipment affected by an outage often will not be able to identify devices that cannot connect to the network, which could make compliance with such a requirement challenging.¹⁴⁶ While several commenters also argue that the phone numbers of individuals who try, but fail to reach 988 is not currently available to providers,¹⁴⁷ we suspect that it may be technically feasible for providers to develop these capabilities, so we plan to continue to explore the matter.

35. We disagree with those commenters that argue that a 30-minute timeframe to provide 988 outage notifications is too fast, as well as those that argue that it is too slow. We find, as we previously have for 911 outage notifications, that a 30-minute timeframe strikes a balance between the need for timely and actionable 988 outage information and the accuracy of that information.¹⁴⁸ We believe the comments of the Veterans Crisis Line, which highlights that statistically as many as three deaths by suicide occur within thirty minutes,¹⁴⁹ and the comments of CCA, which argues that 30-minute notifications may result in rushed analysis and inaccurate reporting,¹⁵⁰ illustrate why a balance must be

communications service(s) affected; and a statement of whether the message is the notifying service provider's initial notification to the 988 special facility, an update to an initial notification, or a message intended to be the notifying service provider's final assessment of the outage).

¹⁴⁵ Mental Health America at 1; SAMHSA Comments at 2; SAMHSA Reply Comments at 1; FailSafe Communications Reply Comments at 2-3; Vibrant Comments at 3; Vibrant Reply Comments at 1-2.

¹⁴⁶ CTIA Reply Comments at 9-10. *See also* ATIS Reply Comments at 2-3 (arguing that "there are many situations in which service providers would not know or be able to determine this information").

¹⁴⁷ USTelecom argues that these phone numbers are unavailable because the rules we adopt today only require reporting and notification for outages in which no calls can be placed. USTelecom Reply Comments at 5. As noted above, this is incorrect as "outages" include any "significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network." 47 CFR § 4.5(a).

¹⁴⁸ *PSAP Notification Order* at 13-14, para. 22; *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, PS Docket Nos. 13-75 and 11-60, 28 FCC Rcd 17476, 17527, paras. 143-144 (2013).

¹⁴⁹ Veterans Crisis Line Comments at 1. *See also* SAMHSA Reply Comments at 2 (proposing that covered 988 service providers be required to send notifications about outages in under 15 minutes); Vibrant Reply Comments at 2 (same).

¹⁵⁰ CCA Comments at 2-3. *See also* ATIS Comments at 9 ("ATIS NRSC recommends that initial notifications should be required within four (4) hours of discovery to allow 988 covered service providers with more time to evaluate outages, thereby minimizing the number of notifications that would subsequently have to be withdrawn."); CX360 Reply Comments at 11-13; USTelecom Reply Comments at 4-5 ("less than 30 minutes is not sufficient to gain visibility into the circumstances surrounding the outage, including the extent of the network affected and any potential causes").

struck between speed and accuracy. We agree with those commenters who argue that 30 minutes is the best way to strike that balance.¹⁵¹

36. We disagree with CCA that a 30-minute notification timeframe would be unreasonable and unrealistic, particularly for originating service providers utilizing vendors for 988 solutions.¹⁵² Thirty minutes has already proven to be a realistic timeframe for covered 911 service providers to gather clear and useful information about network outages to include in a notification, even though such providers also frequently contract for services from vendors.¹⁵³ We also find that originating service providers serving fewer customers will have to experience longer outages to reach the threshold required for notification, which effectively provides more time for those providers to investigate the outage.¹⁵⁴ We therefore see no reason why it would be overly burdensome for originating service providers to provide accurate notifications within a similar timeframe for 988 outages. To the extent that service providers find that their own vendors' coordination failures are causing them to violate the Commission's outage notification requirements we believe that is a matter to be resolved between those parties and does not change the service provider's obligation to comply with the Commission's notification requirements we adopt today.

37. As an alternative to the requirement we adopt today, CCA proposes that we adopt at minimum an approach that sets 988 outage notification deadlines based on the time when actual originating service providers are notified about outages by their vendors or underlying providers.¹⁵⁵ This alternative is incompatible with the goal of providing 988 special facilities with timely outage notifications because it would excuse originating service providers from reporting outages that their vendors fail to disclose to them. We believe this approach would disincentivize originating service providers from learning about outages on their vendors' networks, eliminate consistency as to when 988 special facilities can expect to receive outage reports, and delay 988 special facilities' receipt of outage reports, which would in turn delay any actions they may take to ensure the 988 Lifeline's availability. Moreover, we find it does not serve the public interest to create a means for providers to "contract away" their obligations by allowing the use of a vendor to alleviate a regulatory obligation. As stated above, the Commission has long held that licensees and other regulatees are responsible for the acts and omissions of their contractors,¹⁵⁶ and we decline to adopt an approach to 988 outage notification that would disturb that

¹⁵¹ Mental Health America Comments at 1; BRETSA Comments at 8.

¹⁵² CCA Comments at 2-3; *see also* Letter from Angela Simpson, Senior Vice President and General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-5 et al., at 2-3 (filed July 13, 2023) (CCA Ex Parte).

¹⁵³ *See* 47 CFR § 4.9(h).

¹⁵⁴ For example, a wireless provider with 5,000 subscribers would need to experience an outage affecting all of those customers for three hours to reach the 900,000 user-minutes threshold. If that outage potentially affected a 988 special facility and was discovered immediately, then the provider would be required to deliver a notification about the outage three hours and thirty minutes after the outage began. We expect that providers would begin investigating an outage as soon as it is discovered, not only after the threshold is met.

¹⁵⁵ CCA Comments at 4.

¹⁵⁶ *See* *Eure Family Limited Partnership, Memorandum Opinion and Order*, 17 FCC Rcd 21861, 21863-64 (2002), citing *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991), *Wagenvoord Broadcasting Co.*, 35 F.C.C.2d 361 (1972). *See also* *Amendment of the Commission's Rules to Provide Spectrum for the Operation of Medical Body Area Networks, First Report and Order and Further Notice of Proposed Rulemaking*, 17 FCC Rcd 6422, 6439 n.108 (2012); *Courier Communications Corp.*, 23 FCC Rcd 2593, 2595 n.25 (EB 2008).

holding.¹⁵⁷ We also reject CX360's proposal that follow-up notifications not be due until seven to fourteen days after an initial notification is provided,¹⁵⁸ as delaying critical details about an outage for an entire week, which is likely long after the outage has been resolved, clearly does not serve the goals of improving 988 special facilities' awareness and ability to address outages.

38. We require covered 988 service providers and originating service providers to exercise special diligence to maintain accurate, up-to-date contact information for 988 special facilities, just as our rules require for 911 special facilities.¹⁵⁹ "Special diligence" is the diligence expected from a person practicing in a particular field of specialty.¹⁶⁰ The Commission has imposed this higher level of care in circumstances where a failure to take sufficient care can lead to particularly serious public harms.¹⁶¹ In these circumstances, special diligence would require, for example, actively seeking to confirm the accuracy of contact information and not relying on the absence of a response. Once providers have a 988 special facility contact list in place, special diligence would require them to annually verify the accuracy of their contact list to ensure it is up-to-date.¹⁶² As we have found in the 911 context, we today find for 988 outage reporting that requiring a higher level of care than reaching out to the prior contact is imperative to ensure public safety, and requiring this higher level of care will incentivize providers to ascertain and update such contact information.¹⁶³ We also find that this requirement is significantly less burdensome than the similar requirement pertaining to 911 special facility contact information because we only designate three 988 special facilities for which contact information must be maintained. We disagree with ATIS's view that it would be extremely difficult to apply special diligence to the maintenance of 988 contact information because "there are no subject matter experts practicing in the field of 988 routing or 988 contact information maintenance."¹⁶⁴ The diligence our rules require is that of a communications provider that, through their experience in offering the services that emergency communications depend on, understands that failure to provide effective notifications about outages could result in harm to life and property. Accordingly, we expect that 988 service providers and originating service providers would take the steps necessary to ensure that the contact information they maintain for

¹⁵⁷ The findings we make in this Report and Order are limited to the 988 outage notification requirements we make today. We reserve judgment on the Petition for Reconsideration filed by CCA regarding the Commission's November 2022 Report and Order harmonizing 911 existing outage notification requirements. See CCA Petition for Reconsideration, PS Docket Nos. 15-80 and 13-75, ET Docket No. 4-35, (filed Mar. 17, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/1031746539270>.

¹⁵⁸ CX360 Reply Comments at 14-15.

¹⁵⁹ 47 CFR 4.9(h)(1); see also *PSAP Notification Order* at paras. 9, 32.

¹⁶⁰ See *Black's Law Dictionary* (11th ed., 2019).

¹⁶¹ See, e.g., *Revocation of License of CS WIGO, Inc.*, Decision, 85 FCC 2d 196, 202, para. 16, n.26 (1981) ("[A] broadcaster must . . . exercise special diligence to ensure that the promotion or contest is not in fact conducted as a lottery."); *Application of KMAP, Inc.*, Memorandum Opinion and Order, 63 FCC 2d 470, 480, para. 34 (1977) ("special diligence" required to prevent "payola"); *Crowell-Collier Broadcasting Corp.*, 14 FCC 2d 358, 358 (1966) ("special diligence" required to prevent "conflict between . . . private interests and . . . roles as employees of the station").

¹⁶² See *PSAP Notification Order* at 6, para. 9.

¹⁶³ See *Id.*

¹⁶⁴ ATIS Comments at 8-9.

988 special facilities is accurate and effective as the failure to provide effective notice to the appropriate contact could result in harm to life and property.

39. We decline at this time to require covered 988 service providers or originating service providers to file 988 reliability certifications to ensure the network supporting the 988 Lifeline remains resilient and robust. We agree with ATIS that 988 is different from 911 in structure and organization; therefore the Commission's existing 911 network reliability certification requirements could not easily be applied to 988 reliability.¹⁶⁵ We believe additional study of threats to the 988 Lifeline is necessary to determine what next steps should be taken, if any, to promote reliability.¹⁶⁶ We expect that the 988 outage reporting requirements that we adopt today will give us additional insight to 988 reliability trends and inform future action.

40. We note that some commenters made recommendations that they argue would improve the general effectiveness and reliability of the 988 Suicide & Crisis Lifeline.¹⁶⁷ While these recommendations are outside of the scope of the 988 network outage reporting and notification requirements that we adopt today, we will keep these issues in mind as we continue to support the 988 Lifeline.

C. Assessing the Benefits and Costs

41. We determine that the rules we adopt today concerning the reporting in NORS of outages that potentially affect 988 special facilities and the notifying of 988 special facilities about outages will result in an industry-wide one-time compliance cost of \$56,000 and an annual recurring cost of \$1,355,000. We sought comment on cost estimates in the *988 Outage NPRM* and received no persuasive

¹⁶⁵ ATIS Comments at 11 (“[T]he content of 911 certification is not applicable to calls to 988 (e.g., PSAP circuit audits, backup power audits for PSAPs and 911 selective routers, and NOC aggregation audits). There are no comparable network components. ATIS NRSC also notes that there are no 988-specific network standards on which to audit.”). See also CTIA Reply Comments at 11; USTelecom Reply Comments at 5-6.

¹⁶⁶ Cf. ATIS Comments at 10-11 (“Before adopting 911 certification requirements, the Commission had investigated and identified in its Derecho report the weaknesses in 911 routing that served as a basis for 911 certification. That record included: 534 outage reports from 22 communications providers; 45 comments from stakeholders in response to the Derecho Public Notice; interviews with representatives of eight communications providers, twenty-eight PSAPs, three battery manufacturers, one generator manufacturer, numerous state and county entities; information obtained through six supplemental data requests; participation in several federal, state, and local meetings and hearings on the effects of the Derecho; and review of relevant Best Practices generated by NRSC and CSRIC. There is no comparable record for 988.”); USTelecom Comments at 6-7 (“Indeed, the Commission adopted the 911 reliability certification requirement following extensive examination of where outages affecting 911 service occurred and what caused them, and a certification requirement so tailored to the 911 network would not be meaningful in the context of the 988 Lifeline.”).

¹⁶⁷ See National Association of State 911 Administrators Comments (encouraging implementation of capabilities to route wireless or nomadic VoIP 988 calls, chats, or texts based on the location of the cellular tower); NENA Comments at 3-6 (arguing that the 988 system should “plan to eventually migrate to Next Generation 9-1-1 technologies as a matter of building a more reliable, equitable life-saving service for people with mental health crises.”); BRETSA at 2 (urging the Commission to focus on ensuring the contingent routing of 988 calls to any crisis center to which the call can be connected when ordinary 988 call routing cannot be completed); Intrado Life & Safety Reply Comments at 2-3 (arguing that “the i3 design principles for Next Generation 911 (NG911) can and should be applied to 988”); Vibrant Comments at 5 (“Vibrant encourages the Commission to allow for information that would facilitate geo-routing to be used by the 988 Lifeline.”).

objections and only one comment offering an alternative calculation in response, which we address in context below.¹⁶⁸

42. For the reporting of 988 outages in NORS, we find that outages that potentially affect 988 special facilities fall into two categories: outages experienced by the covered 988 service providers that are responsible for providing the 988 Lifeline with the capability to receive, process, or forward 988 calls, and outages experienced by originating service providers that deliver calls to the Lifeline. Consistent with the estimate stated in the *988 Outage NPRM*, which no commenter challenged, we assume that one covered 988 service provider experiences a maximum of one reportable outage per month and we estimate an annual compliance cost for that one covered 988 service provider of \$1,000.¹⁶⁹ We find that originating service providers already submit outage reports to the Commission related to outages that affect voice telephony, which would be largely or entirely identical to the new reporting requirements, so initial compliance costs would be negligible.

43. With regard to the requirements to maintain updated contact information for 988 special facilities and to notify those facilities about outages that affect them, we estimate that the costs of compliance will also be relatively low when compared to the benefits to the public. We estimate a one-time industry-wide cost of \$56,000 to create an e-mail survey to biannually solicit 988 special facility contact information.¹⁷⁰ We do not expect more than incidental costs arising from the creation or updating of outage notification templates, as the 988 outage notification requirements that we adopt today share the same content and timing as the 911 outage notification requirements with which service providers already comply. We estimate maximum annually recurring costs of \$1,354,000, which consist of \$1,326,000 for notifying 988 special facilities of outages that potentially affect them pursuant to the requirements that we adopt today¹⁷¹ and \$28,000 for soliciting appropriate contact information for outage notification from 988 special facilities.¹⁷² We expect that no costs will be incurred related to identifying the 988 special facilities that could potentially be affected by an outage, as we have required that the same three special facilities (SAMHSA, the VA, and the 988 Lifeline administrator) be notified regardless of the geographic area affected by the outage.

¹⁶⁸ See *988 Outage NPRM* at 14-17, paras. 34-41.

¹⁶⁹ See *988 Outage NPRM* at 15, para. 37, n.80 (estimating a maximum of two hours total time to submit all required reports at a cost of \$43 per hour for a total cost estimate of \$1000 $\approx$ \$43/hr $\times$ 2 hrs $\times$ one reportable outage per month $\times$ 12 months).

¹⁷⁰ See *988 Outage NPRM* at 16, para. 38, n.81 (estimating that for each of 3,124 providers, one worker earning \$36/hour would spend $\frac{1}{2}$ hour for a total of approximately \$56,000). In its comments, SAMHSA and Vibrant both note that the 988 Lifeline administrator maintains an accurate and updated list of contacts at each crisis center and thus the estimate \$56,000 survey cost may be an overestimate. SAMHSA Comments at 1; Vibrant Comments at 4. However, as we are not requiring 988 outage notifications to be sent to individual crisis centers at this time, we do not believe the existence of this list would lower the estimated costs associated with the development of the survey.

¹⁷¹ See *988 Outage NPRM* at 16, para. 38, n.82 (estimating that a communications equipment operator, earning \$34/hour, would spend a total of 1 hour per outage to send out two notifications for each of an estimated 39,000 outages, for a total of \$1,326,000 $=$ \$34/hour $\times$ 1 hour $\times$ 39,000). We expect that our estimate of the cost will reduce significantly over time as the Commission collects better data on the actual number of 988 outages experienced annually.

¹⁷² See *988 Outage NPRM* at 16-17, para. 38, n.83 (estimating that for each of 3,124 providers, one worker earning \$36/hour would spend $\frac{1}{4}$ hour for a total of approximately \$28,000).

44. We find that the benefits of the 988 outage reporting and notification requirements that we adopt today outweigh their associated costs. We recognize that it is difficult to quantify the value of ensuring the continuity of access to 988 Lifeline services, which includes its capacity to save lives and mitigate and prevent injuries. However, we believe the considerable public safety value of the requirements adopted today as described above will exceed the limited costs of implementation. As discussed by commenters and in the *988 Outage NPRM*, the 988 Lifeline directly benefits people in crisis and saves lives.¹⁷³ When the 988 Lifeline is interrupted, people's lives are put into jeopardy.¹⁷⁴ In May 2023, the 988 Lifeline answered 235,292 calls, which is an average of over 7,500 answered calls per day.¹⁷⁵ We find that the outage reporting requirements would improve public safety by providing the Commission and other impacted entities with situational awareness of 988 outages, including the magnitude and causes of those outages, and allow for the identification of network reliability trends that can help identify best practices that could improve network reliability by helping to mitigate future outages.¹⁷⁶ The notice and contact information retention requirements we adopt today are intended to ensure that when 988 calling is disrupted, parties responsible for the varying aspects of the 988 call pathway notify 988 special facilities, share critical information in a timely and standardized manner, and hasten the timely restoration of 988 Lifeline services.¹⁷⁷ We describe below how even a very small increase in the speed of restoration of access to 988 Lifeline services could provide benefits that outweigh the costs of adopting the requirements.

45. The benefits of reducing suicide via 988 are driven by the staggering societal costs of deaths by suicide. In 2021, there were over 48,000 deaths by suicide in the United States, which, as noted above, averages out to approximately one death every 11 minutes.¹⁷⁸ For every suicide death, there were 3 hospitalizations for suicide attempts, 8 suicide-related emergency department visits, and 38 self-reported suicide attempts.¹⁷⁹ Suicides and suicide attempts annually impose billions of dollars in medical, first-responder, productivity-loss, and lost-quality-of-life costs on society.¹⁸⁰ In addition to lives saved

¹⁷³ See *988 Outage NPRM* at 14, paras. 34-36; T-Mobile Comments at 1; USTelecom Comments at 1; Mental Health America Comments at 1-2; CTIA Comments at 2, 3, 7; NENA Comments at 1.

¹⁷⁴ See VCL Comments at 1 (“[E]very minute of downtime is a minute we that VCL cannot try to save someone’s life.”); Mental Health America Comments at 1-2; NENA Comments at 2-3 (“It is important that those with a mental health crisis understand if the 988 service capability is impaired—and that they don’t discover this fact when they do have a mental health crisis and attempt to reach the service.”).

¹⁷⁵ SAMHSA Substance Abuse and Mental Health Services Administration, 988 Suicide & Crisis Lifeline, *988 Lifeline Performance Metrics*, <https://www.samhsa.gov/find-help/988/performance-metrics#answered> (last visited June 7, 2023).

¹⁷⁶ See BRETSA Comments at 7; T-Mobile Comments at 3-4.

¹⁷⁷ SAMHSA Comments at 1-2; ATIS Comments at 6; NENA Comments at 2; USTelecom Comments at 5.

¹⁷⁸ Centers for Disease Control and Prevention, *Facts About Suicide*, <https://www.cdc.gov/suicide/facts/index.html> (last visited June 12, 2022).

¹⁷⁹ *Id.*

¹⁸⁰ See Ian R.H. Rockett, et al., *Escalating costs of self-injury mortality in the 21st century United States: an interstate observational study*, 23 BMC Public Health, <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-023-15188-8>; Centers for Disease Control and Prevention, *Health Topics – Suicide Prevention*, <https://www.cdc.gov/policy/polaris/healthtopics/suicide/index.html> (last visited June 13, 2023).

and injuries avoided, time-saving network outage protocols will also alleviate the devastating emotional toll wrought by suicide on victims' families, friends, and communities.

46. Notifying SAMHSA, the VA, and the 988 Lifeline administrator of the disruption of access to 988 Lifeline services will allow these parties to manage the impact of outages on their operations, quickly notify the public of the 988 service outage, and promote alternative ways for people to access 988 Lifeline services during the outage, which may include notifying the public of alternative call numbers, or encouraging people to text to 988 or use the <https://988lifeline.org/> link to chat with a crisis management counselor. This, in turn, will enhance the 988 Lifeline's ability to direct scarce resources toward mitigating outages rather than seeking out information as to whether an outage is occurring, the scope of such an outage, or its impact. One of the benefits of implementing short dialing for calls and text messages to the Lifeline was to reduce the burdens on 911 and other emergency services arising from calls related to mental health and suicide. We believe that the rules we adopt today will further reduce the burden on 911 and other emergency services by promoting 988 reliability so that 988 calls go through when individuals need 988 service the most.¹⁸¹

47. We disagree with Southern Linc's argument that the rules we adopt today place unnecessary regulatory burdens on smaller non-nationwide providers, which they assert will be strained due to the same personnel being responsible for both reporting and responding to outages, as well as complying with other regulatory requirements.¹⁸² As explained above, we find that the significant public safety benefits arising from the requirements we adopt today outweigh their associated burdens, particularly since the cost of these requirements is likely to be relatively low due to commonalities with existing outage reporting requirements. We again note that the outages experienced by smaller providers with fewer subscribers would generally take longer to meet the required reporting thresholds, which would effectively provide more time to investigate an outage before it is required to be reported. Southern Linc further accuses the Commission of "assuming that all employees of a provider's affiliates – no matter how distant – should be considered 'available resources' to support the provider's compliance efforts, regardless of whether the employees of those affiliates have any responsibility to support wireless network operations."¹⁸³ We do not make this assumption. If we were to assume that service providers already had available staff to implement the requirements that we adopt today, then the costs to service providers would be estimated to be zero. To the contrary, the cost estimates that we make above are grounded in the additional labor hours and wages needed to comply with the requirements that we adopt today.

¹⁸¹ In the Commission's proceeding designating 988 as the 3-digit dialing code for the Lifeline, the North American Numbering Council (NANC) issued a report considering each existing N11 code, and while the Commission determined designating a unique 3-digit code was superior to using an existing code, NANC determined that "[a]llowing 211 operators to act as a first line of defense in suicide prevention calls might alleviate the pressure on 911 call takers and allow the caller to obtain assistance for other non-suicide related services in addition to mental health referrals." *Report and Recommendation on the Feasibility of Establishing a 3-Digit Dialing Code for a National Suicide Prevention and Mental Health Crisis Hotline* from Travis Kavulla, Chair, North American Numbering Council, to Kris Anne Monteith, Chief, FCC Wireline Competition Bureau, WC Docket No. 18-336, CC Docket No. 92-105, at 7 (May 10, 2019) (NANC Report).

¹⁸² Southern Linc Reply Comments at 5. *See also* CCA Ex Parte at 2-3.

¹⁸³ *Id.* at 6.

D. Legal Authority

48. In the *988 Outage NPRM*, we sought comment on potential sources of legal authority under titles II and III and section 4(i) of the Communications Act and Section 104 of the Twenty-First Century Communications and Video Accessibility Act (CVAA) for Commission action to promote the reliability and resiliency of the 988 Lifeline.¹⁸⁴ We noted that Congress amended section 251 of the Communications Act of 1934 to specify 988 as the universal telephone number for the National Suicide Prevention Lifeline¹⁸⁵ and that our proposed rules were intended to ensure that the Lifeline remains operational in accordance with the policies identified by Congress in that 2020 legislation and that any outages are quickly identified and reported, thus promoting the safety of life and property. We now find that section 4 and section 251 provide ample authority for the reporting and notice obligations that we adopt here.

49. Title II of the Communications Act gives the Commission clear authority over service providers, including covered 988 service providers, to the extent that they provide interstate common carrier service. The statute provides that “practices” for and in connection with interstate common carrier services must be “just and reasonable,”¹⁸⁶ and that a common carrier must “provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier.”¹⁸⁷ The Commission is also authorized to “inquire into the management of the business of all carriers and obtain from them full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.”¹⁸⁸

50. We further note that the Communications Act directs that “[f]or the purpose of obtaining maximum effectiveness from the use of radio and wire communications in connection with safety of life and property,” the Commission “shall investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems.”¹⁸⁹ Both originating service providers and covered 988 service providers play critical roles in ensuring the cooperation and coordination of the 988 system, and the Commission has previously relied on section 4(n) as providing authority to require reporting of interconnected VoIP outages,¹⁹⁰ and to require emergency alerting plans to allow the Commission and other stakeholders “to more easily review and identify gaps” in emergency alerting architecture, “detect problems, and take measures to address these shortcomings.”¹⁹¹ By requiring

¹⁸⁴ *988 Outage NPRM* at 14, para. 33.

¹⁸⁵ 47 U.S.C. § 251(e)(4) (designating, as part of the Commission’s numbering authority, 988 as the universal telephone number for the national suicide prevention and mental health crisis hotline system).

¹⁸⁶ 47 U.S.C. § 201(b). Section 201(b) also provides the Commission authority to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of [the Communications Act].” *Id.*; see *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 378 (1999).

¹⁸⁷ 47 U.S.C. § 214(d).

¹⁸⁸ 47 U.S.C. § 218.

¹⁸⁹ 47 U.S.C. § 154(n).

¹⁹⁰ *The Proposed Extension of Part 4 of the Commission’s Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, 27 FCC Rcd 2650, 2676, para. 61 (2012).

¹⁹¹ See, e.g., *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, 33 FCC Rcd 3627 at paras. 9, 56 (2018) (citing to section 4(n), then 4(o), as a source of authority for the Commission to adopt a system for filing of State Emergency Alert System plans).

reporting of outages affecting access to 988 by both originating service providers and covered 988 service providers we are enabling the Commission's ongoing review of sources of disruption to this critical emergency service, which in turn will contribute to greater reliability going forward. We conclude that these sources provide us with sufficient authority for the 988 outage reporting requirements that we adopt today.

51. Additionally, we find that imposing outage reporting requirements on covered 988 service providers is reasonably ancillary to our responsibility to ensuring that the 988 Lifeline service operates effectively.¹⁹² To exercise ancillary authority “two conditions [must be] satisfied: (1) the Commission’s general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”¹⁹³ The functions at issue here involve communications by wire or radio in that they either take the form of such transmission or involve the use of equipment for purposes of facilitating transmission by wire or radio.¹⁹⁴ We conclude that these reporting requirements are necessary to carry out our responsibility for the proper functioning of the 988 Lifeline service under section 251(e)(4). Obtaining outage information from covered 988 service providers is necessary because only the covered 988 service provider has visibility into outages that occur at the point where the covered 988 service provider processes and forwards the call. Adopting outage reporting and notice requirements for entities that have the ability to receive, process, or forward calls to the 988 Lifeline furthers the Commission’s goals to strengthen the 988 Lifeline’s reliability and help save the lives of those who may be experiencing a suicidal crisis or mental health-related distress.

52. We disagree with CX360, a company that contracts with the 988 Lifeline administrator to provide voice and SMS-based services for communications after they reach the 988 Lifeline,¹⁹⁵ that the

¹⁹² 47 U.S.C. § 154(i) (“The Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.”); § 201(b) (“The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this [Act].”).

¹⁹³ *Am. Library Ass’n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005).

¹⁹⁴ 47 U.S.C. § 153(40) (radio communication “means the transmission by radio of writing, signs, signals, pictures, and sounds of all kinds, *including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission*” (emphasis added)); 47 U.S.C. § 153(59) (wire communication “means the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, *including all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery of communications) incidental to such transmission*” (emphasis added)). Our focus on the use of equipment specifically for purposes of enabling transmission of wire or radio communication distinguishes the circumstances here from the facts of *Am. Library Ass’n*. See *Am. Library Ass’n*, 406 F.3d at 700 (holding that “the agency’s general jurisdictional grant does not encompass the regulation of consumer electronics products that can be used for receipt of wire or radio communication when those devices are not engaged in the process of radio or wire transmission”).

¹⁹⁵ CX360 Comments at 2. CX360 asserts in its July 14, 2023 *ex parte* letter that it is not a telecommunications services provider because it does not engage in the routing or transmission of 988 calls. CX360 Ex Parte at 1-2. However, the letter also states that CX360 purchases telecommunications services from telecommunications service providers for the purpose of transporting 988 calls to the appropriate crisis response centers. *Id.* at 2. Accordingly, and consistent with its original comments, we find that the 988 Lifeline administrator contracts with CX360 for voice and SMS-based services for communications. In any case, our analysis ultimately does not turn on whether

(continued....)

Commission lacks authority to require the reporting of outages by entities that provide the 988 Lifeline with the capability to receive, process, or forward calls.¹⁹⁶ As outlined above, the Commission clearly has authority to impose these reporting and notice requirements on CX360, on any entities that offer to the public for a fee “transmission between points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received,”¹⁹⁷ and on entities that route calls from the 988 Lifeline to the appropriate crisis center(s), following routing instructions provided by the 988 Lifeline administrator. Even though the responsibilities of an originating service provider may conclude once a call reaches the 988 Lifeline, this does not mean that the services offered by other communications providers within the 988 call path that are necessary to connect the caller to their local crisis center, the Veterans Crisis Line, or other call taker, a service which CX360 states that it provides,¹⁹⁸ cannot be regulated by the Commission.

53. We specifically reject CX360’s argument that entities that “process” calls for the 988 Lifeline cannot be regulated by the Commission.¹⁹⁹ We find that the processing of 988 calls – that is to say, conducting the necessary technical steps to prepare the call for forwarding to a crisis center or the Veterans Crisis Line and then transmitting those calls to that crisis center – falls within our authority to regulate via the reporting and notice requirements we adopt here. To the extent that an entity uses an interactive voice response system to support these capabilities, we acknowledge that such an offering may acquire, store, or process information related to how the call should be routed.²⁰⁰ But we conclude that we have authority to require outage reporting and notice under the specific circumstances here from entities performing functions like CX360.

E. Timelines for Compliance

54. We adopt deadlines for originating service providers to comply with the revisions to section 4.9 that we adopt today as the latest of (1) 30 days after the Commission issues a Public Notice

CX360 specifically provides transmission as an input to the 988 Lifeline, but on whether the functions it performs do serve as inputs to the 988 Lifeline service. CX360’s arguments do not persuade us to adopt a different view of its role in that regard.

¹⁹⁶ See, e.g., CX360 Comments at 10-11 (arguing that “nothing in the authority to designate 988 as the universal telephone number confers upon the Commission the authority to ensure the Lifeline ‘remains operational’ or to enforce Congress’ policies for its operation” and arguing that “the Commission’s Title II and Title III jurisdiction does not extend to call centers, information service providers or software used by the 988 Lifeline Administrator once a 988 call has reached the 988 Lifeline.”).

¹⁹⁷ 47 U.S.C. § 153(50), (53) (“The term ‘telecommunications service’ means 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.”).

¹⁹⁸ CX360 Comments at 2 (“CX360 contracts with the 988 Lifeline Administrator . . . to provide voice and SMS-based services for communications after they reach the 988 Lifeline.”).

¹⁹⁹ CX360 Comments at 10-11 (“The Commission’s Title II and Title III jurisdiction does not extend to call centers, information service providers or software used by the 988 Lifeline Administrator once a 988 call has reached the 988 Lifeline.”).

²⁰⁰ 47 U.S.C. § 153(24) (“The term ‘information service’ means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.”).

announcing that OMB has completed review of any new information collection requirements associated with the adopted Report and Order; (2) 90 days after the publication of the summary of this Report and Order in the Federal Register, or (3) the date the Commission's updated 911 outage reporting and notification rules go into effect.²⁰¹ Consistent with our proposal in the *988 Outage NPRM*,²⁰² we agree with Vibrant that the first two elements of this timeline provide sufficient time for compliance,²⁰³ as we find that the revisions proposed today constitute only minor changes to existing notice and reporting requirements for 911 network outages, and it will take a modest amount of time for originating service providers to adjust their processes to satisfy the proposed rules. We also agree with USTelecom that it is sensible to harmonize the compliance timeline for the rules that we adopt today with the compliance timeline for the 911 outage notification requirements adopted in November 2022 given the similarities between them.²⁰⁴

55. We are persuaded by CX360 that some covered 988 service providers may not have existing NORS filing or outage notification obligations and would need additional time to develop the capabilities and processes necessary to comply with rules that we adopt today.²⁰⁵ Accordingly, we agree with CX360 that covered 988 service providers should be granted six additional months to come into compliance.²⁰⁶ We adopt deadlines for covered 988 service providers to comply with the rules we adopt today as the latest of (1) 30 days after the Commission issues a Public Notice announcing that OMB has completed review of any new information collection requirements associated with the adopted Report and Order; (2) nine months after the publication of the summary of this Report and Order in the Federal Register; or (3) the date the Commission's updated 911 outage reporting and notification rules go into effect.²⁰⁷

IV. PROCEDURAL MATTERS

56. *Paperwork Reduction Act Analysis.* These requirements constitute new and modified information collections. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).²⁰⁸ OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contain in this proceeding. This document will be submitted to OMB for review under Section 3507(d) of the PRA. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought, but did not receive,

²⁰¹ *PSAP Notification Order* at 17-18, paras. 32-33 (requiring compliance 120 days after publication of a notice in the Federal Register following completion of Paperwork Reduction Act review by OMB). Changes to definitions in 47 CFR §§ 4.3 and 4.5 will become effective 30 days after publication of a summary of this Order in the Federal Register.

²⁰² *988 Outage NPRM* at 18, para. 42.

²⁰³ Vibrant Comments at 6.

²⁰⁴ Letter from Morgan E. Reeds, Director, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-5 et al., at 1 (filed July 13, 2023) (USTelecom Ex Parte).

²⁰⁵ CX360 Reply Comments at 8.

²⁰⁶ *Id.*

²⁰⁷ *PSAP Notification Order* at 17-18, paras. 32-33 (requiring compliance 120 days after publication of a notice in the Federal Register following completion of Paperwork Reduction Act review by OMB).

²⁰⁸ 44 U.S.C. § 3507(d).

specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that the new or modified information collection requirements we adopt here will be unduly burdensome on small businesses.

57. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA)²⁰⁹ 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.”²¹⁰ Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the potential impact of the rule and policy changes adopted in the *Report and Order* on small entities. The FRFA is set forth in Appendix B.

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

59. *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).

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

V. ORDERING CLAUSES

61. ACCORDINGLY IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 4(j), 4(n), 201(b), 214, 218, 251(e)(3), 251(e)(4), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, and 403, of the Communications Act of 1934, as amended, and sections 3(b) and 6 of the Wireless Communications and Public Safety Act of 1999, as amended, 47 U.S.C. §§ 151, 154(i), 154(j) 154(n), 201(b), 214, 218, 251(e)(3), 251(e)(4), 301, 303(b), 303(g), 303(r), 307, 309(a), 332, 403, 615, 615a-1, the National Suicide Hotline Improvement Act of 2018, Pub. L. No. 115-233, 132 Stat. 2424 (2018), and the National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172 (2020), this *Report and Order* IS hereby ADOPTED.

62. IT IS FURTHER ORDERED that the amendments of the Commission’s Rules as set forth in Appendix A are ADOPTED, effective 30 days after publication in the Federal Register, except for the amendments to 47 CFR § 4.9. The amendments to 47 CFR § 4.9 will not become effective until OMB completes any review that the Public Safety and Homeland Security Bureau determines is required under the Paperwork Reduction Act and the Public Safety and Homeland Security Bureau announces an effective date consistent with § III.E above by subsequent Public Notice.

²⁰⁹ 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 et seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

²¹⁰ 5 U.S.C. § 605(b).

63. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

64. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons discussed above, the Federal Communications Commission amends 47 CFR part 4 as follows:

PART 4 – DISRUPTIONS TO COMMUNICATIONS

1. The authority citation for part 4 continues to read as follows:

Authority: [TO BE INSERTED PRIOR TO FEDERAL REGISTER SUMMARY PUBLICATION]

2. Section 4.3 is amended by adding paragraph (j) to read as follows:

§ 4.3 – Communications providers covered by the requirements of this part.

* * * * *

(j) ***Covered 988 Service Providers*** are providers that provide the 988 Suicide & Crisis Lifeline with capabilities such as the ability to receive, process, or forward calls. “Covered 988 service provider” shall not include any entity that constitutes a crisis center that participates in the 988 Lifeline, or any entity that offers the capability to originate 988 calls where another service provider delivers those calls to the appropriate crisis center.

3. Section 4.5 is amended by adding paragraph (f) to read as follows:

§ 4.5 – Definitions of outage, special offices and facilities, 911 special facilities and 988 special facilities.

* * * * *

(f) An outage that potentially affects a 988 special facility occurs whenever there is a loss of the ability of the 988 Suicide & Crisis Lifeline to receive, process, or forward calls, potentially affecting at least 900,000 user-minutes and lasting at least 30 minutes duration.

4. Delayed indefinitely, section 4.9 is amended by revising paragraphs (a)(4), (c)(2)(iv), (e) introductory text, (e)(1)(v), (f)(4), and (g)(1)(i) to read as follows:

§ 4.9 – Outage reporting requirements - threshold criteria.

(a) * * *

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) or (i) of this section, respectively. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

* * * * *

(c) * * *

(2) * * *

(iv) Potentially affecting a 911 special facility (as defined in § 4.5(e)) or potentially affecting a 988 special facility (as defined in § 4.5(f)), in which case the affected facility shall be notified in the manner described in paragraph (h) or (i) of this section, respectively.

* * * * *

(e) *Wireless.*

(1) * * *

(v) That potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) or (i) of this section, respectively.

* * * * *

(f) * * *

(4) Potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) or (i) of this section, respectively. Not later than 72 hours after discovering the outage, the provider shall submit electronically an Initial Communications Outage Report to the Commission. Not later than 30 days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and the Initial and Final reports shall comply with all of the requirements of § 4.11.

(g) * * *

(1) * * *

(i) Within 240 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 911 special facility (as defined in § 4.5(e)) or potentially affects a 988 special facility (as defined in § 4.5(f)), in which case they also shall notify the affected facility in the manner described in paragraph (h) or (i) of this section, respectively; or

* * * * *

5. Delayed indefinitely, section 4.9 is also amended by adding paragraph (i) to read as follows:

§ 4.9 – Outage reporting requirements - threshold criteria.

* * * * *

(i) *988 Special facility outage notification.* All cable, satellite, wireless, wireline, interconnected VoIP, and covered 988 service providers shall notify any official at a 988 special facility who has been designated by the affected 988 special facility as the provider's contact person(s) for communications outages at the facility of any outage that potentially affects that 988 special facility (as defined in § 4.5(f)) in the following manner:

(1) *Appropriate contact information.* To ensure prompt delivery of outage notifications to 988 special facilities, covered 988 service providers shall exercise special diligence to identify, maintain, and, on an annual basis, confirm current contact information appropriate for outage notification for each 988 special facility that serves areas that the service provider serves.

(2) *Content of notification.* Covered 988 service providers' outage notifications must convey all available material information about the outage. For the purpose of this paragraph (i), "material information" includes the following, where available:

- (i) An identifier unique to each outage;
- (ii) The name, telephone number, and email address at which the notifying 988 service provider can be reached for follow up;
- (iii) The name of the covered 988 service provider experiencing the outage;
- (iv) The date and time when the incident began (including a notation of the relevant time zone);
- (v) The types of communications service(s) affected;
- (vi) The geographic area affected by the outage;
- (vii) A statement of the notifying covered 988 service provider's expectations for how the outage potentially affects the special facility (*e.g.*, dropped calls or missing metadata);
- (viii) Expected date and time of restoration, including a notation of the relevant time zone;
- (ix) The best-known cause of the outage; and
- (x) A statement of whether the message is the notifying covered 988 service provider's initial notification to the special facility, an update to an initial notification, or a message intended to be the service provider's final assessment of the outage.

(3) *Means of notification.* Covered 988 service providers' outage notifications must be transmitted by telephone and in writing via electronic means in the absence of another method mutually agreed upon in writing in advance by the special facility and the service provider.

(4) *Timing of initial notification.* Covered 988 service providers shall provide an outage notification to a potentially affected 988 special facility as soon as possible, but no later than within 30 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage that potentially affects a 988 special facility (as defined in § 4.5(f)).

(5) *Follow-up notification.* Covered 988 service providers shall communicate additional material information to potentially affected 988 special facilities in notifications subsequent to the initial notification as soon as possible after that information becomes available, but providers shall send the first follow-up notification to potentially affected 988 special facilities no later than two hours after the initial contact. After that, covered 988 service providers are required to continue to provide material information to the special facilities as soon as possible after discovery of the new material information until the outage is completely repaired and service is fully restored.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline, Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, Implementation of the National Suicide Hotline Improvement Act of 2018, Notice of Proposed Rulemaking (988 Outage NPRM)* released in January 2023.² The Commission sought written public comments on the proposals in the *988 Outage NPRM*, including comments on the IRFA. Comments filed by two parties specifically addressing the IRFA are addressed below in Section B. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Final Rules

2. According to the Centers for Disease Control and Prevention (CDC), the suicide rate in this country increased by 35% from 1999 to 2018.⁴ In 2021, suicide was a leading cause of death in the United States for people aged 10 to 64 and the second leading cause of death among people aged 10-14 and 20-34.⁵ Suicide claimed the lives of over 48,000 Americans in 2021, resulting in about one death every 11 minutes.⁶ For every one person who dies by suicide annually, 316 people seriously consider suicide.⁷ In this *Report and Order*, the Commission adopts rules and procedures to improve the reliability and resiliency of telecommunications networks nationwide and the 988 Suicide & Crisis Lifeline (988 Lifeline) specifically, so that the American public can continue to reach the 988 Lifeline without undue delay or disruption.

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12, 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 *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Implementation of the National Suicide Hotline Improvement Act of 2018*, PS Docket Nos. 23-5 and 15-80, WC Docket No. 18-336, Notice of Proposed Rulemaking, FCC 23-7, Appendix B, Initial Regulatory Flexibility Analysis (Jan. 27, 2023) (*988 Outage NPRM*).

³ See 5 U.S.C. § 604.

⁴ Holly Hedegaard, Sally C. Curtin, and Margaret Warner, *Increase in Suicide Mortality in the United States, 1999-2018*, National Center for Health Statistics (NCHS) Data Brief No. 362, at 1 (Apr. 2020), <https://www.cdc.gov/nchs/data/databriefs/db362-h.pdf>.

⁵ Centers for Disease Control and Prevention, *Suicide Prevention*, <https://www.cdc.gov/suicide/> (last visited June 12, 2023). See also The Trevor Project, *Facts About LGBTQ Youth Suicide* (June 14, 2021), <https://www.thetrevorproject.org/resources/article/facts-about-lgbtq-youth-suicide/>.

⁶ Centers for Disease Control and Prevention, *Facts About Suicide*, <https://www.cdc.gov/suicide/facts/index.html> (last visited June 12, 2023).

⁷ 988 Suicide & Crisis Lifeline, *Suicide Prevention by the Numbers*, <https://988lifeline.org/by-the-numbers/> (last visited June 12, 2022).

3. In the *Report and Order*, both originating service providers⁸ and covered 988 service providers are required to file 988 outage reports with the Commission, in the Commission's Network Outage Reporting System (NORS). The Commission also adopts the definition for "covered 988 service providers" as those providers that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls. We conclude that the reporting obligations upon originating service providers and covered 988 service providers adopted in the *Report and Order* will improve the resiliency of the 988 Lifeline and ensure that the Substance Abuse and Mental Health Services Administration (SAMHSA), the Department of Veteran Affairs (VA), and the 988 Lifeline administrator have timely outage information so they can provide the public with alternative ways to access the Lifeline.⁹ The Commission will also be able to improve 988 reliability by using this information to analyze outage trends and identify best practices to prevent and mitigate outages. The rules adopted by the Commission also require originating service providers and covered 988 service providers to notify 988 special facilities about outages that affect these facilities pursuant to notification obligations that mirror the Commission's existing 911 special facility notification requirements. In adopting these rules, the Commission designates SAMHSA, the VA, and the 988 Lifeline administrator as the 988 special facilities that must receive outage notifications. This notification requirement will allow 988 special facilities to take steps to maintain the public's access to crisis intervention centers,¹⁰ including by routing calls to crisis centers not experiencing outages,¹¹ and allowing 988 callers to receive assistance faster.¹² Moreover, the reporting and notification requirements adopted in the *Report and Order* will help ensure that the Commission and those parties that provide life-saving crisis intervention services to people calling the 988 Lifeline receive timely and actionable information about 988 service outages that potentially affect those services' ability to meet the immediate health needs of people in suicidal crisis and mental health distress.

4. In light of the significant public safety benefits which include the capacity to save lives, mitigate, and prevent injuries, and which further the public interest, the Commission believes the actions taken in the *Report and Order* outweigh the implementation costs for service providers. We also believe implementation of the adopted requirements by cable, satellite, wireless, wireline, interconnected VoIP, and covered 988 service providers will only require minor changes to existing processes and procedures, and will not require a substantial amount of time since the 988 outage notification requirements are substantially similar to the existing notice and reporting requirements for 911 network outages.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. Two commenters specifically addressed the proposed rules and policies presented in the IRFA. Vibrant agrees that the proposed rules and policies in the *988 Outage NPRM* "would have limited impact for small and medium sized businesses."¹³ Southern Linc argues that the Commission should "apply the 911 definitions of 'nationwide' and 'non-nationwide' providers, rather than the [Small

⁸ Originating service providers include cable, satellite, wireless, wireline, and interconnected VoIP providers and are jointly referred to as "originating service providers" or "OSPs."

⁹ The Commission is continuing to consider whether reporting and notification requirements should also be applicable to text messaging outages.

¹⁰ USTelecom Comments at 5; *see also 988 Outage NPRM* at 10, para. 21.

¹¹ *See* Vibrant Comments at 3.

¹² *Id.*

¹³ Vibrant Comments at 6.

Business Administration] standard, when assessing and evaluating the potential impact that any action it may take in this proceeding would have on smaller regional service providers.”¹⁴ The Commission rejects this argument. The 988 outage reporting and notification requirements it adopts today do not place differing requirements on nationwide and non-nationwide providers, nor do any of the Commission’s existing outage reporting and notification requirements (including for 911 outages) make such a distinction. For these reasons, the Commission sees no basis to agree with Southern Linc that use of Small Business Administration (SBA) size standards would confuse service providers or somehow impose further burdens on non-nationwide providers.¹⁵ Additionally, Southern Linc offers no explanation of how its preferred “non-nationwide provider” impact analysis should be conducted.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.¹⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁸ 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.¹⁹

8. *Small Businesses, Small Organizations, and 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.²⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is

¹⁴ Southern Linc Reply Comments at 5-6 (citing 47 CFR § 9.10(i)(1)(iv)).

¹⁵ Southern Linc Reply Comments at 6.

¹⁶ 5 U.S.C. § 604(a)(4).

¹⁷ *Id.* § 601(6).

¹⁸ *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.”

¹⁹ 15 U.S.C. § 632.

²⁰ *See* 5 U.S.C. § 601(3)-(6).

an independent business having fewer than 500 employees.²¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.²²

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”²³ 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.²⁴ 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.²⁵

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”²⁶ U.S. Census Bureau data from the 2017 Census of Governments²⁷ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²⁸ Of this number, there were

²¹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf>. (Mar. 2023)

²² *Id.*

²³ See 5 U.S.C. § 601(4).

²⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

²⁵ 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.

²⁶ See 5 U.S.C. § 601(5).

²⁷ 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>.

²⁸ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

36,931 general purpose governments (county,²⁹ municipal, and town or township³⁰) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts³¹ with enrollment populations of less than 50,000.³² 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.”³³

11. *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.³⁴ 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.³⁵ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.³⁶ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.³⁷ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.³⁸ Of that number, 149 firms operated with revenue of less than

²⁹ 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.

³⁰ 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.

³¹ 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.

³² 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.

³³ 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.

³⁴ 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>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

³⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=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).

\$25 million a year and 44 firms operated with revenue of \$25 million or more.³⁹ Based on this data, the Commission estimates that a majority of firms in this industry are small.

12. *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.⁴⁰ Based on industry data, there are about 420 cable companies in the U.S.⁴¹ Of these, only seven have more than 400,000 subscribers.⁴² In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.⁴³ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.⁴⁴ Of these, about 639 have more than 15,000 subscribers.⁴⁵ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

13. *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."⁴⁶ 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

³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴⁰ 47 CFR § 76.901(d).

⁴¹ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

⁴² S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, *Multichannel Video Subscriptions, Top 10* (April 2022).

⁴³ 47 CFR § 76.901(c).

⁴⁴ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

⁴⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

⁴⁶ 47 U.S.C. § 543(m)(2).

Notice.⁴⁷ Based on industry data, only six cable system operators have more than 677,000 subscribers.⁴⁸ 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.⁴⁹ 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.

14. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁵⁰ is the closest industry with an SBA small business size standard.⁵¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵² U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁵³ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁵⁵ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer

⁴⁷ *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).

⁴⁸ 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).

⁴⁹ 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).

⁵⁰ *See* U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵¹ *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵² *Id.*

⁵³ *See* U.S. Census Bureau, 2017 *Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

employees.⁵⁶ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

15. *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 Carriers⁵⁷ is the closest industry with an SBA small business size standard.⁵⁸ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁵⁹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁰ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶¹ Of this number, 2,964 firms operated with fewer than 250 employees.⁶² 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.⁶³ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁶⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *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.⁶⁵ 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.⁶⁶ Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol

⁵⁶ *Id.*

⁵⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁹ 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.

⁶⁰ *Id.*

⁶¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶³ 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>.

⁶⁴ *Id.*

⁶⁵ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁶⁶ *Id.*

(VoIP) services, via client-supplied telecommunications connections are also included in this industry.⁶⁷ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁶⁸ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁶⁹ Of those firms, 1,039 had revenue of less than \$25 million.⁷⁰ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

17. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁷¹ 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.⁷² U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.⁷³ Of this number, 242 firms had revenue of less than \$25 million.⁷⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.⁷⁵ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.⁷⁶ Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

18. *Telecommunications Resellers.* 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

⁶⁷ *Id.*

⁶⁸ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁶⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁷⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁷¹ See U.S. Census Bureau, *2017 NAICS Definition, “517410 Satellite Telecommunications,”* <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁷² See 13 CFR § 121.201, NAICS Code 517410.

⁷³ 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>.

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. 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.

⁷⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁶ *Id.*

satellite) to businesses and households.⁷⁷ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁷⁸ Mobile virtual network operators (MVNOs) are included in this industry.⁷⁹ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸⁰ U.S. Census Bureau data for 2017 show that 1,386 firms operated in this industry for the entire year.⁸¹ Of that number, 1,375 firms operated with fewer than 250 employees.⁸² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 666 providers that reported they were engaged in the provision of local or toll resale services.⁸³ Of these providers, the Commission estimates that 640 providers have 1,500 or fewer employees.⁸⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *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.⁸⁵ 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.⁸⁶ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁸⁷ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁸⁸

⁷⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁸¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁸² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸⁴ *Id.*

⁸⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ 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, (continued....)

20. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁸⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁹⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁹¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.⁹² Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁹³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.⁹⁴ Wireless Telecommunications Carriers (except Satellite)⁹⁵ is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹⁶ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁹⁷ Of this number, 2,837 firms employed fewer than 250 employees.⁹⁸ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

22. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands

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.

⁸⁹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁹⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁹¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁹³ *Id.*

⁹⁴ See 47 CFR §§ 27.1 – 27.1607.

⁹⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹⁶ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁹⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.⁹⁹

23. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.¹⁰⁰ 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.¹⁰¹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰² U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁰³ Of that number, 2,837 firms employed fewer than 250 employees.¹⁰⁴ 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.¹⁰⁵ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.¹⁰⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

25. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA

⁹⁹ See 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

¹⁰⁰ See U.S. Census Bureau, *2017 NAICS Definition, 517312 Wireless Telecommunications Carriers (except Satellite)*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰¹ *Id.*

¹⁰² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰³ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

¹⁰⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰⁵ 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>.

¹⁰⁶ *Id.*

small business size standard is Wireless Telecommunications Carriers (except Satellite).¹⁰⁷ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.¹⁰⁸ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.¹⁰⁹ Of this number, 2,837 firms employed fewer than 250 employees.¹¹⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.¹¹¹ Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.¹¹² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

26. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (*except Satellite*) is the closest industry with a SBA small business size standard applicable to these service providers.¹¹³ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹¹⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹¹⁵ Of this number, 2,837 firms employed fewer than 250 employees.¹¹⁶ 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.¹¹⁷ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.¹¹⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

¹⁰⁷ 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>.

¹⁰⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹¹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹¹ 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>.

¹¹² *Id.*

¹¹³ 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>.

¹¹⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹¹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹¹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

¹¹⁸ *Id.*

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

27. The *Report and Order* adopts new or additional reporting, recordkeeping, notice and other compliance requirements for small entities required to report outages affecting 988 Lifeline services. Specifically, the rules require originating service providers and covered 988 service providers to report to the Commission and provide notice to 988 special facilities about voice service outages that potentially affect 988 special facilities. These service providers are required to: (1) report outages that potentially affect 988 special facilities using NORS, and follow processes and procedures similar to the Commission's existing reporting for outages that potentially affect 911, including the requirement to submit notifications, initial reports, and final reports within a specified amount of time and with specified content; (2) provide notice of 988 outages that potentially affect a 988 special facility to the designated 988 special facilities; and (3) exercise special diligence to identify, maintain, and confirm up-to-date contact information for 988 special facilities on an annual basis.

28. The Commission is not currently in a position to determine whether the rules adopted in the *Report and Order* will require small entities to hire attorneys, engineers, consultants, or other professionals to comply. We note, however, that some originating service providers and covered 988 service providers are already subject to compliance with outage reporting obligations that would facilitate their ability to comply, and may reduce any compliance burdens associated with the adopted 988 outage reporting and notification requirements. For example, some originating service providers and covered 988 service providers already must comply with the Commission's rules on network outage reporting and 911 outage reporting. In addition, many service providers are likely to already have documented procedures for notifying affected facilities of outages that potentially affect them. For those that do not, Alliance for Telecommunications Industry Solutions (ATIS) Network Reliability Steering Committee (NRSC) Task Force documents can serve as a useful guide to help small entities comply with the requirements.¹¹⁹

29. The Commission expects that originating service providers already report the majority of outages that affect the completion of 988 calls to the Commission under our existing outage reporting requirements. For example, originating service providers are already required to report voice service outages in NORS, regardless of a call's destination.¹²⁰ As a result, providers that are complying with this existing outage reporting requirement will only need to take nominal action to report voice telephony outages that potentially affect the 988 Lifeline. Below we discuss the potential costs of the reporting requirements.

30. In the *Report and Order*, we determine that the rules we adopt concerning the reporting in NORS of outages that potentially affect 988 special facilities and the notifying of 988 special facilities about outages will result in an industry-wide one-time compliance cost of \$56,000, and an annual recurring cost which is revised from our estimate in the *988 Outage NPRM*, of \$1,355,000.¹²¹ Outages that potentially affect 988 special facilities that will be reportable in NORS fall into two categories: (1)

¹¹⁹ See, e.g., Alliance for Telecommunications Industry Solutions, Service Providers: Outage Reporting Structure and Potential Types of 9-1-1 Outages (June 28, 2018), <https://www.atis.org/committees-forums/nrsc/>.

¹²⁰ 47 CFR §§ 4.9(a)(1), (c)(2)(ii), (e)(1)(ii), (f)(1), (g)(1)(ii); Verizon Comments at 3 (“[B]ecause the rules already apply to the major originating access network outages that affect 988 dialing, new rules for originating service providers would be redundant.”).

¹²¹ See *988 Outage NPRM* at 38. The estimate for the maximum annually recurring costs was \$1,354,000.

outages experienced by the covered 988 service providers that are responsible for providing the 988 Lifeline with the capability to receive, process, or forward 988 calls, and (2) outages experienced by originating service providers that deliver calls messages to the Lifeline. Consistent with the estimate stated in the *988 Outage NPRM*, which no commenter challenged, we assume that one covered 988 service provider experiences a maximum of one reportable outage per month, and estimate an annual compliance cost for that one covered 988 service provider of \$1,000.¹²²

31. With regard to the requirements for small and other providers to maintain updated contact information for 988 special facilities and to notify those facilities about outages that affect them, we estimate that the costs of compliance will also be relatively low when compared to the benefits to the public. In accordance with the *988 Outage NPRM*, we estimate that there will be a one-time industry-wide cost of \$56,000 to create an e-mail survey to biannually solicit 988 special facility contact information.¹²³ Further, we expect costs arising from the creation or updating of outage notification templates will be incidental costs, since the 988 outage notification requirements that we adopt in the *Report and Order* share the same content and timing as the 911 outage notification requirements with which service providers already comply. We estimate maximum annually recurring costs of \$1,354,000, which consist of \$1,326,000 for notifying 988 special facilities of outages that potentially affect them pursuant to the standards adopted in the *Report and Order*,¹²⁴ and \$28,000 for soliciting appropriate contact information for outage notification from 988 special facilities.¹²⁵ Since we require that the same three special facilities (SAMHSA, the VA, and the 988 Lifeline administrator) be notified regardless of the geographic area affected by the outage, we do not expect that any costs will be incurred related to identifying the 988 special facilities that could potentially be affected by an outage.

32. We note that in the *988 Outage NPRM*, we sought comments from the parties in the proceeding and requested cost and benefit information to help the Commission identify and evaluate relevant matters for small entities, however we did not receive any specific cost estimates. The Commission disagrees with Southern Linc's argument that the rules adopted in the *Report and Order* place unnecessary regulatory burdens on smaller non-nationwide providers, which they assert will be strained due to the same personnel being responsible for both reporting and responding to outages, as well as complying with other regulatory requirements.¹²⁶ As explained above, the significant public safety

¹²² See *988 Outage NPRM* at 15, para. 37, n.80 (estimating a maximum of two hours total time to submit all required reports at a cost of \$43 per hour for a total cost estimate of \$1000 $\approx$ \$43/hr $\times$ 2 hrs $\times$ one reportable outage per month $\times$ 12 months).

¹²³ See *988 Outage NPRM* at 16, para. 38, n.81 (estimating that for each of 3,124 providers, one worker earning \$36/hour would spend $\frac{1}{2}$ hour for a total of approximately \$56,000). In its comments, SAMHSA and Vibrant both note that the 988 Lifeline administrator maintains an accurate and updated list of contacts at each crisis center and thus the estimate \$56,000 survey cost may be an overestimate. SAMHSA Comments at 1; Vibrant Comments at 4. However, as we are not requiring 988 outage notifications to be sent to individual crisis centers at this time, we do not believe the existence of this list would lower the estimated costs associated with the development of the survey.

¹²⁴ See *988 Outage NPRM* at 16, para. 38, n.82 (estimating that a communications equipment operator, earning \$34/hour, would spend a total of 1 hour per outage to send out two notifications for each of an estimated 39,000 outages, for a total of \$1,326,000 $=$ \$34/hour $\times$ 1 hour $\times$ 39,000). We expect that our estimate of the cost will reduce significantly over time as the Commission collects better data on the actual number of 988 outages experienced annually.

¹²⁵ See *988 Outage NPRM* at 16-17, para. 38, n.83 (estimating that for each of 3,124 providers, one worker earning \$36/hour would spend $\frac{1}{4}$ hour for a total of approximately \$28,000).

¹²⁶ Southern Linc Reply Comments at 5.

benefits arising from the requirements we adopt today outweigh their associated burdens, particularly since the cost of these requirements is likely to be relatively low due to commonalities with existing outage reporting requirements. The rule changes adopted in the *Report and Order* will enable 988 special facilities to accelerate the public's ability to reach the 988 Lifeline during an outage, thereby reducing the probability of lives being lost during such an outage. The outages experienced by smaller providers with fewer subscribers would generally take longer to meet the required reporting thresholds, which would effectively provide more time to investigate an outage before it is required to be reported. Southern Linc further accuses the Commission of "assuming that all employees of a provider's affiliates – no matter how distant – should be considered 'available resources' to support the provider's compliance efforts, regardless of whether the employees of those affiliates have any responsibility to support wireless network operations."¹²⁷ However, the Commission does not make this assumption. If it were assumed that service providers already had available staff to implement the requirements adopted in the *Report and Order*, then the costs to service providers would be estimated to be zero. To the contrary, the cost estimates are grounded in the additional labor hours and wages needed to comply with the *Report and Order*'s requirements.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

33. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."¹²⁸

34. The Commission continues to adopt measures to facilitate the reliability of the 988 Lifeline network and meet its public safety obligations for oversight of the integrity of the 988 communications infrastructure by implementing measures to ensure that 988 special facilities can expect consistent and timely outage notifications whenever there is an outage that potentially affects 988 Lifeline service. While doing so, the Commission is mindful that small and other covered 988 and originating service providers may incur costs which we weighed against the public interest benefits of the new obligations and determined the benefits outweigh the costs. The specific steps the Commission has taken to minimize costs and reduce the economic impact for small entities and alternatives considered are discussed below.

35. The adoption of our proposal to require entities that provide the 988 Lifeline with capabilities such as the ability to receive, process, or forward calls to report outages that potentially affect the 988 special facilities in NORS¹²⁹ closely tracks the requirements applicable to 911 outage reporting which should minimize some economic impact of compliance for small entities. For example, the *Report and Order* requires the use of NORS for 988 outage reporting, which is already used for 911 outage reporting. The *Report and Order* also adopts thresholds to trigger the 988 outage reporting requirements that are similar to the 911 outage duration and user minute thresholds. Specifically reportable outages that

¹²⁷ *Id.* at 6.

¹²⁸ 5 U.S.C. § 604(a)(6).

¹²⁹ 988 Outage NPRM at 8-9, paras. 13-14.

potentially affect a 988 special facility are events that result in the loss of the ability of the 988 Lifeline to receive, process, or forward calls, potentially affecting at least 900,000 user-minutes and lasting at least 30 minutes duration.¹³⁰ Therefore, to the extent small entities have or will implement the 911 outage reporting requirements already adopted by the Commission, compliance with 988 reporting requirements should not impose any significant additional costs.

36. We considered but reject arguments that it is not necessary for the FCC to provide the parties responsible for operation of the 988 Lifeline with timely and actionable information about outages that occur after those communications reach the Lifeline,¹³¹ and reporting requirements are not necessary because SAMHSA and the VA already have visibility into outages that occur after calls reach the 988 Lifeline.¹³² Requiring small and other covered 988 service providers to report outages is appropriate because the services they offer, which ensure that calls are routed to the correct destination after a call reaches the 988 Lifeline, are essential to the Lifeline's availability.¹³³ Similarly, we considered but did not agree that it is premature for the Commission to apply 988 outage reporting requirements to OSPs.¹³⁴ Originating service providers are critical in providing 988 service. Thus, cable, satellite, wireless, wireline, and interconnected VoIP providers as well as 988 service providers will be required to report both voice service 988 outages in NORS. The adopted rules are the same for both covered 988 service providers and originating service providers which should streamline the requirements and reduce the burden of reporting for small and other providers.

37. Our decision to require 988 outage reports be filed with the Commission in NORS consistent with the current 911 requirements for outage report filing processes and timing, is another step that should minimize the impact of the adopted requirements for small entities. Small entities and other industry participants are already familiar with NORS. Moreover, industry participants who support the use of NORS view it as a less burdensome approach which will reduce the implementation costs associated with 988 outage reporting, and will be significantly less costly and burdensome than implementing a new or different reporting system.”¹³⁵ In addition, reporting in NORS “will streamline the reporting process and allow [small and other] providers to devote maximum attention to addressing the outage itself and getting service back up and running, rather than diverting time and resources to more

¹³⁰ We note that “loss of the ability of the 988 Lifeline to receive . . . calls” includes outages in originating service providers’ networks that prevent successful transmission of calls to the Lifeline.

¹³¹ CX360 Comments at 3.

¹³² CX360 Reply Comments at 5.

¹³³ See T-Mobile Comments at 3-4 (“[T]his proceeding was initiated in response to a service outage experienced by Intrado, the company that provides telecommunications services to the 988 Lifeline, that rendered the 988 service inaccessible nationwide. . . . Simply put, outage reporting by 988 CSPs is appropriate because there is a direct link between services provided by 988 CSPs and the availability of the 988 Lifeline.”); CTIA Comments at 3-4; AT&T Comments at 6 (“Because Covered 988 Service Providers provide service directly to the agencies overseeing the 988 Lifeline . . . , they would be in a better position than Originating Service Providers to notify the FCC of outages impacting 988, because they actually offer special services that are specific to the provision of the 988 Lifeline.”); Verizon Comments at 2 (“The scope of the proposed codified rule is appropriately focused on ‘Covered 988 providers’ These are the entities that provide the 988 Lifeline with service through direct contractual arrangements, and are directly accountable to the 988 Lifeline and the local help centers it supports.”).

¹³⁴ CTIA Comments at 5; Southern Linc Reply Comments at 4.

¹³⁵ ATIS Comments at 5.

complex or cumbersome reporting requirements.”¹³⁶ To further minimize the costs of reporting for small and other providers, the streamlined process will include the addition of a checkbox to NORS for reporting providers to indicate whether a reported outage potentially affects a 988 special facility.

38. We gave consideration to an alternative proposal to allow reporting by email instead of NORS reporting,¹³⁷ but declined to allow email reporting for several reasons impacting both the efficiency and effectiveness of 988 reporting. As an initial matter, allowing outage reports to be submitted via e-mail would create opportunities for inconsistently styled filings with incomplete or confusing information which would lead to Commission staff taking up providers’ time with numerous calls and questions about their filings. The submission of reports by e-mail would also greatly diminish the Commission’s ability to record historic outage data, analyze outage trends, and share outage information with federal, state, Tribal, and territorial agencies. Lastly, we do not believe that allowing email reporting would reduce the administrative burdens for small and other providers, and could actually increase their recordkeeping burdens and in-turn increase the overall compliance burden.

39. The Commission additionally considered but declined to require local crisis centers to be among those 988 special facilities that receive outage notifications recognizing that such a requirement would place significant burdens on the 988 Lifeline during outages. Similarly, we declined to require that PSAPs be notified about 988 outages, which we concluded would be too administratively burdensome for each small and other service provider to continuously track and update the list of PSAPs across the country that have opted into receiving 988 outage notifications. Further, we declined to require that notifications should include contact information for those callers that failed to connect to the 988 Lifeline since the outage began based on our conclusion that more study is needed to determine whether it is technically feasible. A further step we took to minimize the economic impact for small entities includes allowing additional time for compliance for those covered 988 service providers that may not have existing NORS filing or outage notification obligations. These covered 988 service providers have an additional six months to develop the capabilities and processes necessary to comply with rules adopted in the *Report and Order*.¹³⁸ In addition, as we allow for 911 notification, we also allow covered 988 service providers, originating service providers, and 988 special facilities to mutually agree to alternate means of outage notification.

G. Report to Congress

40. The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹³⁹ In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁴⁰

¹³⁶ USTelecom Comments at 3. *See also* USTelecom Reply Comments at 3; Veterans Crisis Line Comments at 1 (“988 reporting requirements should be consistent with the 911 reporting requirements. . . . Service providers should report to the NORS system.”).

¹³⁷ CX360 Reply Comments at 8.

¹³⁸ *See* CX360 Reply Comments at 8.

¹³⁹ *See* 5 U.S.C. § 801(a)(1)(A).

¹⁴⁰ *See* 5 U.S.C. § 604(b).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline*, PS Docket No. 23-5; *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80; *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Report and Order (July 20, 2023)

It was a year ago this week that the 988 hotline went into effect. Thanks to the work of this agency, anyone, anywhere in this country can call or text this easy-to-remember, three-digit number for the Suicide and Mental Health Crisis Lifeline at any time.

The numbers show the early success of our efforts. During the past year, we saw a nearly 50 percent increase in the number of calls to 988 when compared to the ten-digit number that had been used for this lifeline in the past. And texting—functionality I insisted we add to 988—has proven even more popular than calls. All told, there have been five million people who have reached out to 988 in the last year.

The numbers demonstrate how deep the need is for this service. Because those are five million people who found a place to turn, someone to listen, and a way to receive support.

This week I visited with the Latin American Youth Center in Washington to talk about 988. This is an organization that helps young people transition to adulthood. The community they work with is low-income and often unhoused. One of the intake managers told me nearly all of the young people she signs up for services have used this number—some multiple times.

This week I also spoke with The Trevor Project and Whitman-Walker Institute about 988 and the communities they serve. LGBTQ youth are four times more likely to attempt suicide than their heterosexual peers—not because they are inherently more prone to suicide because of their orientation or gender identity but because of how they are mistreated and stigmatized in society. Watch the cruelty of the discourse in our country right now. If we don't find a way to stop it, these numbers will grow.

These discussions were a reminder that when it comes to mental health in this country, we have real work to do. Remember also that great programs like 988 do not thrive without continuous attention and care. At the Federal Communications Commission we commit to that care today—and doing our part.

First, in this order we take steps to make sure 988 is reliable. In December of last year, the hotline experienced a brief nationwide calling outage. Today, we establish rules that require reporting and notification in the event of any future 988 outage, just like we require with 911. That means any hotline outage will be recorded in the Network Outage Reporting System and this information will be shared directly with the Department of Health and Human Services, the Department of Veterans Affairs, and the 988 administrator. Like with 911, it is vital that any problems with 988 are shared fast with the right people—so we understand what went wrong and can make it right.

Second, we know we have work to do to continue to publicize the new, three-digit hotline. I hope my colleagues will consider visits to do so this September during National Suicide Prevention Week and throughout the year. We will be happy to help each of you make this happen.

Third, we are working with our partners at the Department of Health and Human Services, and specifically the Substance Abuse and Mental Health Services Administration, to find ways to better connect people who reach out to 988 to resources in the communities where they actually make that call or text. Right now, we have underway a trial that tests routing 988 calls of those in crisis to receive care where they are rather than based on area code. We are mindful that this is not just a technical matter; because when it comes to healthcare there are vitally important issues with privacy and security and as we develop technical solutions, we want experts in mental health to work with us every step of the way. And we are making progress.

Thank you to those responsible for this effort, including Brenda Boykin, John Chapa, Rochelle Cohen, John Evanoff, David Furth, Amanda Groccia, Shabbir Hamid, Ryan Hedgpeth, Debra Jordan, William Kang, Nicole McGinnis, Erika Olsen, Austin Randazzo, Tara Shostek, and Rachel Wehr from the Public Safety and Homeland Security Bureau; Heather Hendrickson, Michelle Sclater, and Christi Shewman from the Wireline Competition Bureau; Stacy Jordan and Aleks Yankelevich from the Office of Economics and Analytics; William David Wallace from the Consumer and Governmental Affairs Bureau; Matthew Warner from the Wireless Telecommunications Bureau; Jeremy Marcus, Ryan McDonald, Victoria Randazzo, and Shana Yates from the Enforcement Bureau; Deborah Broderson, Douglas Klein, Marcus Maher, Anjali Singh, Chin Yoo, and Bill Richardson from the Office of General Counsel; and Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

RE: *Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline*, PS Docket No. 23-5; *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80; *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336; Report and Order (July 20, 2023).

Five million. That's the number of calls, texts, and chats that the Suicide and Crisis Lifeline has received in just a year, since we required that the Lifeline be reachable by an easy-to-remember three-digit number: 988.¹

Five million. Behind that number are people – young and old; men, women, and children; veterans; living in cities and rural areas – reaching out in their darkest hour. And more people than ever before. Last year's number reflects a 35 percent increase compared to when the Lifeline was only reachable via a 10-digit number.

Five million. Increased usage is no doubt a metric of success, but we cannot slow down when it comes to providing potentially life-saving services. I'm proud of our telecom community for not taking its foot off the gas here. There was an outage to the 988 Lifeline in December 2022. In January 2023 we proposed rules to ensure that the Commission, our federal partners at the Substance Abuse and Mental Health Services Administration and the Department of Veterans Affairs, and the 988 administrator would be swiftly notified of any subsequent outage, so that people needing to reach the Lifeline could be re-directed and re-routed to alternate channels. Today, six months later, we adopt those rules. That follows the commendable pace that the FCC set – and our providers followed – in establishing 988 and text-to-988.

There is still work to do. Awareness of the Lifeline, and the service it provides, must increase.² Wait times for those contacting the Lifeline have dropped tremendously in the last year, and stakeholders will need to work hard to ensure that an increase in awareness does not reverse this trend. As always, in cross-cutting issues like this, I am glad to see lawmakers and advocates working together to serve the people, and I am proud of the FCC's role in doing so as well.

Thank you to the Commission staff who worked on this item, and who have worked on our steady stream of 988 items over the last few years. Five million. There's a lot behind that number, and you've played an important role.

¹ NPR, *988 mental health crisis line gets 5 million calls, texts and chats in first year* (July 15, 2023), <https://www.npr.org/sections/health-shots/2023/07/15/1187862144/988-mental-health-crisis-line-gets-5-million-calls-texts-and-chats-in-first-year>. See also KKF, *Taking a Look at 988 Suicide & Crisis Lifeline Implementation One Year After Launch* (July 14, 2023), <https://www.kff.org/other/issue-brief/taking-a-look-at-988-suicide-crisis-lifeline-implementation-one-year-after-launch/>.

² Pew Charitable Trusts, *Most U.S. Adults Remain Unaware of 988 Suicide and Crisis Lifeline* (May 23, 2023), <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/05/23/most-us-adults-remain-unaware-of-988-suicide-and-crisis-lifeline>.

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

In the Matter of	)	
	)	
Amendment of Parts 73 and 74 of the	)	MB Docket No. 03-185
Commission's Rules to Establish Rules for Digital	)	
Low Power Television and Television Translator	)	
Stations	)	

FIFTH REPORT AND ORDER

Adopted: July 20, 2023

Released: July 20, 2023

By the Commission: Chairwoman Rosenworcel and Commissioner Carr issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	2
III. DISCUSSION	8
A. Authorizing FM6 Operations as Ancillary or Supplementary Services.....	8
1. Existing FM6 Operations Serve the Public Interest as Required by Section 336(a)(2)	9
2. Existing FM6 Operations Satisfy Section 336(b)(1)	19
3. Existing FM6 Operations Satisfy Section 336(b)(2)	23
B. Limiting FM6 Operations to Existing Operators	24
C. Establishing Rules Governing FM6 Operations	35
1. Codifying Certain FM6 STA Conditions	35
2. Application of Part 73 FM Rules	53
3. Five Percent Fee For Ancillary or Supplementary Services.....	59
D. Licensing of Additional NCE FM Stations.....	61
E. Elimination of Certain TV6 Interference Protections	65
IV. PROCEDURAL MATTERS.....	66
V. ORDERING CLAUSES.....	71
APPENDIX A – List of Commenters and Reply Commenters	
APPENDIX B – Final Rules	
APPENDIX C – Final Regulatory Flexibility Analysis	

I. INTRODUCTION

1. In this Fifth Report and Order (*R&O*), we conclude that the public interest will be served by allowing the continued operation of existing analog FM radio services (FM6 operations) by channel 6 digital low power television (LPTV) stations (FM6 LPTV stations), subject to certain conditions. We also decline to adopt a proposal discussed in the *Further Notice*¹ that would allow new FM radio stations to be licensed on 82-88 MHz across the United States, for lack of record support.²

¹ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking, MB Docket No. 03-185, FCC 22-40, paras. 50-56 (2022) (*Further Notice*). Appendix A of this *R&O* contains a list of comments filed in response to the (continued....)

II. BACKGROUND

2. *2014 LPTV DTV Third NPRM and 2019 Refresh PN.* Because the FM radio spectrum band is adjacent to the TV spectrum band, FM radio listeners are able to receive the audio portion of analog channel 6 stations at 87.75 MHz.³ Due to their ability to reach radio audiences, in the 1980s, some channel 6 LPTV stations began to use a portion of television spectrum to provide *de facto* radio programming.⁴ In the *LPTV DTV Third NPRM*,⁵ we sought comment on whether analog FM6 operations are allowable by digital LPTV stations.⁶ Specifically, we sought comment on whether a digital LPTV station providing an analog FM radio-type service as an ancillary or supplementary service is consistent with the Communications Act of 1934, as amended (Act) and the Commission's rules (rules).⁷ We also sought comment on whether a digital LPTV station would be able to operate an analog transmitter without interfering or derogating its digital operation.⁸ In addition, we sought information on the potential for FM6 operations to cause interference to primary licensees such as noncommercial educational (NCE) FM radio licensees, and whether to adopt rules to prevent such interference.⁹ The record was split with a coalition of FM6 LPTV stations supporting the Commission's proposal to allow

(Continued from previous page)

Further Notice and the shorthand abbreviations for each that appear in this *R&O*. A list of previous commenters in this proceeding was contained in Appendix A to the *Further Notice*. Previous comments are distinguished by the date they were filed.

² We also decline to address at this time a proposal to eliminate the television channel 6 (TV6) distance separation (interference protection) rules for radio services operating on reserved band FM channels 201-220, or to alternatively revise and update them for a post-digital transition world. *See infra* Section III. E. – Elimination of Certain TV6 Interference Protections.

³ 87.75 MHz is adjacent to noncommercial educational (NCE) FM channel 201 (88.1 MHz). Prior to the LPTV digital transition, some FM6 LPTV stations also operated on 87.7 MHz.

⁴ *See Further Notice* at paras. 3-13 for a detailed account of the history of FM6 operations. *See* comments filed by Venture Technology, LLC at 4 (Jan. 14, 2015) (Venture 2015 Comments). Prior to the LPTV digital transition, we estimate that there were close to 30 LPTV stations providing FM6 service. *See Further Notice*, para. 19 *citing* comments filed by Preserve Community Programming Coalition (PCPC) at 10 and Exhibit A (Jul. 3, 2019) (listing 28 stations providing FM6 services as of June 2019).

⁵ *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Notice of Proposed Rulemaking, MB Docket No. 03-185, 29 FCC Rcd 12536 (2014) (*LPTV DTV Third NPRM*).

⁶ *See LPTV DTV Third NPRM*, 29 FCC Rcd at 12554, para. 47. *See* 47 CFR § 74.790(m) that replaced 47 CFR § 74.731(m) (mandating that LPTV stations terminate all analog operations not later than 11:59pm local time on July 13, 2021).

⁷ *Id.* at 12554, para. 49. We also asked whether allowing this service would conflict with section 336(b)(1) of the Act, which states the TV frequency is “for the provision of advanced television services,” or conflict with the rule requiring that a digital LPTV station transmit an over-the-air *video* program signal at no direct charge to viewers. *Id.* at 12554-55, para. 49, *citing* 47 CFR § 74.790(g)(3) and 47 C.F.R. § 336(b)(1).

⁸ *Id.* at 12555, para. 50, *citing* 47 U.S.C. § 336(b)(2). Section 336(b)(2) of the Act provides that the Commission shall “limit the broadcasting of ancillary or supplementary services on designated frequencies as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies....” 47 U.S.C. § 336(b)(2).

⁹ *LPTV DTV Third NPRM*, 29 FCC Rcd at 12555, para. 51. The Commission also asked whether the Commission's Part 73 FM radio rules should apply to FM6 operations, and whether FM6 operations should be subject to the five percent annual fee applicable to gross revenues from ancillary and supplementary services which are feeable. *Id.* at 12555-56, paras. 52-53, *citing* 47 U.S.C. §§ 336(b)(3), 336(e), and 47 CFR § 73.624(g).

FM6 operations to continue as ancillary or supplementary services¹⁰ and FM radio broadcasters, including National Public Radio (NPR) and other noncommercial educational FM broadcasters, and full power television stations licensed on channel 6 opposing the proposal.¹¹

3. In December 2019, after a lack of consensus in the 2014 record, the Media Bureau (Bureau) released a public notice seeking to refresh the record.¹² The Bureau sought specific comment on whether, and how, the Commission could legally limit the number of stations eligible to offer FM6 services and the basis for any such limitation.¹³ The Bureau also sought comment on the possibility certain FM6 operations would cause impermissible interference to digital television stations (including co-channel interference) and to FM radio stations.¹⁴ The Bureau requested parties submit more recent technical studies demonstrating the feasibility of transmitting analog audio signals within a digital television station's spectrum.¹⁵ The record received in response to the *Refresh PN* largely mirrored the split record responding to the *LPTV DTV Third NPRM*.¹⁶

4. *2021 Digital Transition and FM6 STA Filings*. The LPTV digital transition was completed on July 13, 2021.¹⁷ All remaining analog LPTV stations were required to terminate their

¹⁰ See, e.g., Electronic Media Foundation (EMF) Comments at 2 (Jan. 9, 2015); George Flinn Comments at 4 (Jan. 9, 2015); Venture Comments at 3-4 (Jan. 9, 2015); Signal Above LLC (Signal) Comments at 5-6 (Jan. 12, 2015); Metro TV, Inc. (Metro) Comments at 1 (Jan. 12, 2015); Murray Hill Broadcasting, LLC Comments at 1-3 (Jan. 9, 2015); One Ministries, Inc. (OMI) Comments at 1 (Jan. 12, 2015); Island Broadcasting, LLC (Island) Comments at 6 (Jan. 9, 2015); Joint FM6 Commenters Comments at 1 (Jan. 9, 2015); LPTV Spectrum Rights Coalition (LSRC) Comments at 12 (Jan. 14, 2015); Venture Reply Comments at 2-3 (Feb. 2, 2015); Signal Reply Comments at 3-4 (Feb. 2, 2015); OMI Reply Comments at 2-3 (Jan. 27, 2015); Joint FM6 Commenters Reply Comments at 4-6 (Feb. 2, 2015); and LSRC Reply Comments at 6 (Feb. 4, 2015).

¹¹ See, e.g., NPR Comments at 3-9 (Jan. 9, 2015); ABC, Inc. Reply Comments at 1-3 (Feb. 2, 2015); NPR Reply Comments at 3-8 (Feb. 2, 2015); and REC Networks (REC) Reply Comments at 1-8 (Feb. 2, 2015).

¹² See *Media Bureau Seeks to Update the Record on the Operation of Analog Radio Services by Digital LPTV Stations as Ancillary or Supplementary Services*, Public Notice, 34 FCC Rcd 11162 (MB 2019) (*Refresh PN*). The Bureau noted that a group of licensees of FM6 LPTV stations had submitted *ex parte* filings since the Commission's 2015 decision deferring action on the question of whether to permit FM6 operations as ancillary or supplementary services. *Id.* at 11163, n.2, citing Letter from Channel 6 Commenters (June 10, 2019) (Channel 6 Commenters 2019 *Ex Parte*); Letter from PCPC (Jul. 3, 2019) (PCPC 2019 *Ex Parte*); and Letter from Cal State (Aug. 1, 2019) (Cal State 2019 *Ex Parte*).

¹³ Specifically, the Commission asked whether only those "currently operating" analog channel 6 LPTV stations should be eligible, and whether "currently operating" should be determined as of the release date of the *Refresh PN*. *Id.* at 11165, para. 5.

¹⁴ *Id.* at 11164, para. 4, citing Channel 6 Commenters *Ex Parte* at 15; PCPC Informal Comments at 9; and Cal State *Ex Parte* at 2.

¹⁵ *Id.* at 11164, para. 4.

¹⁶ See e.g., LSRC Comments at 2-3, 5 (Jan. 23, 2020) (FM6 should not be charged 5% fee; should not be limited to existing operators; and will not cause interference); NPR Comments at 2-11, 13-18 (Jan. 23, 2020) (FM6 LPTV should not be allowed at all; creates interfere issues with other licensed users; is an inefficient use of spectrum; does not qualify as ancillary or supplementary service); cf. LSRC Comments, at 12 (Jan. 14, 2015) (FM6 LPTV should be permitted as ancillary and supplemental service; no interference issues have arisen; service should not be subject to 5% fee as it is not a "feeable" service); and NPR Reply Comments at 3-9 (Jan. 9, 2015) (permitting FM6 LPTV is not a permissible ancillary or supplementary service; would be an inefficient use of spectrum; would likely cause interference).

¹⁷ See 47 CFR § 74.790(m) previously § 74.731(m).

analog operations and begin operating in digital on that day.¹⁸ In March 2021, in an effort to preserve its FM6 operations following the digital transition deadline, a channel 6 LPTV station filed an application seeking authorization to convert its facility to ATSC 3.0 digital and to operate an ATSC 3.0 transmitter and a separate analog FM radio transmitter on 87.7 MHz.¹⁹ On June 10, 2021, the Bureau granted a digital engineering request for special temporary authorization (FM6 STA)²⁰ to conduct such operations for a period of six months, subject to numerous conditions.²¹ Specifically, the station was required to: Convert to ATSC 3.0 digital operations; provide at least one video stream on the ATSC 3.0 portion on a full time (24 x7) basis; limit FM6 operations to 87.75 MHz; operate on a non-interference basis; provide audio and video coverage to similar populations; and provide status reports at certain intervals regarding interference and population reach.²² The station was also restricted from modifying, assigning or transferring the license of the facility.²³ These conditions were established to prevent interference, evaluate the operations of FM6 LPTV stations utilizing an FM transmitter and ATSC 3.0 transmitter at the same time, and maintain the status quo while the Commission continued to evaluate how to treat FM6 operations. The conditions were also intended to ensure that the FM6 LPTV station did not prioritize its FM operations over its television operations, which was an issue during analog operations. Other FM6 LPTV stations subsequently requested an FM6 STA. In total, the Bureau has granted FM6 STAs to 13 FM6 LPTV stations that had previously been providing FM6 service while they were operating in analog.²⁴ All the FM6 STAs contain the same conditions and have been extended multiple times. The status reports provided with the FM6 STAs and their extensions have shown no incidents of interference with their own ATSC 3.0 television operations and other licensees, including FM radio licensees.

5. *2022 Further Notice.* In our *Further Notice*, we sought to resolve the longstanding question of FM6 operations by seeking comment on whether allowing continued analog radio operations on TV channel 6 by existing FM6 LPTV stations serves the public interest.²⁵ Specifically, we sought comment on whether FM6 operations should be authorized to continue in any capacity,²⁶ the extent to which in the post-LPTV digital transition world consumers rely on FM6 programming, and whether such consumer reliance on programming should enter into the public interest analysis of FM6 services when programming is variable.²⁷ We asked commenters to weigh the current benefits of FM6 radio programming against the lost opportunities from an expanded adjacent NCE FM service or digital LPTV service on channel 6.²⁸ We also asked whether allowing continued analog FM6 operations is an efficient

¹⁸ *Id.* We note that a small number of LPTV and TV translator stations have not yet completed construction of their digital facilities and have been granted additional time to do so. Since analog television operations are no longer permitted, these LPTV and TV translator stations must remain silent until such time as they complete construction.

¹⁹ See LMS File No. 0000138107; *Further Notice*, 34 FCC Rcd at 11166, para. 14.

²⁰ See LMS File No. 0000147729.

²¹ See Letter from Barbara A. Kreisman, Chief, Video Division, to Licensee of KBKF-LD, San Jose, California, Venture Technologies Group, LLC (June 10, 2021) available at LMS File No. 0000147729.

²² *Id.* at 2.

²³ *Id.* Following issuance of the *Further Notice*, an additional condition was added to the FM6 STA stating that the Bureau's action was not intended to prejudice the outcome of the instant proceeding and that all licensees must come into compliance with any rules adopted by the Commission as part of the instant proceeding. See e.g., Letter from Barbara A. Kreisman, Chief, Video Division, to Licensee of KBKF-LD, Venture Technologies Group, LLC (Jan. 20, 2023) available at LMS File No. 0000205892.

²⁴ A list of the 13 stations is provided at *infra* note 105. See also *Further Notice* at para. 16, n.43.

²⁵ *Id.* at para. 1.

²⁶ *Id.* at paras. 18-21.

²⁷ *Id.* at para. 19.

²⁸ *Id.* at para. 20.

use of Commission spectrum and comports with our recent efforts to adopt more efficient and innovative use of digital television spectrum,²⁹ or instead whether programming currently provided by FM6 operations could be provided through other means of delivery and would be more spectrally efficient.³⁰

6. In addition, we sought comment on whether existing FM6 operations comply with the ancillary or supplementary provisions of the Act and our rules,³¹ whether the operation of analog FM radio services in conjunction with a digital television service would cause impermissible interference to other radio and television licensees,³² and whether the fact that FM6 stations are operating in ATSC 3.0 digital mode changes the potential for their analog FM6 operations to interfere with or derogate the LPTV station's television service.³³ To the extent we permitted FM6 operations to continue, we sought comment on how best to authorize FM6 operations, including whether the conditions attached to the FM6 STAs should remain³⁴ and whether to limit future FM6 operations to only those LPTV channel 6 stations with "active" FM6 STAs on the release date of the *Further Notice*.³⁵ We went on to ask whether, and under what circumstances, an LPTV station's ancillary or supplementary FM6 operations should be deemed "feeable" and subject to the five percent ancillary or supplementary fee.³⁶ We also asked whether FM6 operations are "analogous to other services subject to regulation by the Commission" within the meaning of section 336(b)(3) of the Act and our rules and, if so, which of the Part 73 rules should apply to FM6 operations.³⁷

7. Finally, we asked for comment on a proposal to repurpose television channel 6 (TV channel 6) spectrum (82-88 MHz) for FM services in locations where the channels are not being used to provide "actual television programming."³⁸ We sought comment on the technical feasibility of this proposal, the potential for interference, the costs and benefits of an expanded FM band, and if permitted whether use should be limited to NCE FM stations.³⁹ We also sought comment on whether to eliminate TV channel 6 (TV6) interference protections for Low Power FM (LPFM) radio, NCE FM radio, Class D FM radio (10 watt), and FM translator stations operating on reserved band FM channels 201-220, or, to alternatively revise and update our interference protections to better reflect a post-digital television transition world.⁴⁰

²⁹ *Id.*

³⁰ *Id.* at para. 21

³¹ *Id.* at paras. 23-24.

³² *Id.* at paras. 34-36.

³³ *Id.*

³⁴ *Id.* at paras. 23-33.

³⁵ *Id.* at paras. 41-44. "Active" is defined as an initial engineering STA that is granted and unexpired or a request for extension of an engineering STA that is granted or pending at the time of the release date of the 2022 *Further Notice*. *Id.* at para. 41. The term "release date of the *Further Notice*" means the date the adopted *Further Notice* was released by the Commission, which was June 7, 2022.

³⁶ *Id.* at paras. 39-40.

³⁷ *Id.* at paras. 37-38.

³⁸ *Id.* at paras. 45-49.

³⁹ *Id.*

⁴⁰ *Id.* at paras 50-56.

III. DISCUSSION

A. Authorizing FM6 Operations as Ancillary or Supplementary Services

8. After a lengthy proceeding involving multiple rounds of comments, we conclude that both the Act and our rules allow existing FM6 operations to be provided on an ancillary or supplementary basis to a channel 6 LPTV station's digital television operation, and that it is in the public interest to preserve FM6 operations by existing FM6 LPTV stations.⁴¹ The Act provides that ancillary or supplementary services must be "consistent with the public interest, convenience, and necessity";⁴² must be "consistent with the technology or method designated by the Commission for the provision of advanced television services";⁴³ and must "avoid derogation of any advanced television services."⁴⁴ We conclude that existing FM6 services meet all of these requirements of the Act.

1. Existing FM6 Operations Serve the Public Interest as Required by Section 336(a)(2)

9. We conclude that existing FM6 operations are consistent with the mandate of section 336(a)(2) of the Act that the Commission allow digital television stations "to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity."⁴⁵ Specifically, we note the length of time that certain FM6 LPTV stations have been operating and efforts they undertook to convert to digital operations to limit consumer impact. To preserve their programming (especially public safety and emergency information) that viewers have come to rely on, we find the public interest will be served by continuing existing FM6 operations. Further we find that the benefits of preserving *existing* FM6 LPTV stations outweigh concerns that FM6 operations are an inefficient use of spectrum or could cause interference to their own television service or other licensed users.

10. The record in this proceeding reflects widespread recognition of the long history of public interest benefits provided by existing FM6 LPTV stations' FM6 operations.⁴⁶ Since the 1980s, FM6 LPTV stations have maintained a close connection with the communities they serve through their

⁴¹ In addition to permitting the 13 FM6 LPTV stations with active FM6 STAs to continue FM6 operations as an ancillary and supplementary service, we also permit WVOA-LD, to commence FM6 operations based on its unique circumstances. *See infra* Section III.B – Limiting FM6 Operations to Existing Operators.

⁴² 47 U.S.C. § 336(a)(2).

⁴³ 47 U.S.C. § 336(b)(1).

⁴⁴ 47 U.S.C. § 336(b)(2).

⁴⁵ 47 U.S.C. § 336(a)(2).

⁴⁶ *See Further Notice* at para. 18 ("FM6 supporters have trumpeted the merits of FM6 operations by maintaining that they provide diverse, niche, and local programming that is not otherwise available in the stations' communities."); *see also* Electronic Media Foundation Comments at 2 (Jan. 9, 2015) (EMF 2015 Comments); George Flinn Comments at 4 (Jan. 9, 2015); Venture Comments at 3-4 (Jan. 9, 2015) (Venture 2015 Comments); Signal Above LLC (Signal) Comments at 5-6 (Jan. 12, 2015) (Signal 2015 Comments); MetroTV, Inc. Comments at 1 (Jan. 12, 2015); Murray Hill Broadcasting, LLC (Murray Hill) Comments at 1-3 (Jan. 9, 2015); One Ministries, Inc. (OMI) Comments at 1 (Jan. 12, 2015); Island Broadcasting, LLC (Island) Comments at 6 (Jan. 9, 2015); Joint Commenters Comments at 1 (Jan. 9, 2015); and LSRC Comments at 12 (Jan. 14, 2015) (LSRC 2015 Comments); Venture Reply Comments at 2-3 (Feb. 2, 2015); Signal Reply Comments at 3-4 (Feb. 2, 2015); OMI Reply Comments at 2-3 (Jan. 27, 2015); Joint Commenters Reply Commenters at 4-6 (Feb. 2, 2015); and LSRC Reply Commenters at 6 (Feb. 4, 2015); Lovcom, Inc. Comments at 1 (Jan. 23, 2020); EMF Comments at 2-4 (Jan. 23, 2020); Seattle 6 Broadcasting Company, LLC (Seattle 6) Comments at 1 (Jan. 22, 2020); Prism Broadcasting Network, Inc. Comments at 3 (Jan. 22, 2020); Kids Television, LLC Comments at 3 (Jan. 22, 2020); Hombro Network Reply Comments at 1 (Feb. 4, 2020).

FM6 programming.⁴⁷ Listeners have tuned to existing FM6 LPTV stations for foreign language, religious and sports programming; programming intended to support historically underserved populations such as native Spanish speakers, immigrant populations; and programming designed for niche music audiences.⁴⁸ In addition, existing FM6 LPTV stations provide emergency and public safety information that their listeners have come to rely upon in times of disasters.⁴⁹ Although some commenters contend that certain FM6 LPTV stations are not serving the public interest because they are not providing any programming designed specifically for their local audiences but are merely airing music programming,⁵⁰ we do not make distinctions based on format.⁵¹ Therefore, we find that the record weighs in favor of the public interest benefits provided by existing FM6 LPTV stations.⁵²

11. Although FM6 LPTV stations were required to discontinue analog television operations and convert to digital in July 2021, there were 13 FM6 LPTV stations that were able to complete their

⁴⁷ See NAB Comments at 5 (“loyal audiences have developed around some FM6 stations . . . and NAB believes permanent authorization of those established services is warranted and would serve the public interest”); PCPC Comments at 6 (the nature of the programming offered by existing FM6 LPTV stations provides a unique and substantial public interest benefit, largely due to the distinctive programming provided by existing FM6 LPTV stations, many of which serve “historically underserved populations, including native Spanish speakers, first- and second- generation immigrants, and older Americans”); NPR Comments at 5-6 (“the public interest would be served” by permanently authorizing existing FM6 LPTV stations with a significant history of FM6 service); REC Comments at 18 (“the provision of analog audio services on 87.7 in the 13 FM6 markets have become something that the public has depended on”).

⁴⁸ See PCPC Comments at 2-4 (KEFM-LD, Sacramento, California, broadcasts EthnoFM, a locally produced source of information for Sacramento’s Ukrainian, Lithuanian, Moldavian, Romanian, Georgian, Uzbek, Polish, Russian and Jewish ethnic immigrant communities); AVHN Comments at 2 (FM6 programming includes religious talk and music, public affairs, local affairs and news, education and sports); Flinn Comments at 1-2 (FM6 programming includes minority-focused and religious programming); Guadalupe Radio Comments at 1 (KZNO-LD, Big Bear Lake, California and KRPE-LD, San Diego, California broadcast Spanish-language programming for the Roman Catholic Church); PCPC Comments at 2-4 (KXDP-LD, Denver, Colorado broadcasts La Invasora, a locally produced, community oriented program format that includes Spanish-language news, traffic, and weather reports); PCPC Comments at 2-4 and Signal Comments at 1-2 (WDCN-LD, Fairfax, Virginia broadcasts La Nueva, a Spanish language music format with news and talk with a particular focus on the Washington, D.C. area’s large Central American community); SOL Comments at 1-2 (WNYZ-LD, New York, New York serves the interests and needs of the Korean community in New York city); PCPC Reply Comments at 3-4.

⁴⁹ See PCPC Comments 21-22 (noting the FM6 LPTV stations could provide a public safety service by airing national security announcements); KTL Comments at 2 (FM6’s presence on the FM dial is essential to connecting community, facilitating civic participation, and maintaining public safety); LSRC 2015 Comments at 6 (FM6 audiences enjoy and benefit from local news, community affairs programming, and emergency messages in various languages); PCPC Reply Comments at 4-5 (Feb. 6, 2020) (FM6 stations provide an invaluable resource for emergency information during extreme weather events); David Ponomar Comments at 1 (Jan. 14, 2020) (FM6 station notifies its audience of fire, flood and other emergencies and explains what to expect in case of power blackouts).

⁵⁰ See CFI Comments at 3-4 (admonishing certain FM6 LPTV stations for playing Spanish-language and Christian music).

⁵¹ See *Changes in the Entertainment Formats of Broadcast Stations*, Memorandum Opinion and Order, 60 F.C.C.2d 858, 863, para. 18 (1976) (“the marketplace is the best way to allocate entertainment formats in radio. . .”), *recon. denied*, Memorandum Opinion and Order, 66 FCC 2d 78 (1977), *rev’d sub nom.*, *WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev’d*, 450 U.S. 582 (1981).

⁵² Even NPR, which historically has been opposed to FM6 operations, now recognizes that “the public interest would be served” by permanently authorizing existing FM6 LPTV stations with a significant history of FM6 service. See NPR Comments at 5-6. And REC, another long-standing opponent of FM6 operations, acknowledges that “the provision of analog audio services on 87.7 in the 13 FM6 markets have become something that the public has depended on.” REC Comments at 18.

digital transition and resume their FM6 operations with an FM6 STA with limited, if any, service interruptions.⁵³ We find that preserving the long-time audio programming offered by these remaining FM6 LPTV stations aligns with one of the Commission's core principles guiding the digital transition—minimizing service disruptions.⁵⁴ FM6 LPTV stations provide free, over-the-air synchronized video and audio programming using a standard-compliant ATSC 3.0 signal and supplement that programming with additional free, over-the-air analog audio broadcast services. As discussed above, the availability of these additional audio services has provided programmers with a platform on which to invest in programming directed to unserved or underserved audiences that may not be available on any other stations in their markets – all while continuing to provide free over-the-air video programming pursuant to their television licenses. To remove this service that radio listeners have relied on for many years would contravene the Commission's goal of preserving service.

12. The public interest benefits of preserving existing FM6 operations also outweigh concerns about inefficient use of spectrum.⁵⁵ As we noted in the *Further Notice* and several commenters point out, some analog FM6 LPTV stations had a history of minimal video service.⁵⁶ With analog television operations, an FM6 LPTV station could not transmit a separate audio stream for its video programming and for radio reception.⁵⁷ The rules we adopt today address this issue.⁵⁸ As discussed further below, FM6 LPTV stations will be required to transmit a dual digital television and analog radio signal, thereby providing both new digital television services while maintaining existing audio services. The rules we adopt ensure that FM6 LPTV stations are first and foremost LPTV stations and that their video programming stream is prioritized over any audio stream. Further, enhanced compression technologies encompassed in the ATSC 3.0 standard provide broadcasters even greater bandwidth capacity on their channel for television services than under the ATSC 1.0 standard.⁵⁹ Therefore, we believe the rules we adopt appropriately address previous concerns that FM6 LPTV stations are using their spectrum inefficiently.⁶⁰ As the Commission has previously recognized, offering additional services

⁵³ We note that more than half of the 13 existing FM6 LPTV stations were able to convert to digital and resume their FM6 operations within 2 months of terminating their analog operations in July 2021. The remaining stations resumed FM6 operations between 4 and 8 months after the July 2021 transition deadline mainly due to supply chain delays in obtaining the necessary FM6 equipment that were outside of their control. *See, e.g.,* Application for Extension of Time of WNYZ-LD, LMS File No. 0000142452 (granted June 14, 2021).

⁵⁴ *See Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 5946, 5956, para. 22 (2001) (“While we wish to assure broadcasters a measure of flexibility in constructing their DTV facilities, we continue to want to assure that viewers do not lose service and we take seriously our mandate to speed the transition and to ensure that the spectrum is used efficiently.”); *see also Incentive Auction Task Force and Media Bureau Set Forth Tools Available to LPTV/Translator Stations Displaced Prior to the Special Displacement Window*, Public Notice, 32 FCC Rcd 4943 (IATF and MB 2017) (announcing a “toolkit” that LPTV stations displaced by the Incentive Auction could avail themselves of in order to remain on the air).

⁵⁵ *Further Notice* at para. 20; *see also* Common Frequency, Inc. (CFI) Comments at 4 (Jan. 23, 2020).

⁵⁶ *Id.* *See also* Reed Comments at 2 (FM6 LPTV stations - when previously analog stations – operated “effectively as aural-only FM radio stations; the video broadcast ha(d) little - or zero - connection to the aural broadcast”); REC Comments at 12 (“[w]hile the FM6 stations have had a track record for offering audio services, there is no true established track record for offering video services . . .”).

⁵⁷ PCPC Comments at 9.

⁵⁸ *See infra* Section III.C.1 – Codifying Certain FM6 STA Conditions.

⁵⁹ *See Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, Report and Order, 32 FCC Rcd 9930 (2017).

⁶⁰ We are not persuaded by commenters that suggest FM6 LPTV stations will abandon their current programming thereby undoing the public interest basis for allowing their continued FM6 operations. *See* Cal State Reply Comments at 4 (the ability of FM6 LPTV stations to abandon niche programming in favor of more profitable
(continued....)

that show that FM6 operations will not cause interference to either host digital television operations or adjacent channel FM radio stations in all circumstances. Therefore, because we have only anecdotal evidence involving specific unmodified stations, we are unable to conclusively state that no interference will occur from prospective new FM6 LPTV stations that do not have a track record of interference-free operations.⁶⁹

15. For prospective new FM6 operations, such interference concerns outweigh any benefits from adopting rules allowing new FM6 operations to commence, thus leading us to conclude that adopting rules to allow all channel 6 LPTV stations to offer new FM6 services would not serve the public interest as required by section 336(a)(2) of the Act.⁷⁰ Accordingly, we believe it prudent to proceed cautiously and establish rules in this Order only for existing FM6 stations, which have an established track record of non-interference and a history of providing FM6 service to the public. Commenters support limiting FM6 operations to the existing LPTV stations, provided we take steps to ensure that the existing stations (and WVOA-LD)⁷¹ will continue to provide FM6 service without causing interference.⁷² To that end, we adopt specific FM6 operational rules, such as limiting modifications and explicitly requiring that FM6 operations be conducted only on a non-interference basis.⁷³

16. We also conclude that the record in this proceeding demonstrates that there are no reasonable alternatives for existing FM6 operations that provide the same level of accessibility to existing audiences.⁷⁴ We are persuaded that the additional expense and/or lack of access make other options impractical as reasonable substitutes for established audiences and services. As commenters point out, to receive a digital audio stream on an LPTV station's multicast channel, the listener would need to purchase a digital television receive antenna in order to access the audio stream.⁷⁵ Further, listeners would lose the portability of an existing FM6 LPTV station's audio signal as it would only be available on a television set, which is generally a fixed device. Instead of having to take these additional, potentially costly steps to continue receiving this established audio programming, permitting existing FM6 operations to continue

(Continued from previous page)

stations operating pursuant to STAs was not sufficient to determine the potential for interference to FM stations); NPR 2015 Comments at 4 (studies conducted in 2014 underestimated the interference between FM6 stations and FM radio); NPR Comments at 13 (Jan. 23, 2020) (FM6 LPTV stations present significant technical and interference issues); REC Networks at 6-7 (Jan. 13, 2015) (questioning whether the Commission can prevent interference from FM6 LPTV stations to FM radio stations).

⁶⁸ *Refresh PN*, 34 FCC Rcd at 11164 (“we request the submission of any more recent technical studies demonstrating the feasibility of transmitting analog audio signals with a digital television station’s spectrum”); *Further Notice* at para. 36 (“we encourage commenters to study the question of FM6 interference and to provide the results of these studies in their comments”).

⁶⁹ See Bogner Comments at 1 (additional studies of FM6 operations in ATSC 3.0 environment are necessary); NAB Reply Comments at 6 (unable to make an informed recommendation concerning the potential for interference from FM6 because the technical record is not yet sufficient).

⁷⁰ Even though some TV6 LPTV stations may have previously provided FM6 service while operating in analog before the digital transition (i.e., legacy analog FM6 stations), we again do not have sufficient technical analysis to say for certain that there would be no interference to their own television operations or adjacent FM radio stations were we to allow them to recommence FM6 operations.

⁷¹ See *infra* Section III. B. – Limiting FM6 Operations to Existing Operators.

⁷² See NPR Reply Comments at 3.

⁷³ See *infra* Section III. C. 1. – Codifying Certain FM6 STA Conditions.

⁷⁴ See *Further Notice* at para. 21 (asking whether other options – including a digital audio-only stream on a LPTV multicast channel, a lease of digital subchannels on a local FM or LPFM station, the Internet, or an FM or LPFM license – would be suitable alternatives to FM6 service).

⁷⁵ See PCPC Comments at 7-8; REC Comments at 15-17; VCY Comments at 5.

as they are currently offered will allow listeners to utilize existing FM radio receivers, including in cars and using other portable radio devices, and continue to obtain FM6 audio programming in the manner that radio listeners are accustomed to receiving such audio content.

17. Similarly, we find that relocating FM6 programming to digital subchannels on local FM or LPFM stations could also be a more costly option because it too would potentially involve the purchase of new equipment for some consumers instead of relying on existing receivers.⁷⁶ Additionally, FM6 LPTV stations would have to negotiate programming agreements with FM and LPFM radio stations and pay to air their programming on other stations instead of simply airing their programming on their own station.⁷⁷ Further, given the unique types of programming often provided by FM6 LPTV stations, it may be difficult to find an entity interested in carrying their streams that is different from the entity's programming.⁷⁸ As for making the programming available through the Internet, this would create significant barriers for listeners who do not have Internet access, may only have fixed Internet access (thus losing portability of the existing FM6 audio signal), or may not have mobile Internet access with sufficient data plans or a device capable of streaming audio.

18. Finally, we find that obtaining a separate FM or LPFM radio license provides an unlikely alternative.⁷⁹ In particular, because LPFM stations must be operated on a noncommercial educational basis,⁸⁰ they are not an option for FM6 LPTV stations that historically have operated as commercial stations.⁸¹ Further, in the case of either LPFM or full power FM, acquiring a station could be an expensive and time consuming proposition for many FM6 LPTV stations, especially for those in larger markets. Therefore, for all of the foregoing reasons, we conclude that the public interest is best served by allowing existing FM6 operations to continue as an ancillary or supplementary service.

2. Existing FM6 Operations Satisfy Section 336(b)(1)

19. As required by Section 336(b)(1), we conclude that existing FM6 operations are “consistent with” the “technology or method designated by the Commission for the provision of advanced television services”⁸² As an initial matter, we interpret the phrase “consistent with” to allow for a degree of flexibility by requiring ancillary or supplementary services to be compatible with the technology or method for providing advanced television services.⁸³ A more narrow reading of the phrase

⁷⁶ See PCPC Comments at 7-8.

⁷⁷ See *id.*

⁷⁸ See *id.* at 8 (“because these limitations would fall disproportionately on low-income and non-English speaking listeners and threaten the Commission’s goal of providing access to more diverse programming, the public interest benefits of preserving FM6 programming are particularly pronounced”); see also REC Comments at 15.

⁷⁹ REC Comments at 16 (obtaining a license for an FM or LPFM station “would be an uphill battle as there is no true means to obtain a commercial FM license in a major market due to crowded spectrum and the financial ability to prevail in competitive bidding if such commercial operations are made available”).

⁸⁰ See 47 CFR § 73.853.

⁸¹ We believe most if not all FM6 LPTV stations are operating on a commercial basis as evidenced by the fact that most FM6 LPTV stations submitted Annual DTV Ancillary/Supplementary Services Reports (LMS Form 2100 – Schedule 317) indicating that they have had revenues from their FM6 operations. See, e.g., LMS File Nos. 0000173200 (KBKF-LD); 0000204627 (WRME-LD); 0000173199 (KZNO-LD); and 0000204582 (WMTD-LD).

⁸² 47 U.S.C. § 336(b)(1).

⁸³ See *Intelsat LLC*, Memorandum Opinion Order and Authorization, 16 FCC Rcd 12280 (2001) (“The courts have not construed ‘consistent’ to mean ‘alike’ or ‘the same as.’ Rather, when preceding the preposition ‘with,’ they have recognized ‘consistent’ as meaning ‘agreeing’ or according in substance or in a form that is congruous or compatible. . . . [W]e construe the ‘consistent with’ standard as inferring a degree of flexibility by requiring ‘congruity or compatibility.’”) citing *Environmental Defense Fund, Inc. v. Environmental Protection Agency*, 82 F.3d 451, 457 (D.C. Cir. 1996), *amended on other grounds*, 92 F.3d 1208 (D.C. Cir. 1996), citing Oxford English (continued....)

“consistent with” that affords less flexibility would unreasonably constrain the types of ancillary or supplementary services stations can provide, thereby frustrating Congressional intent to “[p]ermit[] broadcasters more flexibility in using their spectrum assignments [] consistent with the public policy goal of providing additional services to the public.”⁸⁴ The Commission has most recently interpreted this provision of the Act broadly, observing that “Congress recognized that the transition from analog to digital broadcast technology would enable DTV licensees to provide new and innovative services . . . over their additional spectrum capacity and wanted to provide licensees with the flexibility necessary to utilize fully that new potential.”⁸⁵ In addition, we interpret the phrase “technology or method designated by the Commission for the provision of advanced television services” to mean the transmission standards required for digital television stations that have been adopted by the Commission and incorporated in the rules.⁸⁶ While the Commission’s rules allow LPTV stations to comply with either the ATSC 1.0 or 3.0 standard in providing advanced television services, we analyze here compatibility of analog FM6 with only ATSC 3.0 consistent with the rules we adopt below.

20. We find that existing analog FM6 radio operations are compatible with the ATSC 3.0 standard, and therefore satisfy Section 336(b)(1). The ATSC 3.0 standard allows for configurability, permitting FM6 LPTV stations to make their television signal narrower and/or have the signals settings modified to have increased error correction intended to prevent co-channel interference between the stations’ digital television and analog radio signals.⁸⁷ Existing FM6 LPTV stations operating in ATSC 3.0 have been able to continue to deliver free over-the-air ATSC 3.0 television signals configured to occupy approximately 5.5 MHz of their digital channel capacity while at the same time providing analog FM6 on a frequency within their 6 MHz channel.⁸⁸ The Act and our rules do not require a licensee to use its *entire* 6 MHz channel solely for the provision of advanced television services.⁸⁹ For these reasons, including the configurability afforded by ATSC 3.0, we find that existing analog FM6 radio operations are compatible with the ATSC 3.0 standard.

21. We disagree with commenters suggesting that the definition of “advanced television services” should apply to all services that are incorporated into a digital television station’s 6 MHz digital bitstream.⁹⁰ Such a finding would be in complete contradiction with the flexibility afforded to

(Continued from previous page) _____
Dictionary 773 (2d 1989), *N.L. Indes, Inc. v. Kaplan*, 792 F.2d 896, 898-899 (9th Cir. 1996), and *Wickland Oil Terminals v. Asarco, Inc.*, 792 F.2d 887, 891-892 (9th Cir. 1986).

⁸⁴ See House Report at 116.

⁸⁵ See *Promoting Broadcast Internet Innovation Through ATSC 3.0*, Declaratory Ruling and Notice of Proposed Rulemaking, 35 FCC Rcd 5916, 5919, para. 6 (2020); PCPC Comments at 10-11; SOL Comments at 5.

⁸⁶ 47 CFR §§ 73.682, 74.782. Section 336(i)(1) defines “advanced television services” as “television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled ‘Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service’, MM Docket 87-268, adopted September 17, 1992, and successor proceedings.” 47 U.S.C. § 336(i)(1).

⁸⁷ See *infra* para. 37.

⁸⁸ Television channel 6 encompasses the 82-88 MHz band.

⁸⁹ In fact, in adopting the ancillary or supplementary provisions of our rules, the Commission provided numerous examples of non-television services as being permissible ancillary or supplementary services including: “computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video” whether offered on a “broadcast, point-to-point, or point-to-multipoint basis.” See 47 CFR § 73.624(c); see also *In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, MM Docket No. 87-268, 12 FCC Rcd 12809 (1997) adopting section 73.624(c) of the rules.

⁹⁰ See, e.g., REC Comments at 22-23 (maintaining that the additional transmission of a so-called “sidecar” analog signal is not a part of the “advanced television system,” and thus is inconsistent with Section 336 of the Act).

broadcasters under the Act, and implemented by our rules, to offer ancillary or supplementary services. A digital LPTV station may offer ancillary or supplementary services on its assigned frequencies as long as such services are “consistent with the technology or method designated by the Commission for the provision of advanced television services”⁹¹ and, as discussed in greater detail below, “avoid derogation of any advanced television services . . . that the Commission may require using such frequencies.”⁹² Based on these facts, we conclude that FM6 LPTV stations operations are consistent with the technology or method designated by the Commission for the provision of advanced television systems, as required by section 336(b)(1) of the Act and defined by our rules.

22. We reject arguments that FM6 operations are precluded by section 336(b)(1) of the Act because FM6 stations are providing separate audio and visual offerings or that FM6 operations are not “consistent with technology or method designated by the Commission for the provision of advanced television services” because neither the ATSC 3.0 standard nor our rules specifically refer to analog audio signals.⁹³ As an initial matter, neither Section 336 nor our rules mandate that particular ancillary or supplementary services must be specifically integrated into or mentioned within the pertinent digital television transmission standard (in this case, ATSC 3.0) or in our rules. Rather, the Commission’s rules require only that a digital television station transmit at least one over-the-air video program signal at no charge to viewers as a precondition to offering ancillary and supplementary services.⁹⁴ Our rules also permit digital LPTV broadcasters to transmit separate aural and visual program material as long as the visual signal can be viewed on a receiver based on the ATSC standard.⁹⁵ Here, FM6 stations comply with this rule by providing a television signal while the analog audio stream is transmitted through a separate analog audio carrier.

3. Existing FM6 Operations Satisfy Section 336(b)(2)

23. As required by Section 336(b)(2), we next find that existing FM6 operations do not “derogate[e] any advanced television services.”⁹⁶ One commenter claims that, by providing an FM6 operation that uses a portion of an LPTV station’s bandwidth, it is “denying advanced television services to the entire 6 MHz band as required by statute” and that this “derogate[s] the NextGen ATSC 3.0 experience and therefore does not meet the statutory test.”⁹⁷ We disagree. The derogation prong of section 336(b)(2) prohibits derogation of “any advanced television services . . . that the Commission may require using such frequencies.”⁹⁸ The derogation standard does not address what hypothetical advanced television services a station could offer; rather, it addresses the advanced television services a station actually offers and are otherwise required by the Commission. Under our rules broadcasters are only required to provide one free over-the-air video programming stream.⁹⁹ Further, as discussed above, broadcasters are not required to utilize their entire 6 MHz stream solely for television services and are authorized by the Act and our rules to offer ancillary or supplementary services over a portion of their spectrum.¹⁰⁰ The record demonstrates that the use of ATSC 3.0 to broadcast a station’s television

⁹¹ 47 U.S.C. § 336(b)(1) (emphasis added).

⁹² 47 U.S.C. § 336(b)(2) (emphasis added).

⁹³ See REC Comments at 22-23.

⁹⁴ 47 CFR § 73.624(b).

⁹⁵ 47 CFR § 74.795.

⁹⁶ 47 U.S.C. § 336(b)(2).

⁹⁷ See REC Comments at 23.

⁹⁸ 47 U.S.C. § 336(b)(1).

⁹⁹ See *supra* para. 22.

¹⁰⁰ See *supra* para. 20.

stream(s) is intended to prevent interference between the station's digital television and analog radio signals and thereby does not run afoul of the derogation provision of section 336(b)(2) of the Act or section 73.624(c) of our rules.¹⁰¹

B. Limiting FM6 Operations to Existing Operators

24. We adopt our proposal¹⁰² to allow only FM6 LPTV stations with "active" FM6 STAs to continue to provide FM6 service. As proposed in the *Further Notice*, we will define "active" FM6 STAs to be initial FM6 STAs that were either granted and unexpired, or a request for extension of an STA that was granted or pending at the time of the release date of the adopted *Further Notice* (that is, June 7, 2022).¹⁰³ We also require that to be considered an "active" FM6 STA, the STA must remain unexpired (i.e., through grant of subsequent extension(s)) or have a pending extension request on file as of the effective date of this *R&O*.

25. *Eligible FM6 LPTV Stations.* We conclude that the public interest benefits of preserving the existing programming of the 13 FM6 LPTV stations with active FM6 STAs outweighs the risk of potential interference to other licensed users by these 13 FM6 LPTV stations.¹⁰⁴ We also find that limiting the class of stations eligible to provide FM6 services is consistent with both section 336(a)(2) of the Act, which states that the Commission shall adopt regulations authorizing ancillary or supplementary services that "may be consistent with the public interest, convenience, and necessity,"¹⁰⁵ and section 336(b)(5) of the Act, which states that in adopting regulations authorizing ancillary or supplementary services the Commission shall "prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity."¹⁰⁶ These 13 stations (as well as WVOA-LD), present unique circumstances that weigh in favor of permitting continued FM6 operations as an ancillary or supplementary service.¹⁰⁷

26. We find the 13 FM6 LPTV stations with active FM6 STAs are distinguishable from other channel 6 LPTV stations that have either never provided FM6 service or were legacy FM6 stations when they were operating in analog, but are no longer providing such service. As an initial matter, the 13 FM6 LPTV stations with active FM6 STAs have a history of providing consistent FM6 service both prior to

¹⁰¹ See *infra* para. 37. 47 U.S.C. § 336(b)(1); 47 CFR § 73.624(c).

¹⁰² *Further Notice* at para. 41.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at para. 19. The 13 existing FM6 LPTV stations are: KBKF-LD, San Jose, California; WMTO-LD, Norfolk, Virginia; KXDP-LD, Denver, Colorado; WTBS-LD, Atlanta, Georgia; WRME-LD, Chicago, Illinois; KZNO-LD, Big Bear Lake, California; KEFM-LD, Sacramento, California; WEYS-LD, Miami, Florida; WDCN-LD, Fairfax, Virginia; KRPE-LD, San Diego, California; KGHD-LD, Las Vegas, Nevada; WPGF-LD, Memphis, Tennessee; and WNYZ-LD, New York, New York.

¹⁰⁵ 47 U.S.C. § 336(a)(2).

¹⁰⁶ 47 U.S.C. § 336(b)(5).

¹⁰⁷ Some commenters maintain that limiting the class of entities that can provide FM6 service is inconsistent with the requirement under section 307(b) of the Act to "provide a fair, efficient, and equitable distribution of radio service." See CMC Comments at 1; OMI Comments at 1 citing 47 U.S.C. § 307(b). As an initial matter, Section 307(b) applies only when the Commission is "considering applications for licenses, and modifications and renewals thereof." 47 U.S.C. § 307(b). In this Order, however, no applications are before us; rather, we establish rules for existing licensees to provide certain ancillary or supplementary services, so section 307(b) does not apply. In addition, given their lower power and secondary nature, the Commission has not considered the mandate of section 307(b) when deciding how to allocate LPTV stations. See *Inquiry into the Future Role of Low-Power Television Broadcasting and TV Translators*, BC Docket No. 78-253, Report and Order, 51 Rad. Reg. 2d 476, 490-91 (1982) (concluding that, given their lower power and secondary status, LPTV applicants should be free to choose their proposed channels subject to the technical rules) (subsequent citations omitted).

and following the July 13, 2021 LPTV digital television transition. These stations not only promptly transitioned to digital operations, but they also converted to ATSC 3.0 and obtained an FM6 STA within a reasonable period following their digital transition. As a result, listeners have maintained their reliance on these stations, and preserving access to programming on which listeners have come to rely weighs heavily in favor of permitting these 13 FM6 LPTV stations to continue their existing FM6 operations. Second, permitting only the existing FM6 LPTV stations to provide FM6 service presents a solution to the interference concerns raised by adjacent-band FM stations. Existing FM6 LPTV stations' facilities have been "frozen" in place and were not permitted to be modified. While such stations have been operating without any verified complaints of interference,¹⁰⁸ we have established rules to ensure that such interference-free operations continue into the future with no negative impact on other licensees or their own digital television service.¹⁰⁹ The same cannot be said of FM6 operations from prospective new FM6 LPTV stations for which we do not have a track record of non-interference since the LPTV digital television transition.

27. *WVOA-LD*. We conclude that WVOA-LD, Westvale, New York, should be permitted to provide FM6 operations.¹¹⁰ In the *Further Notice*, we specifically sought comment on the case of WVOA-LD, and whether it should qualify as an exception to our finding that eligibility for continuing to provide FM6 service should be cut-off as of the release date of the adopted *Further Notice*.¹¹¹ The station previously provided FM6 service while an analog station, and was prepared to operate an FM6 station prior to the release of the *Further Notice*.¹¹² However, the station was unable to complete its conversion to ATSC 3.0 digital operations and initiate FM6 operations pursuant to an FM6 STA due to a delay in grant of an application for minor modification. Grant of the application was delayed because the requisite international coordination clearance from Canada had not been received by the Commission prior to release of the *Further Notice*.¹¹³ WVOA-LD indicates that such minor modification was necessary in order to adequately implement their digital television service and recommence its FM6 operation.¹¹⁴ We

¹⁰⁸ See *supra* paras. 13-14.

¹⁰⁹ See *infra* Section III. C. - Establishing Rules Governing FM6 Operations.

¹¹⁰ WVOA-LD is licensed to Metro TV, Inc.

¹¹¹ *Further Notice* at para. 44, n.115.

¹¹² See Letter from David D. Oxenford, Esq. counsel for Metro TV., Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket No. 03-185 at 3 (filed May 31, 2022) (Metro TV May 2022 *Ex Parte*) (maintaining that the station has provided FM6 service since 2013); Metro TV Comments at 2-5 (discussing the station's extensive history of FM6 operations).

¹¹³ Metro TV Comments at 4-6 (discussing WVOA-LD's efforts to complete its digital conversion and the circumstances outside of its control that prevented it from commencing FM6 operations prior to release of the *Further Notice*). The Commission has since received concurrence from Canada and granted the minor modification. LMS File No. 0000186547 (filed Mar. 11, 2022; granted Aug. 15, 2022). WVOA-LD subsequently completed construction of the minor modification facilities and filed a license to cover application that was granted on May 31, 2023. See LMS File No. 000215263. Because this proceeding was ongoing at the time of the grant, the license was granted with a condition stating that WVOA-LD was not permitted to conduct FM6 operations, subject to the outcome of this proceeding. Given our decision today to permit WVOA-LD to offer FM6 services, we instruct the Media Bureau to add a notation to the WVOA-LD license indicating that FM6 operations are permitted pursuant to Section 74.790(o) of the Commission's rules and this *R&O*.

¹¹⁴ Metro TV Comments at 4-6.

find the delay in obtaining international coordination was truly outside of WVOA-LD's control,¹¹⁵ and good cause to permit WVOA-LD to provide FM6 operations.¹¹⁶ No commenter opposes this finding.¹¹⁷

28. In order to confirm that no interference will occur, we require that WVOA-LD initially commence FM6 operations under special temporary authority and operate under such authority for a period of one-year. Although WVOA-LD argues that such a requirement is unnecessary,¹¹⁸ we disagree because unlike the 13 existing FM6 LPTV stations, we do not have a record of WVOA-LD operating in digital while providing FM6 service.¹¹⁹ Therefore, within 85 days of the effective date of this *R&O*¹²⁰ we require WVOA-LD to commence both ATSC 3.0 and FM6 operations by filing an application to convert its facility to ATSC 3.0, and request for engineering STA.¹²¹ During the one-year period the station is operating pursuant to an FM6 STA, WVOA-LD will be required to comply with all rules adopted in this *R&O* that would otherwise pertain to an LPTV station conducting FM6 operations. In addition, WVOA-LD is required to file status reports of interference, as required for FM6 STAs, disclosing whether it has received any complaints of interference. During the initial six-month STA, status reports will be required after 90 days and 180 days of operation.¹²² Upon extension of its STA, if granted, WVOA-LD must file one final status report disclosing whether it has received any interference complaints within five days of expiration of the STA. It must also state whether it intends to continue to provide FM6 service on a permanent basis following expiration of the STA. If no interference is found and WVOA-LD states it wishes to continue FM6 operations permanently, then WVOA-LD will be permitted to continue FM6 operations on the same basis as the other 13 stations discussed herein without the need for an STA.

¹¹⁵ Metro TV Comments at 4, 6-8. The Commission has recognized certain delays in international coordination as truly beyond the control of the station. See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 23 FCC Rcd 2994, 3038, para. 78 (2007) ("We will consider delays due to international coordination where resolution of the international coordination issue is truly beyond the control of the station . . ."). Here, WVOA-LD took all steps necessary to secure Canadian approval and the delays in approval were truly outside the control of WVOA.

¹¹⁶ See *ICO Glob. Commc'ns (Holdings) Ltd. v. F.C.C.*, 428 F.3d 264, 270 (D.C. Cir. 2005) (finding no inconsistency and therefore no abuse of discretion in agency's decision to grant a waiver to one licensee based on certain factors, including a gap due to a special legal obstacle created by a limit on investment in Canadian licensees, but not to a second licensee in whose case those factors were absent).

¹¹⁷ See NPR Comments at 10-1 ("NPR recognizes that, although WVOA-LD's service has been offline since the DTV deadline of July 13, 2021, WVOA-LD had an established listenership at the time and a pending construction-permit application. To this end, should the Commission permit FM6 operations outside of the STA Stations, we urge the Commission to limit permission only to WVOA-LD.").

¹¹⁸ See WVOA Comments at 6.

¹¹⁹ See *infra* paras. 13-14 (discussing the 13 FM6 LPTV stations' history of interference-free operation under the FM6 STAs); see also Metro TV Comments at 4-6 (WVOA could not complete conversion and commence service by the release date of the *Further Notice* due to then pending approval of its application).

¹²⁰ The period represents the amount of time WVOA-LD would have had to resume FM6 operations in order to have been included in the group of 13 FM6 LPTV stations with "active" FM6 STAs if its minor modification application did not require international coordination and was actionable upon filing when filed on March 11, 2022.

¹²¹ WVOA-LD must notify the Bureau no more than 10 days after it commences FM6 operations by filing a written letter with the Secretary's office, to the attention of the Chief, Video Division, Media Bureau and by providing an electronic version of that letter to the Chief of the Video Division, Media Bureau. The letter must provide the date the Station completed its transition to ATSC 3.0 and the date that it commenced FM6 operations.

¹²² WVOA-LD's status reports must be filed with the Secretary's office, to the attention of the Chief of the Video Division, Media Bureau. An electronic copy must also be sent via electronic mail to the Chief of the Video Division, Media Bureau.

29. *New Entrants and Other “Legacy” Analog FM6 LPTV Stations.* In contrast, we cannot make similar conclusions about legacy analog FM6 LPTV stations that ceased FM6 operations or LPTV channel 6 stations that have never provided FM6 services. In the *Further Notice*, we recognized that there may be a limited number of legacy analog FM6 LPTV stations that discontinued their FM6 operations at the time of the LPTV digital transition in July 2021, but intended to resume their FM6 operations once their new digital facilities were completed.¹²³ We asked if we should permit these stations to begin providing FM6 operations under the same conditions as existing FM6 LPTV stations.¹²⁴ In response, we received comments from two legacy FM6 LPTV stations – WJMF-LD, Jackson, Mississippi, licensed to KTL,¹²⁵ and KBFW-LD, Arlington, Texas, licensed to Benavides.¹²⁶ We find that these stations are distinguishable from the 13 FM6 LPTV stations with active FM6 STAs and WVOA-LD.

30. WJMF-LD terminated its analog television operations in July 2021 to comply with the LPTV digital transition deadline¹²⁷ and completed its conversion to ATSC 1.0 digital operations in January 2022.¹²⁸ Although it was a legacy FM6 LPTV station, the station, at a minimum, has not provided FM6 service since at least July 13, 2021, nor (unlike WVOA-LD) did it take steps to preserve FM6 operations. As such we are unable to conclude that there is an audience that relies on WJMF-LD’s FM6 operations, in contrast to the 13 existing operators that have been providing service and submitting periodic reporting demonstrating a lack of interference from their operations. There is also no record of FM6 operations upon which to determine if the station could operate without causing interference. While the Station’s current digital license largely mirrors the contour of its former analog facility, in May 2022 WJMF-LD was granted a construction permit to increase its coverage area.¹²⁹ Such a modification could significantly alter the potential interference profile of the station and remains unbuilt, unlike the 13 existing operators about whose FM6 operations we do have a record of non-interference. WJMF-LD also failed to provide any circumstances, as in the case of WVOA-LD, that prevented it from taking steps to maintain its FM6 operations, as the 13 other stations did, following the digital television transition deadline. KTL had ample time following the digital transition deadline and prior to release of the *Further Notice* to pursue steps to preserve its FM6 operations, but for its own independent reasons chose not to take action.

31. As for KBFW-LD, it was a legacy analog FM6 LPTV station that did not convert to digital ATSC 1.0 until September 1, 2021.¹³⁰ Unlike WJMF-LD, however, it continued its FM6 analog operation, without Commission authority, until sometime in May 2022 when the station was instructed by the Enforcement Bureau to cease and desist its FM6 analog operations.¹³¹ The station did not seek to convert to ATSC 3.0 until July 2022.¹³² Similar to WJMF-LD, the station has not provided FM6 service

¹²³ *Further Notice* at para. 44.

¹²⁴ *Id.*

¹²⁵ KTL Comments at 1-2.

¹²⁶ Benavides Comments at 2-3.

¹²⁷ LMS File No. 0000152481.

¹²⁸ LMS File No. 0000179353.

¹²⁹ LMS File No. 0000190172 (granted May 9, 2022) .

¹³⁰ LMS File No. 0000158342 (granted Nov. 18, 2021).

¹³¹ Benavides Comments at 3-4.

¹³² *Id.* at 4. KBFW-LD has pending before the Bureau an application to convert its station to ATSC 3.0. LMS File No. 0000195651. We provide KBFW-LD 30 days following release of this *R&O* to notify the Video Division (Division) of its intent to proceed with transitioning its facility to ATSC 3.0 operations. If KBFW-LD intends to proceed with transitioning to ATSC 3.0, it must amend its pending application to identify its new transition date.

(continued....)

for an extended period of time – having last engaged in authorized operations nearly two years ago. As such, we are unable to conclude there is an audience that has continued to rely on KBFW-LD's FM6 operations, as we have for the 13 FM6 stations that have continued to provide FM6 service, with limited or no interruption. Further, as was the case with WJMF-LD, there is no record of the station operating as an FM6 LPTV station pursuant to an FM6 engineering STA upon which to determine if the station could operate without causing interference.¹³³ KBFW-LD also fails to provide any circumstances truly beyond its control, as in the case of WVOA-LD, that prevented it from taking steps to maintain its FM6 operations, as 13 other stations did following the LPTV digital television transition deadline. Like KTL, Benavides had ample time following the digital transition deadline and prior to release of the *Further Notice* to pursue steps to preserve its FM6 operations, but did not take the necessary steps in time. In light of all these facts, we reject KTL and Benavides' calls to be permitted to provide FM6 services on their channel 6 LPTV stations.

32. Likewise, channel 6 LPTV stations that are seeking to be new entrants to FM6 operations do not have similar equities at play as the 13 FM6 LPTV stations, as they have no established listener base that relies upon them,¹³⁴ and we therefore find that there are insufficient public interest reasons to outweigh the interference concerns brought on by new FM6 operations. We also find that WVOA-LD is distinguishable from potential "new entrants" because WVOA-LD had an established audience prior to the digital transition and was prepared to proceed with FM6 operations, but was prevented from doing so because approval of its application was pending international coordination.¹³⁵ Even to the extent that there are licensees that obtained channel 6 LPTV stations with the expectation that they may be able to provide FM6 operations, the public interest rationale — maintaining service on which an audience has come to rely — does not apply to hypothetical scenarios about service a licensee might provide. In addition, these new entrant stations have no record regarding interference because they have not been providing FM6 service, unlike the 13 existing FM6 operators which have an established track record of

(Continued from previous page) _____

Alternatively, KBFW-LD may withdraw its application. Should KBFW-LD fail to amend its request or seek withdrawal of its application within 30 days, the Bureau is instructed to dismiss the pending application

Benavides contends that Bureau staff assured him that he would be permitted to obtain an FM6 STA. Benavides Comments at 2, n.2; *see also id.* at 4-6. This appears to be an inaccurate characterization of the guidance provided. In a series of e-mails dating back to August 2021, Bureau staff provided both Benavides and his counsel detailed instructions on how to proceed with filing an FM6 STA. Benavides and his counsel failed to follow these instructions and instead proceeded to continue to provide, at minimum, analog FM service, without a valid authorization. Notwithstanding any potential misunderstanding about obtaining an FM6 STA, Benavides still was not prepared to convert to ATSC 3.0 and commence FM6 operations pursuant to FM6 STA until July 2022. *See* e-mail correspondence between Benavides, his counsel and Bureau staff, copies of which are available at LMS File No. 0000195651.

¹³³ KBFW-LD did operate in digital ATSC 1.0 with an FM6 operation for several months but such operation was not authorized and we will not recognize it for purposes of determining the station's operational record.

¹³⁴ *See* Barreto Comments at 1 (licensee of an channel 6 LPTV station W06DA-D, Aguada, PR and would develop FM6 operations if given the opportunity); CBC Comments at 1-2 (licensee of a channel 6 LPTV station KMCF-LD, Visalia, CA that sought and was denied an FM6 engineering STA because it was not a legacy FM6 station); Luna Comments at 1 (licensee of two channel 6 LPTV stations, K06PU-D Yakima, WA, and K06QD-D Pasco, WA, and has been awaiting a Commission decision on the FM6 matter before pursuing FM6 operations); OMI Comments at 1-2 (licensee of three unnamed channel 6 LPTV stations and would like the opportunity to provide FM6 operations); VCY Comments at 9 (licensee of channel 6 LPTV station WDMY-LD, Toledo, OH that sought and was denied an FM6 STA because it was not a legacy FM6 station),

¹³⁵ *See infra* para. 27.

no interference.¹³⁶ For the foregoing reasons, we also reject these stations' requests to be permitted to provide FM6 services in the future.¹³⁷

33. We also reject arguments that our decision to limit FM6 operations to certain stations is arbitrary and capricious.¹³⁸ As discussed above, we conclude that the public interest is served by maintaining existing FM6 services provided by stations that have actively taken steps to ensure continuity of service to their listeners. We are also limiting the class of stations based on concerns of potential interference to other licensed users in areas where FM6 services are not currently provided or to their own digital channel 6 television operations.¹³⁹ The 13 existing FM6 LPTV stations have a proven record of not causing interference to either other licensed FM station operations or to their own digital channel 6 operations.¹⁴⁰ We have no such record of interference-free FM6 operations by new stations or legacy FM6 stations no longer operating. We conclude that the risk of upsetting the current, interference-free environment outweighs the benefit of permitting new FM6 LPTV stations and is contrary to the public interest rationale by which we have determined that continued operation of current analog FM6 operations following the stations' digital television transition is justified.

34. We also are not persuaded by the argument that not all potential FM6 operators had the opportunity to convert to digital operations and obtain an FM6 STA.¹⁴¹ As discussed above, the Commission's examination of whether to permit the continuation of such services has extended nearly a decade. As such, we believe that all channel 6 LPTV stations have had adequate notice of a potential change in Commission rules.¹⁴² In fact, a significant number of stations did take note and have been providing FM6 service following their conversion to digital, thus undermining arguments by some

¹³⁶ See *infra* paras. 13-14.

¹³⁷ VCY, licensee of WDMY-LD, Toledo, Ohio, sought reconsideration of the Division's denial of its request for special temporary authority to provide FM6 operations. See VCY America, Inc.'s Petition for Reconsideration (July 11, 2022) seeking reconsideration of Letter to VCY America, Inc. from Barbara A. Kreisman, Chief Video Division (June 8, 2022) (both available at the station's LMS Facility ID No. 49188). In light of our decision today, we instruct the Bureau to dismiss VCY's petition for reconsideration. VCY also has pending before the Bureau a pending application to convert its station to ATSC 3.0. LMS File No. 0000191355. We provide VCY 30 days following release of this *R&O* to notify the Division of its intent to proceed with transitioning its facility to ATSC 3.0 operations. If VCY intends to proceed with transitioning to ATSC 3.0, it must amend its pending application to identify its new transition date. Alternatively, VCY may withdraw its application. Should VCY fail to amend its request or seek withdrawal of its application within 30 days, the Bureau is instructed to dismiss the pending application.

¹³⁸ See CFI Comments at 8 (citing *AT&T Servs., Inc. v. Fed. Comm'n's Comm'n*, 21 F.4th 841, 845-46 (D.C. Cir. 2021) quoting *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 77 L.Ed.2d 443 (1983)); Multicultural Radio Broadcasting, Inc. Comments at 3 (Jan. 22, 2020).

¹³⁹ See *supra* paras. 25-26.

¹⁴⁰ While the same cannot currently be said for WVOA-LD, as discussed above WVOA presents a unique circumstance in which the station was prepared to proceed with FM6 operations, but was prevented from doing so due to reasons truly outside of its control. It has subsequently completed construction of its facility and we are adopting requirements herein to determine if the Station can establish a track record of no interference to other licensed operations. See *supra* paras. 27-28.

¹⁴¹ See CMC Comments at 1; VCY Comments at 8; Luna Comments at 1; SOL Comments at 10; Barreto Comments at 3; KTL Comments at 2-3; ATBA Comments at 2-3; Ridgeline Reply Comments at 1-2; TZSTC Comments at 1-2; Metro Comments at 7-8; OMI Reply Comments at 1-2; CBC Comments at 2-3.

¹⁴² See *Further Notice* at para. 43.

commenters that FM6 LPTV stations were not able to continue operations in the face of regulatory uncertainty.¹⁴³

C. Establishing Rules Governing FM6 Operations

1. Codifying Certain FM6 STA Conditions

35. Existing FM6 LPTV stations will be permitted to continue their FM6 operations subject to a new rule we adopt that codifies certain conditions that are currently contained in the FM6 STAs.¹⁴⁴ FM6 LPTV stations will be required to keep current their FM6 STAs until the rules we adopt become final. We disagree with commenters that suggest that no rules are necessary.¹⁴⁵ We find that rules are needed to ensure that FM6 LPTV stations continue to operate in a manner that is consistent with the public interest rationale for allowing FM6 operations to continue, to prevent interference with other licensees, and to prevent the derogation of their television signal as required by the Act and our rules.

36. In the *Further Notice* we sought comment on whether any rules permitting FM6 operations should include the conditions in the FM6 STAs, as discussed above.¹⁴⁶ For the reasons outlined more fully below, we codify the following requirements based the current conditions set forth in the FM STAs: (1) FM6 LPTV stations must operate in ATSC 3.0 digital format; (2) FM6 LPTV stations must provide their FM6 operations on 87.75 MHz; (3) FM6 operations must be conducted on a non-interference basis to any other licensed primary or secondary user; (4) FM6 LPTV stations must provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating; (5) FM6 operations may not exceed the coverage area of the FM6 LPTV station's ATSC 3.0 synchronized video/audio programming stream; and (6) FM6 LPTV stations may make modifications to their technical facilities, as otherwise permitted under Part 74 of the Rules, so long as the contour of the station's modified facilities remains within its current protected contour. We decline to require that FM6 LPTV station licenses be prohibited from being assigned or transferred or that they be subject to periodic reporting requirements, though we do require that FM6 LPTV stations notify us of their intent to continue to or cease to provide FM6 operations and provide an ongoing certification as part of their license renewal application.

37. *Requirement to Operate in ATSC 3.0 Format.* As the Bureau included as a condition in the FM6 STAs, we require FM6 LPTV stations operate using the ATSC 3.0 digital standard.¹⁴⁷ In the *Further Notice*, we sought comment on whether the fact that FM6 stations are operating in ATSC 3.0 digital mode changes the potential for their analog FM6 operations to interfere with or disrupt the LPTV

¹⁴³ Barreto Comments at 3 (existence of the FM6 service in doubt and extinction seemed inevitable so station declined to initiate FM6 service during uncertainty); CBC Comments at 2-3 (FM6 service threatened with prohibition, some licensees would have liked to initiate FM6 operations, but too uncertain); CMC Comments at 1 ("For the smaller guy like CMC, the expense and risk were too high in the past to have already converted."); KTL Comments at 2-3 ("Without knowing that the FCC will authorize these services on a permanent basis, it was too great a financial risk to spend the money needed to make the conversion and request the STA previously."); Luna Comments at 1 ("wealthy broadcasters who were able to deploy this kind of service early before minority broadcasters were given the chance to"); OMI Reply Comments at 1 ("distinction between rich LPTV broadcasters who have converted to ATSC 3.0 early and ... the smaller operators who haven't yet had a chance.").

¹⁴⁴ See *infra* App. B – Final Rules.

¹⁴⁵ See CMC Comments at 1 ("FM6 authorizations should simply fall under the licensed operation of the LPTV station without any restrictions other than the 87.75 MHz operation being at or less than the authorized power for the LPTV station"); and Marquee Comments at 1-2 (FM6 LPTV stations "should not be subject to any meaningful additional oversight as long as it causes no improper interference with other stations").

¹⁴⁶ *Further Notice* at para. 23.

¹⁴⁷ See 47 CFR § 73.682(f) outlining the Next Gen TV broadcast television transmission standard.

station's ATSC 3.0 digital TV service.¹⁴⁸ Commenters unanimously support this requirement as a condition of being able to provide FM6 operations.¹⁴⁹ We recognize that this is a departure from our policy of a voluntary transition for television stations to the ATSC 3.0 digital format;¹⁵⁰ however, we find in this unique circumstance it is a necessary requirement in order to address concerns that FM6 operations will derogate the FM6 LPTV station's television service.¹⁵¹ Some commenters argue that previous studies show the potential for interference from FM6 operations to the LPTV station's own digital operation.¹⁵² However, these studies were conducted while FM6 LPTV stations were operating in ATSC 1.0. As evidenced by the "Perry Priestly" study¹⁵³ and more recently through real-world operations under the FM6 STAs, because the ATSC 3.0 digital format is more configurable the existing FM6 LPTV stations have been able to make their television signal narrower and/or have the signals settings modified to have increased error correction intended to prevent co-channel interference between the stations' digital television and analog radio signals. Accordingly, in the case of the 13 existing FM6 LPTV stations, operating in ATSC 3.0 appears to have addressed concerns that FM6 operations will interfere with or derogate their own digital television operation. Therefore, in order to ensure that FM6 LPTV stations comply with the derogation standard set forth in the Act and our rules,¹⁵⁴ we will require that they transmit their television signal using the ATSC 3.0 standard.

38. *Operation on 87.75 MHz.* We require FM6 transmissions to be conducted at 87.75 MHz. We observed in the *Further Notice* that limiting operations to 87.75 MHz would help prevent interference to any other licensed user.¹⁵⁵ A majority of commenters supported this requirement.¹⁵⁶ This is the frequency currently being used by all current FM6 LPTV stations and as a result it has been tested and shown by the 13 existing FM6 LPTV stations through their FM6 STAs to provide a quality FM signal without causing interference to other FM stations.¹⁵⁷ We reject requests by commenters that ask us to allow FM6 operations on 87.7 MHz in order to give licensees the opportunity to improve analog FM6 reception.¹⁵⁸ This is a 50 kHz shift from what has been authorized under the current FM6 STAs and as

¹⁴⁸ *Further Notice* at para. 36.

¹⁴⁹ See AVHN Comments at 3; NAB Comments at 5-6; PCPC Comments at 18; CBC Comments at 4; SOL Comments at 7; VCY Comments at 6.

¹⁵⁰ LPTV stations may choose to operate in ATSC 3.0 but are not required to. See *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930, 9932, para. 1 (2017) (authorizing television broadcasters including LPTV stations to use the ATSC 3.0 standard on a voluntary, market-driven basis).

¹⁵¹ See *supra* para. 23; see also *LPTV Digital Third NPRM*, 29 FCC Rcd at 12555, para. 50; *Refresh PN*, 34 FCC Rcd at 11164, para. 4.

¹⁵² See comments filed by Linley Gumm at 1-13 (Nov. 14, 2014); NPR at 8-11 (Jan. 15, 2015); NPR at 13-17 (Jan. 23, 2020); and REC Networks at 6-14 (Jan. 21, 2020).

¹⁵³ See *Further Notice* at paras. 35-36 citing Reply comments filed in MB Docket No. 03-185 by PCPC at 11-12 and Engineering Statement (Feb. 14, 2020) (maintaining that the Perry Priestly study demonstrates that, "not only is ATSC 3.0 compatible with an 87.7 MHz analog audio carrier, but the two signals can operate simultaneously with almost no degradation to either signal.")

¹⁵⁴ 47 U.S.C. § 336(b)(2); 47 CFR § 73.624(c).

¹⁵⁵ *Further Notice* at para. 25.

¹⁵⁶ See AVHN Comments at 3; CMC Comments at 1; PCPC Comments at 18; SOL Comments at 7.

¹⁵⁷ As a condition to their FM6 engineering STAs, FM6 LPTV stations were required to operate on 87.75 MHz and to report any interference that occurred from their operations. No such interference has been reported to date. See, e.g., FM6 STA of KBKF-LD, San Jose, California at LMS File No. 0000147729, granted June 10, 2021.

¹⁵⁸ See NAB Comments at 8. NAB argues that "[t]his small 50 kHz shift in frequency away from the FM band would presumably reduce the potential for interference to FM stations operating in the reserved band while

(continued....)

such, we are reluctant to permit this change without a thorough technical examination of such a move. Absent additional technical data supporting a shift to 87.7 MHz, none of which has been provided in the record, we find taking the time now to develop a record would only serve to needlessly prolong an already complex proceeding. In addition, it is not clear what cognizable benefit to receivability there would be based on the documented experiences of FM6 LPTV stations that have been providing FM service over 87.75 MHz.

39. *Operation of FM6 on a Non-Interference Basis.* We adopt our proposal from the *Further Notice* and require that FM6 operations be conducted on a non-interference basis “to any other licensed user, including but not limited to broadcast television or radio users.”¹⁵⁹ We agree with commenters that FM6 LPTV stations must operate without causing any impermissible interference to other licensed users, both users with primary and secondary interference protection rights.¹⁶⁰ We disagree with NAB that codification of this condition is unnecessary if FM6 operations are restricted to just a limited number of stations.¹⁶¹ By codifying this condition, we seek to continue to prevent interference and make clear that any interference to other licensed users will not be permitted as these services are being offered purely on an ancillary or supplementary basis.

40. *Synchronized Video and Audio.* We further adopt the requirement that FM6 LPTV stations must provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating.¹⁶² We conclude that adoption of this operational requirement will ensure that FM6 LPTV stations remain dedicated to providing the type of digital television service that viewers have come to expect from TV stations in addition to their FM6 operations. This requirement will also ensure that the spectrum, which has been allocated for the provision of television service, is being used in an efficient manner and for its primary purpose.¹⁶³ A majority of commenters support this requirement.¹⁶⁴ We disagree with the single commenter that called this requirement “constitutionally dubious.”¹⁶⁵ Our decision to require one stream of synchronized video and audio programming is “content neutral” in that it does not reference or implement any requirements regarding the content of the speech.¹⁶⁶ The D.C. Circuit has applied a “heightened rational basis” standard of review to content-neutral broadcast regulation.¹⁶⁷ Applied here, requiring one stream of synchronized video and audio programming is reasonably tailored to satisfying the substantial governmental interest in ensuring that frequencies allocated for television service continue to be used for the types of television services viewers have come to expect from TV stations.

(Continued from previous page) _____
improving compatibility and fidelity for FM receivers that can tune only in 200 kHz steps.” *See also* Bovis Comments at 1 (“[b]ecause analog TV is now defunct, there is no reason to require these stations to transmit only on 87.75 as opposed to 87.7 which is what . . . most FM radios with digital tuners actually tune”).

¹⁵⁹ *Further Notice* at para. 25.

¹⁶⁰ *See* AVHN Comments at 3; PCPC Comments at 18; PCPC Reply Comments at 13-14; Reed Comments at 2.

¹⁶¹ NAB Comments at 5-6.

¹⁶² *See Further Notice* at para. 28.

¹⁶³ *See id.* at paras. 28-29.

¹⁶⁴ *See* AVHN Comments 3; NAB Comments at 8; PCPC Comments at 8; SOL Comments at 7; VCY Comments at 9.

¹⁶⁵ Bovis Comments at 1.

¹⁶⁶ *See Virginia Pharmacy Bd v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976) (defining “content-neutral” speech regulations as “those that are justified without reference to the content of the regulated speech”).

¹⁶⁷ *Ruggiero v. FCC*, 317 F.3d 239, 243-44, 247 (D.C. Cir. 2003).

41. The synchronized video and audio programming condition was originally imposed on the FM6 STAs to ensure that digital LPTV stations providing FM6 operations continued to provide television service that meets viewers' expectations.¹⁶⁸ Prior to the LPTV digital television transition in July 2021, when FM6 operations were being conducted as part of an LPTV station's analog channel 6 operation, most FM6 LPTV stations were sacrificing the extent of their television service by airing limited video-only programming.¹⁶⁹ Because the audio signal for their analog TV station was dedicated to providing the FM6 service, the video service contained minimal video-only content, such as community bulletin boards.¹⁷⁰ FM6 LPTV stations appeared to be focusing their resources on their radio FM6 operation over their television operation.¹⁷¹ However, digital television provides these stations a new opportunity to offer more substantial, independent video content synchronized with audio while still preserving their FM6 operations. Although other digital television stations are required to provide only one over-the-air video program signal at no direct charge to viewers,¹⁷² and may offer video only or separate video and audio on their television operations, given FM6 LPTV stations' past practice favoring their FM6 operations at the expense of their television operations, we continue to believe it is prudent to make clear that an FM6 LPTV station must offer at least one stream of synchronized video and audio programming. This will ensure that FM6 LPTV stations provide the type of digital television service that viewers have come to expect from TV stations while also preserving their FM6 operations.

42. As proposed in the *Further Notice*, we also decline to adopt the condition imposed in the current FM6 STAs that the synchronized audio and video programming be provided on a full time (24x7) basis.¹⁷³ Because our rules provide that LPTV stations are "not required to adhere to any regular schedule of operation,"¹⁷⁴ we find it more appropriate to adopt the revised version of this condition proposed in the *Further Notice* that requires that FM6 LPTV stations provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum "at any time the station is operating."¹⁷⁵ There was no opposition to this proposed revision.

43. *LPTV and FM6 Operational Contours.* We also adopt the requirement that the service contour¹⁷⁶ of a station's FM6 operation may not exceed the protected contour¹⁷⁷ of the LPTV station.¹⁷⁸

¹⁶⁸ Advanced Television Systems & Their Impact Upon the Existing Television Broadcast. Service, Report and Order, 12 FCC Rcd. 12809, para. 28 (1997) (in authorizing the use of ancillary or supplementary service the Commission stated: "We expect that the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service.")

¹⁶⁹ See, e.g., comments filed in MB Docket No. 03-185 by CFI at 1 (Jan. 23, 2020); NPR at 2 (Jan. 23, 2020); and reply comments filed in MB Docket No. 03-185 by NPR at 6 (Feb. 2, 2015).

¹⁷⁰ *Id.*

¹⁷¹ See, e.g., comments filed in MB Docket No. 03-185 by CFI at 1 (Jan. 23, 2020); NPR at 2-4 and 10-11 (Jan. 23, 2020); Heller at 1 (Jan. 23, 2020); and reply comments filed in MB Docket No. 03-185 by NPR at 11-12 (Feb. 7, 2020).

¹⁷² 47 CFR § 73.624(b).

¹⁷³ *Further Notice* at para. 30.

¹⁷⁴ See 47 CFR § 74.763.

¹⁷⁵ *Further Notice* at 30. In order to ensure that a station's FM6 operations are not prioritized over its television service and that television remains its primary purpose, we will consider a station to be "operating" any time it is engaged in FM6 operations over its channel. See *supra* para. 12 (finding that allowing existing FM6 operations to continue is in the public interest because we are adopting rules that ensure FM6 LPTV stations are "first and foremost LPTV stations and that their video programming stream is prioritized over any audio stream.").

¹⁷⁶ We define "service contour" as the service contour provided for in section 73.313 of the rules. See 47 CFR § 73.313.

A similar condition was included in the FM6 STAs to prevent FM6 LPTV stations from configuring their LPTV station's technical facilities in a manner that would favor their FM6 operation over their digital television operation, something that, as just discussed, occurred while FM6 LPTV stations were solely operating in analog.¹⁷⁹ We find that adopting a similar provision here will help to ensure that FM6 LPTV stations continue to focus their attention on the operation of their digital LPTV station - the primary purpose of their station license.¹⁸⁰ Further, we conclude that adoption of this requirement will provide a predictable coverage area for the FM6 signal.¹⁸¹

44. Commenters are united in their support for this requirement,¹⁸² however, there is disagreement on how to determine if the service contour of a station's FM6 operation is exceeding the protected contour of its television operation.¹⁸³ After considering the record and further technical analysis, we conclude that the best approach is to require the service contour of FM6 operations to be contained within, and may not exceed, the LPTV station's protected contour. We find the alternative approaches suggested by commenters are impractical and overly burdensome. It would be difficult, if not impossible, for an FM6 station to test all locations where both the synchronized video/audio and the analog FM signal can be heard.¹⁸⁴ Further, our rules recognize different standards for measuring the strength of a digital LPTV signal and an FM audio signal. Rather than try to reconcile those differences in a single, "one-size-fits-all rule," we will allow FM6 LPTV stations to demonstrate the service contour of their FM6 operations and the protected contour of their TV operations using established methodologies for each service in our rules.¹⁸⁵

(Continued from previous page)

¹⁷⁷ We define "protected contour" as the protected contour provided for in section 74.792 of the rules. See 47 CFR § 74.792.

¹⁷⁸ We note that, in the *Further Notice*, we proposed that "the FM6 coverage area must be contained within and may not exceed the coverage area of the LPTV station's synchronized video/audio programming stream . . ." *Further Notice* at para. 28. To more accurately describe the coverage areas of the FM6 and TV operations and to reflect the language used by our rules, we will use the term "service contour" to describe the FM6 station's coverage area and "protected contour" to describe the TV station's coverage area. See *supra* notes 176 and 177.

¹⁷⁹ *Id.* at para. 41.

¹⁸⁰ *Further Notice* at para. 29.

¹⁸¹ We note that currently FM6 LPTV stations operate with co-located television and FM6 facilities. FM6 LPTV stations operate separate transmitters - one digital television and one analog FM radio - that are combined into one transmission line and broadcast with a combined antenna. The rules we adopt today permit only this type of configuration.

¹⁸² See AVHN Comments 3; NAB Comments at 8; PCPC Comments at 8; SOL Comments at 7; VCY Comments at 9.

¹⁸³ REC Comments at 24 (FM6 LPTV stations should be required to go "on drive tests with antennas of similar design to show that in all places where the analog audio FM station can be heard, the video signal is able to decode 100 percent of the time"); Reed Comments at 3 ("a better limiting factor is to require that the FM6 operation's 28 dBu F(50,50) contour not exceed the current DTV noise-limited contour for DTV6, which is 28dBu F(50,90)"); Bovis Comments at 1 ("[i]t would be better to simply limit the ERP of the FM aural carrier to either match or not exceed the licensed digital (television) ERP").

¹⁸⁴ See REC Comments at 24.

¹⁸⁵ See 47 CFR §§ 73.313 and 74.792 (referencing 73.625(b)(1)). FM6 LPTV stations have been using this approach in their 90-day and 180-day status reports filed as a condition to their FM6 STAs. FM6 LPTV stations have been successfully demonstrating in these reports that the service contour of their FM6 operations (as determined using the standard Part 73 methodology) does not exceed that of the protected contour of their LPTV operations (as determined using the standard Part 74 methodology). We have no reason to question either the methodologies or results of these showings, especially as we have not received any evidence to the contrary.

45. *Technical Modifications.* We will permit FM6 LPTV stations to make modifications to their technical facilities, as otherwise permitted under Part 74 of the Rules, so long as the protected contour of the station's modified television facilities remains within its current protected contour and the service contour of the station's FM6 operations does not exceed the protected contour of the station's television operation.¹⁸⁶ Initially, as a condition in FM6 engineering STAs, the Bureau restricted modifications in order to "lock" the FM6 LPTV station facilities operations in place while we were evaluating the potential for interference from FM6 operations to other users.¹⁸⁷ In the *Further Notice* we sought comment on whether to maintain this condition and whether to provide any exceptions.¹⁸⁸ Commenters felt that this restriction was too stringent and expressed their concerns that such a condition could limit FM6 LPTV stations from making modifications to better serve their audiences.¹⁸⁹

46. Although the record reflects that there have been no reports of interference from the FM6 operations of the 13 existing FM6 LPTV stations, this has been based on their current operations which have been frozen for almost two years. Therefore, in order to prevent possible interference that could result if an FM6 LPTV station were to modify its facilities, we find it is appropriate to limit modifications that could expand an FM6 LPTV station's FM6 operations beyond the protected contour of its television operations as of the release date of this *R&O*. Allowing such changes could potentially upset the current interference free environment that serves as one basis for permitting continued FM6 operations.¹⁹⁰ FM6 LPTV stations may seek to alter their protected contour if they can demonstrate that the change is an "engineering necessity"¹⁹¹ or can meet the Commission's general waiver standard.¹⁹² Any showing of

¹⁸⁶ For example, LPTV stations on channel 6 are not authorized to operate with an ERP greater than 3 kW. See 47 CFR § 74.735(b)(1).

¹⁸⁷ The condition stated: "[d]uring the term of this STA, the technical facilities of (FM6 LPTV station) may not be modified." See, e.g., LMS File No. 0000184381.

¹⁸⁸ *Further Notice* at para. 31.

¹⁸⁹ See ATVN Comments at 3-4 (modifications to facilities are often necessitated by circumstances not of the licensee's making and FM6 LPTV stations should be permitted to make technical modifications without having to request and obtain a waiver); Flinn Comments at 3 (any prohibition on reasonable technical modifications threatens to impede FM6 LPTV stations and harm their listeners); Metro Comments at 8 ("[i]f these FM6 services are valuable and in the public interest, providing those services to more people, if the increases in service do not create increased interference, would be in the public interest as well"); PCPC Comments at 18-19 (prohibiting LPTV stations providing FM6 operations from modifying their facilities is an unnecessary restriction that would potentially inhibit the ability of FM6 LPTV stations to provide consistent service); TZSTC Comments at 2 (questioning whether it is necessary or even in the public interest to limit modifications); VCY Comments at 7 (no analogous service includes permanent prohibitions on modification).

¹⁹⁰ See *supra* paras. 13-14.

¹⁹¹ For example, loss of a tower site or change in equipment due to malfunction would constitute "engineering necessity." Generally things that are voluntary business decisions, such as seeking to relocate facilities to serve a larger audience, would not be deemed an "engineering necessity." We note that during the pendency of this proceeding, the Division allowed an FM6 station, WRME-LD, Chicago, Illinois, to make modifications to its technical facilities. See Letter to WLFM, LLC from Barbara A. Kreisman, Chief, Video Division (Feb. 8, 2023) available at LMS File No. 0000208892. The Division found that the proposed modification was the result of the station's landlord adding an additional tenant to its shared tower and therefore the station was forced to lower the height of its antenna to avoid possible issues with distortion to the station's antenna pattern. *Id.* at 2. The Division concluded that the change was an "engineering necessity" and the public interest would be served by grant of the minor change application. *Id.* The Division also permitted an FM6 station, WDCN-LD, Fairfax, Virginia, to operate at reduced power for a limited period of time while it was repairing failing equipment. See Letter to Signal Above, LLC from Barbara A. Kreisman, Chief, Video Division (May 15, 2023) available at LMS File No. 0000211128. The Division granted the station's request for STA and waived the condition on the station's FM6 STA prohibiting modifications to its facility. *Id.*

“engineering necessity” must include a detailed demonstration that the modification will not cause any interference to other licensed users.¹⁹³ We conclude that allowing stations the flexibility to make minor modifications while remaining within the station’s protected contour, or to alter their protected contour based upon a showing of “engineering necessity” or under the Commission’s general waiver standard, balances any concerns about a station’s ability to maximize their service to viewers.

47. *Assignment and Transfer of FM6 LPTV Stations.* We conclude that FM6 LPTV stations should be permitted to be assigned or transferred. The FM6 STAs included a condition that limited FM6 LPTV stations from being assigned or transferred while FM6 operations were being conducted.¹⁹⁴ While licensees of FM6 LPTV stations were always free to transfer their stations, such action would have required the termination of their FM6 operation. In the *Further Notice*, we questioned whether inclusion of such a limit in our final FM6 rules would continue to serve the public interest.¹⁹⁵ We now conclude that it would not.

48. The Bureau imposed a restriction on transfers and assignments in an effort to maintain the status quo during the pendency of this proceeding and to prevent speculative transactions.¹⁹⁶ This action stemmed from a concern that, during the pendency of this proceeding, parties could seek to obtain an FM6 station without any intention of continuing FM6 operations and for the sole purpose of immediately “flipping” the station to another party for a quick profit if continued FM6 operations were ultimately permitted.¹⁹⁷ A small number of commenters believe it should be retained “in perpetuity” in order to prevent future speculation of FM6 LPTV stations.¹⁹⁸ However, now that this proceeding is complete and we have confined FM6 LPTV stations to only a limited number of stations¹⁹⁹ that have demonstrated an interest in maintaining their FM6 operations into the future, we conclude that there is no longer a risk of parties speculating in FM6 LPTV stations. As discussed above, the steps taken by the remaining FM6 LPTV stations to complete their digital television transition and quickly resume FM6 operations shows their clear desire to continue to provide FM6 service to their listeners.²⁰⁰ Furthermore,

(Continued from previous page)

¹⁹² A waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)). Generally, the Commission may waive any rule if there is good cause to do so and, in making this determination, may take into account considerations such as hardship, equity, or more effective implementation of overall policy on an individual basis. See 47 C.F.R. § 1.3; *Northeast Cellular*, 897 F.2d at 1166 (“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation”); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”).

¹⁹³ See ATVN Comments at 3-4; PCPC Comments at 18-19; PCPC Reply Comments at 14.

¹⁹⁴ *Further Notice* at para. 32.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ See Cal State Reply Comments at 7 (if FM6 LPTV station operators feel so strongly about serving their niche audiences, let them continue to do so in perpetuity); Reed Comments at 3 (existing restriction on transfer should remain in place to help deter other LPTV stations from moving to channel 6 for the purpose of creating an FM radio station to then sell at a profit).

¹⁹⁹ See *supra* Section III. B. – Limiting FM6 Operations To Existing Operators.

²⁰⁰ See *supra* para. 26.

we find that prohibiting the assignment or transfer of these stations would undermine a key rationale by which we have based our decision to permit the continued operation of these stations – the preservation of existing service that listeners rely upon.²⁰¹ To the extent a current licensee no longer wishes to operate its station it should be permitted, like any other licensee, to sell its station to someone that wants to continue to offer its television operations, along with its FM6 operations if they so choose. Accordingly, we find the limitation on transfers is no longer necessary and we conclude that the public interest would not be served maintaining the restriction.²⁰²

49. We clarify that an FM6 LPTV station's FM6 operation is not severable from its digital television license and may not be assigned or transferred independently from the FM6 LPTV station.²⁰³ We base this conclusion upon the fact that we are not separately authorizing FM6 operations, but rather are allowing them as an ancillary or supplementary service to the FM6 LPTV station's main digital television license. An FM6 LPTV station is permitted to provide FM6 operations only as a result of it offering a free over-the-air television service.²⁰⁴

50. *Reporting Requirements.* We adopt our tentative conclusion and will not require FM6 LPTV stations to undertake periodic reporting requirements similar to those contained in their FM6 STAs.²⁰⁵ The periodic reporting requirement was included as a condition to the FM6 STAs to monitor the ongoing STA operations of FM6 LPTV stations for reports of interference and to see if FM6 LPTV stations were complying with the condition that their digital television and analog FM radio operations were serving similar populations.²⁰⁶ We agree with the majority of commenters that the periodic reporting requirement is no longer necessary.²⁰⁷ In this *R&O*, we adopt permanent rules to address the circumstances that the reporting requirement was established to monitor. Failure to comply with these rules will result in sanction and potentially loss of the ability to continue providing FM6 service.

51. Other parties argue that the submission of written reports is still needed in order to confirm system operation and to gather data to confirm that the FM6 service can be implemented and operated in the public interest.²⁰⁸ We disagree. The record, which includes real-world information collected over nearly the last two years from FM6 LPTV stations' FM6 STA operations demonstrates that interference from the 13 existing FM6 LPTV stations is not likely to occur to either adjacent-band FM radio operations or to the host LPTV station's channel 6 operations.²⁰⁹ Further, there have been no

²⁰¹ See AVHN Comments at 3; Flinn Comments at 3; KTL Comments at 3-4; Metro Comments at 8-9 (“[it] would make no sense to preserve service to the public through this proceeding only for that service to have to terminate if a station was ever assigned or transferred.”); NAB Comments at 5-6; PCPC Comments at 19-21 (the purpose of authorizing FM6 operations is to preserve an existing and much valued program service for listeners, not to preserve the benefits of ownership); VCY Comments at 7; EMF Comments at 3-4 (Jan. 22, 2020); LSRC Comments at 5 (Jan. 22, 2020).

²⁰² To the extent that an FM6 LPTV station is assigned or transferred and the new licensee intends to continue FM6 operations it must include a statement to that effect in its assignment or transfer application. The new licensee will be required to meet all the requirements in the rules for FM6 operations and should they choose to discontinue FM6 operations, such discontinuation is permanent.

²⁰³ See PCPC Comments at 21 (asking that the Commission clarify this point).

²⁰⁴ See 47 U.S.C. 336(b)(1) and 47 CFR § 73.624(b).

²⁰⁵ *Further Notice* at para. 33.

²⁰⁶ *Id.*

²⁰⁷ See Metro Comments at 8-9; AVHN Comments at 3-4; Flinn Comments at 3; NAB Comments at 5-6; PCPC Comments at 19-21; VCY Comments at 7; PCPC Reply Comments at 14; KTL Comments at 3-4.

²⁰⁸ See SOL Comments at 7-8; Reed Comments at 3.

²⁰⁹ Copies of the FM6 LPTV station 90-day and 180-day status reports are available at each of the FM6 LPTV stations' main station records on LMS. See *supra* note 104. We again note that our analysis of interference free
(continued....)

legitimate reports of interference being caused by the 13 FM6 LPTV stations that have been operating under STAs.²¹⁰ In addition, FM6 LPTV stations are permitted to make modifications to their facilities only under very limited circumstances. As a result of these facts, we see no basis for requiring FM6 LPTV stations to continue to submit periodic reports.²¹¹

52. *Required FM6 Operational Notices.* We will require that, after review and approval of the information collection requirements adopted herein by the Office of Management and Budget (OMB), the Bureau will issue a Public Notice announcing the deadline for all FM6 LPTV stations to notify the Media Bureau whether they will continue FM6 operations and confirm their precise FM6 operational parameters.²¹² Because we are not licensing FM6 operations separately, this verification enables a confirmation of which stations' FM6 operations will be ongoing and provide continued certainty with regards to those operations.²¹³ FM6 LPTV stations will also be required to include in this notification the current operating parameters of their FM6 operations.²¹⁴ An FM6 LPTV station that voluntarily chooses to permanently discontinue FM6 operations is required to notify the Media Bureau within 30 days of permanently ceasing FM6 operations. If an FM6 station permanently ceases FM6 operations either voluntarily or is deemed to have discontinued operations pursuant to our Part 73 rules,²¹⁵ it will not be

(Continued from previous page)

FM6 operations applies solely to the 13 stations that have been operating under FM6 STAs. This does not mean that interference would not occur if we were to allow other TV6 stations to commence FM6 operations.

²¹⁰ Cal State has long insisted that FM6 operations will cause interference to stations in the NCE portion of the FM radio band (88 to 92 MHz). Cal State Reply Comments at 6-7. The Enforcement Bureau (EB) received an interference complaint from KKJZ(FM), licensed to Cal State, regarding FM6 station KZNO-LD in Big Bear Lake, CA (KZNO), licensed to Venture Technologies Group that included an engineering exhibit. *See* Interference Complaint of California State University, Long Beach Research Foundation, Licensee of KKJZ(FM), Long Beach, CA (Nov. 22, 2022), a copy of which is available at station Facility ID 8197. Upon investigation, and following a request for additional information, the purported interference could not be confirmed. Based on this fact and a separate Media Bureau review of the engineering exhibit included, Cal State's complaint was closed by the Enforcement Bureau.

²¹¹ *See* Barreto Comments at 1-2; CBC Comments at 4; NAB Reply Comments at 3.

²¹² The Media Bureau is instructed to add a notation to each FM6 LPTV station's license to reflect that it is permitted to provide FM6 operations pursuant to the rules adopted by this *R&O*.

²¹³ The notation added to the station's license shall reflect that it is permitted to provide FM6 operations pursuant to the rules adopted by this *R&O* and operational parameters specified in its notification.

²¹⁴ Such information must include: maximum effective radiated power (ERP); radiation center above ground level (RCAGL); radiation center above mean sea level (RCAMSL); antenna height above average terrain (HAAT); antenna type (directional or non-directional); directional antenna pattern (if applicable); antenna make and model; transmitter power output (TPO); and a description of the transmission system, including any transmission lines, connectors, combiners, etc., and their associated losses. Should any technical parameters of the station's FM6 operations change, the licensee must provide written notification to the Media Bureau at least ten (10) days prior to such modifications occurring.

²¹⁵ *See infra* Section III. C. 2 – Application of Part 73 FM Rules; App. B - Final Rules. As part of our finding below that FM6 LPTV station's requirement to comply with certain analogous FM rules, we note that pursuant to 47 CFR § 73.1740(a)(1) FM6 LPTV stations' FM6 operations must adhere to the minimum operating schedule for FM stations. Failure to do so absent valid special temporary authority to operate at variance, *see* 47 CFR §§ 73.1740(a)(4) or 73.1635, will result in sanction or other actions, which could include consideration at renewal of whether the station has served the public interest. 47 U.S.C. § 309(k). One of the primary rationales by which we are permitting continued FM6 operations is in order to provide continuity service. *See supra* paras. 10-12. We find that failure by an FM6 LPTV station to adhere to the minimum operating schedule for FM stations, without valid special temporary authority, is presumptively adverse to the public interest. We also note that should an FM6 LPTV station's digital television operation temporarily cease operations, the station will be required to also discontinue its FM6 operation until such time as the digital television operation resumes as engaging in FM6 operations is dependent upon it providing the digital television service. *See* 47 CFR § 73.624(b).

permitted to resume FM6 operations in the future.²¹⁶ Finally, as an additional measure to ensure that FM6 LPTV stations are continuing to serve the public, we will also require that FM6 LPTV stations certify in their license renewal application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term.²¹⁷ All notifications required by this paragraph shall be made by written letter and mailed to the FCC Office of the Secretary, Attention: Chief, Video Division, Media Bureau.²¹⁸

2. Application of Part 73 FM Rules

53. Although FM6 operations are not separately authorized or licensed,²¹⁹ we conclude that the public interest will be best served by requiring FM6 operations to be subject to appropriate Part 73 rules that currently apply to full service FM radio stations, including emergency alert and online public file requirements. We also find that application of certain of our rules is consistent with and required by section 336(b)(3) of the Act.²²⁰ Furthermore, FM6 LPTV stations, as they are licensed as LPTV stations, must continue to comply with all applicable Part 73 and 74 rules that pertain to their digital television operations.

54. In the *Further Notice* we sought comment on whether FM6 operations are analogous to other services and whether, and if so which, Part 73 rules should apply.²²¹ Section 336(b)(3) of the Act provides that, in prescribing the regulations required by ancillary or supplementary services, the Commission shall “apply to any other ancillary or supplementary service such of the Commission’s regulations as are applicable to the offering of analogous services by any other person”²²² Based on this statutory requirement, we conclude that certain rules that pertain to full service FM radio stations should be applied to FM6 LPTV stations since FM6 LPTV stations offer services that are “analogous” to full service FM radio stations. A majority of commenters support this approach.²²³

²¹⁶ All actions with respect to the cessation of FM6 operation will be final as with any action to permanently discontinue a broadcast operation. See 47 CFR § 73.1750. Cessation of FM6 operations only shall not affect the status of an LPTV station’s license or its ability to continue to provide digital television service.

²¹⁷ See 47 USC § 336(d) (“In the Commission’s review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest. Any violation of the Commission rules applicable to ancillary or supplementary services shall reflect upon the licensee’s qualifications for renewal of its license.”). We delegate authority to the Media Bureau to determine the most appropriate means for these stations to make such certification, be it by an attachment to the renewal application or some other reasonable means.

²¹⁸ An electronic copy of any notification must also be sent via electronic mail to the Chief of the Video Division, Media Bureau. A copy of all notifications shall be uploaded by the Media Bureau to the station’s LMS file.

²¹⁹ Commenters were in agreement that FM6 should not be separately authorized. See, e.g., EMF 2015 Comments at 3-4; Signal Above 2015 Comments at 8; Venture 2015 Comments at 7

²²⁰ See *infra* App. B – Final Rules. We also conclude that we adopt such rules and policies for FM6 operations under our general Title III authority. See 47 U.S.C. § 303 – Powers and Duties of Commission.

²²¹ *Further Notice* at para. 38.

²²² 47 U.S.C. § 336(b)(3).

²²³ See AVHN Comments at 4 (FM6 operations should be subject to Part 73 of the rules that apply to full-service FM stations); Cal State Reply Comments at 5-6 (Commission must impose the same service, power and height limitation rules on FM6 LPTV stations that regulate FM translator stations under Part 74 of the rules); NPR Comments at 7-8 (“to the extent they do not conflict with or duplicate the specific conditions the Commission proposes, every rule governing over-the-air FM radio broadcast service should also apply to FM6 LPTV stations”); Public Media Comments at 5 (FM6 LPTV stations should be subject to the same public interest obligations as any other FM radio station); Reed Comments at 4 (if an FM6 LPTV station is going to provide an FM broadcast service, (continued....))

55. As a practical matter, we agree that listeners are not necessarily able to distinguish between an FM6 LPTV station's FM operations and a traditional FM station.²²⁴ Further, viewers watching an FM6 LPTV station's digital television programming may not be simultaneously listening to the station's analog FM6 audio programming, and vice versa.²²⁵ As a result, we find it is important that FM6 LPTV stations continue to comply with the rules that are otherwise applicable to FM radio operations, including but not limited to our rules related to advertising/commercials, programming, and the Emergency Alert System (EAS).²²⁶ In particular, in order to prevent viewers and listeners from missing vital EAS alerts, we want to make clear that FM6 LPTV stations must maintain the capability to separately air EAS alerts on both their television and their FM6 operations.²²⁷

56. Further, although LPTV stations are not required to maintain an online public inspection file (OPIF),²²⁸ we find it is appropriate to require FM6 LPTV stations to maintain one for their FM6 operations. While some commenters argue that there is no purpose to be served by requiring that FM6 LPTV stations maintain an OPIF solely for their FM6 operations,²²⁹ we agree with commenters maintaining that such a requirement safeguards regulatory compliance with regard to FM operations and provides parity with other FM stations.²³⁰ To be clear, the OPIF requirement will apply only to the FM6 LPTV station's FM6 operations.

57. We disagree with the argument that requiring FM6 LPTV stations to comply with both LPTV and certain Part 73 FM rules is unnecessary or inappropriate as a result of their secondary status or because all relevant regulations already apply by nature of their status as an LPTV station.²³¹ This argument does not reflect how FM6 operations are actually conducted in the digital context and would be inconsistent with section 336(b)(3) of the Act.²³² First, the Act specifically mandates that the Commission apply regulations to ancillary or supplementary services that are analogous to other regulated services.²³³ The secondary nature of LPTV stations is irrelevant to whether the analogous services

(Continued from previous page) _____

it must adhere to all Part 73 broadcast rules); VCY Comments at 5 (certain Part 73 rules for FM radio should be applied to FM6 LPTV stations); Joint Commenters 2015 Comments at 2-3; Venture 2015 Comments at 7-8.

²²⁴ See Public Media Comments at 5.

²²⁵ See NAB Comments at 7-8.

²²⁶ See *infra* App. B – Final Rules - Section 74.790(o).

²²⁷ See 47 CFR § 11.1(a) outlining the equipment deployment requirements for FM radio stations.

²²⁸ See 47 CFR § 73.3526.

²²⁹ Barreto Comments at 1 (“it would not be logical to require an FM6 operator to maintain a public inspection file for the FM6 service when none is required for the parent secondary LPTV station”); NAB Reply Comments at 5 (because LPTV stations are not required to maintain a public inspection file, NAB agrees with commenters that argue FM6 LPTV stations should not have to maintain a separate file).

²³⁰ See Public Media Comments at 5 (requiring FM6 LPTV stations to maintain an OPIF will serve as a vital resource for the public and local television stations for any matters of regulatory compliance). We instruct the Media Bureau to create an OPIF for each FM6 LPTV station in the Commission's database for all FM6 LPTV stations and to notify the Stations by written letter once they are able to file documents in their OPIF. Compliance with the OPIF requirement will take effect either upon effective date of the rule or 30 days following creation of the Stations' OPIF, whichever is later.

²³¹ PCPC Comments at 21 (arguing that “any relevant regulations already apply by nature of an FM6 station's status as a licensed LPTV station ... [n]othing about FM6 operations justifies applying rules designed for primary stations to a station operating as a secondary service.”); PCPC Reply Comments at 14-15; EMF 2015 Comments at 3-4; Signal 2015 Comments at 8.

²³² 47 U.S.C. § 336(b)(3).

²³³ See *supra* para. 54.

provision of the Act should apply. There is no exception in either the Act or our rules from this requirement for stations with secondary status that are providing ancillary or supplementary services. Second, while LPTV and FM radio may have some overlapping rules, they are distinct and independent services with different rules.²³⁴ For example, LPTV stations do not have an OPIF requirement and have different station identification requirements.²³⁵ The record is clear that the aim of these FM6 operations is to provide an audio service that is analogous to other FM radio service and received using FM radio tuners.²³⁶ Therefore, we find that such FM6 operations provided by FM6 LPTV stations is analogous to those of licensed FM radio operations and should be regulated as such.

58. We do, however, find that specific Part 73 technical rules²³⁷ for full service FM radio stations should not apply to FM6 operations because FM6 LPTV stations are operating on frequencies and subject to certain conditions that make the application of certain FM technical rules unnecessary and impractical.²³⁸ Although FM6 LPTV stations operate separate television and radio transmission systems, pursuant to the new rules we have adopted today, the FM6 operations will be restricted in certain respects. For example, FM6 LPTV stations are permitted to make changes to their FM6 station facilities only under very limited circumstances (without a showing of “engineering necessity” or a waiver), are limited to operating on 87.75 MHz, may offer FM6 service only within the LPTV station’s protected contour, and may operate only on a non-interference basis.²³⁹ We have also limited the number of FM6 LPTV stations to a finite group that have already proven they do not cause the interference that many of the Part 73 technical rules for FM stations are intended to prevent.²⁴⁰ Accordingly, we find that applying the specific technical rules in sections 73.201-73.277, 73.310-73.312, and 73.314-73.318 in the context of FM6 operations are not only unnecessary, but could be contradictory to the specific rules we have adopted governing FM6 operations.

3. Five Percent Fee For Ancillary or Supplementary Services

59. Consistent with our determination to allow FM6 operations to continue on an ancillary or supplementary basis, we find that FM6 LPTV stations that offer feeable ancillary or supplementary services are subject to the five percent fee on the gross revenue of such services and must submit an Annual DTV Ancillary/Supplementary Services Report.²⁴¹ Commenters unanimously agree that FM6 LPTV stations offering feeable ancillary or supplementary services should be subject to this fee and reporting requirement.²⁴²

²³⁴ The situation before us is inherently different from the “FM multicast” scenario cited by PCPC where an FM radio station provides multiple HD streams all of which are all subject to the same FM radio operational rules. PCPC Comments at 21.

²³⁵ Cf. 47 CFR §74.783 with 47 CFR § 73.1201.

²³⁶ See *supra* paras. 10-12.

²³⁷ The FM radio technical rules are contained in 47 CFR § 73.201 – 73.333.

²³⁸ See PCPC Comments at 21; PCPC Reply Comments at 14-15; LSRC Comments at 4-5 (Jan. 21, 2020).

²³⁹ See *supra* Section III. C. 1 - Codifying Certain FM6 STA Conditions and App. B – Final Rules.

²⁴⁰ See *supra* Section III. B. – Limiting FM6 Operations To Existing Operators and paras. 13-14.

²⁴¹ FCC Form 2100 Schedule 317. See 47 CFR § 73.624(g)(1)(i); PCPC Comments at 16.

²⁴² See AVHN Comments at 4 (no objection to such a fee, provided that revenues derived from commercial advertisements would be excluded from the fee calculation, as is currently the case); Barreto Comments at 3-4 (it is appropriate that FM6 services be considered ancillary or supplementary and subject to the fees imposed on revenues received from such services); Marquee Comments at 2 (imposing the five percent fee on FM6 operations will “strongly benefit the public by bringing in new monies to the FCC and the U.S. Treasury”); PCPC Comments at 18 (if the licensee receives compensation in return for transmitting material other than commercial advertisements, those operations should be considered an ancillary service and subject to the 5 percent regulatory fee). We also note (continued....)

60. As we observed in the *Further Notice*,²⁴³ our ancillary or supplementary rules provide that digital television stations (including digital LPTV stations) must annually remit a fee of five percent of the gross revenues derived from all “feeable” ancillary and supplementary services.²⁴⁴ The Commission has defined “feeable” ancillary or supplementary services as services for which payment of a subscription fee or charge is required in order to receive the service,²⁴⁵ or if no payment is required from consumers, the licensee “directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required).”²⁴⁶ Given these rules, any FM6 LPTV station that provides “feeable services” is required to comply with the Rules and both remit the required fee and submit an Annual DTV Ancillary/Supplementary Services Report to indicate that they provided feeable services, the amount of gross revenues of such services, and whether they have remitted the requisite five percent fee.²⁴⁷

D. Licensing of Additional NCE FM Stations

61. We decline to adopt the proposal discussed in the *Further Notice* to repurpose TV6 spectrum (82-88 MHz) for FM services nationwide in locations where the channels are not being used to provide television programming.²⁴⁸ We find that the record does not support such a plan to remove a portion of the remaining spectrum allotted for television use and converting it to radio use. We find that the plan is neither feasible, because of the possibility of interference; nor efficient, because receivers are

(Continued from previous page)

that several FM6 LPTV stations began making fee payments on their FM6 operations. See *Further Notice* at n.111 (noting that last year KBKF-LD, San Jose, California submitted a payment of \$7,875 reflecting its five percent fee payment); see also Venture 2015 Comments at 8; Seattle 6 Comments at 1 (Jan. 22, 2020); PCPC Comments at 30-31 (Jan. 22, 2020); PCPC Reply Comments at 10 (Feb. 6, 2020).

²⁴³ *Further Notice* at paras. 39-40.

²⁴⁴ 47 CFR § 73.624(g); see also 47 U.S.C. § 336(e).

²⁴⁵ See 47 CFR § 73.624(g)(1)(i); see also 47 U.S.C. § 336(e)(1)(A). Moreover, the rules provide that “[t]he fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service.” See 47 CFR § 73.624(g)(1)(i).

²⁴⁶ See 47 CFR § 73.624(g)(1)(ii); see also 47 U.S.C. § 336(e)(1)(B). Further, the rules provide that “[t]he fee required by this provision shall be imposed on any and all revenues from such services, other than revenues received from a third party in return for the transmission of commercial advertisements used to support broadcasting for which a subscription fee is not required.” See 47 CFR § 73.624(g)(1)(ii).

²⁴⁷ The Media Bureau and Office of Managing Director are directed to issue any guidance, as necessary, to facilitate payment of the required fee.

²⁴⁸ See *Further Notice* at paras. 45-49. See also NPR Comments at 16. In July 2020, NPR argued FM6 is not an efficient use of spectrum, the TV6 resource was not being fully utilized by television broadcasters and much of the spectrum was laying fallow, especially in the rural parts of the country. Accordingly, we sought comment in the *Further Notice* about whether to allow FM on 82-88 MHz, whether it should be limited to NCEs, and technical feasibility. *Further Notice* at para. 45-49, citing Letter from Gregory A. Lewis, Deputy General Counsel, NPR, to Marlene H. Dortch, Secretary, FCC, in MB Docket No. 03-185 (Jul. 9, 2020) at 1 (NPR July 2020 *Ex Parte*); see also Letter from Christina H. Burrow, Cooley, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 03-185 (filed Apr. 13, 2021) (NPR April 2021 *Ex Parte*). In recent filings, NPR has modified its request to ask that the Commission instead make changes to interference protections. See, e.g., NPR Comments at 15-16; see also Letter from Amanda Huetinck, Assistant General Counsel, NPR, to Marlene H. Dortch, Secretary, FCC, in MB Docket No. 03-185 (Jul. 25, 2022) at 1 (NPR July 2022 *Ex Parte*) (stating NPR supports “the Commission’s proposal to allow permanent operation of legacy FM6 operations, so long as FM6 operations are limited to only the legacy stations discussed in the NPRM and those operations are subject to appropriate rules to ensure parity with FM stations.”); see also NPR Reply Comments at 3-6.

not capable of receiving FM stations below 87.7 FM; nor appropriate, because TV6 spectrum is still needed for broadcast television use.

62. First, we agree with commenters that the interference implications of NPR's plan to reallocate unused TV6 spectrum have not been adequately considered.²⁴⁹ Further, we find that NPR's stated efficiency goal of adding up to 30 new FM channels cannot be achieved because it would not be possible to use all 30 channels in one place.²⁵⁰ Although in theory 30 FM channels are available in the band that comprises TV6, in practice it would not be possible to use all 30 channels in one place given interference considerations.²⁵¹ Practically speaking, the number of channels for use by new FM radio stations in any one area would be significantly fewer.²⁵²

63. We find that even in places where there are available allocations for FM stations under the proposal, listeners would not be able to receive most transmissions because FM radio receivers receive only the top-most portion of the 82-88 MHz band (87.7 or 87.9 MHz) of the 6 MHz channel that comprises TV6.²⁵³ We agree with commenter concerns that FM radio receivers cannot "tune down" to the rest of the spectrum – 82.1-87.5 MHz.²⁵⁴ Therefore, we agree that it would be impractical to reallocate unused TV6 spectrum for use by new FM radio stations when it is unlikely that listeners would be able to receive most of the broadcasts from these new FM radio stations.²⁵⁵

64. Finally, although some commenters support NPR's proposal by suggesting that it is a better use of spectrum because TV6 is not ideal for digital television broadcasting,²⁵⁶ we disagree, and note that many TV stations operate on TV6. According to NAB, as of July 2022, 98 television stations were authorized to operate on TV6 in the United States.²⁵⁷ Some of these stations serve large, sparsely

²⁴⁹ See Bovis Comments at 1; Bovis Reply Comments at 1; KTL Comments at 3 (no objection to NPR's proposal as long as the FCC establishes protection from interference so that NCE stations and FM6 operations can co-exist); REC Reply Comments at 14 ("NPR's comments also lack any kind of technical showing that would need to be implemented in the event that Channel 200 or any other channels in the 76-88 MHz spectrum were to be opened for sound broadcasting.").

²⁵⁰ See *Further Notice* at para. 47.

²⁵¹ *Id.* See also PCPC Comments at 10.

²⁵² *Further Notice* at n.124 (noting as an example that in New York City, there are only 7 full-power radio stations licensed to the top 6 MHz of the FM radio band. The other 23 frequencies are licensed to stations on Long Island, New Jersey, Connecticut, and areas of New York north of New York City to avoid interference.).

²⁵³ See *Further Notice* at para. 48.

²⁵⁴ See Ridgeline Comments at 1-2 ("Extending the FM band lower into channel 6 bandwidth is a non-starter. With no receivers in automobiles capable of receiving these frequencies it would be ineffective use of bandwidth to use channel 6 for radio."); OMI Comments at 1 ("most all of the car radios in the United States do not tune down further than 87.5 MHz"); PCPC Comments at 10 ("listeners would not even be able to receive FM stations below 87.7").

²⁵⁵ See CMC Comments at 1 ("If the spectrum was made available for radio, there wouldn't be anyone who could receive it, and this would deprive the use of this spectrum for TV for which receivers are ubiquitous.").

²⁵⁶ See, e.g., Marquee Comments at 1 ("it boils down to an argument of whether a television broadcaster's FM station is any better or worse than a non-profit station's use of the channel"); IBS Comments at 3 ("IBS strongly supports reserving 87.5, 87.7, and 87.9 for new NCE FM stations, and opposes the authorization of a hybrid commercial and NCE operation for stations operating at such frequencies."); CFI Comments at 1-2 ("FCC should adopt 82-88 MHz across the United States for FM radio broadcasting."); Lee Comments at 1 ("it would be far more effective to repurpose the TV Channel 6 spectrum to up to 30 new all-digital FM radio stations, rather than limit the "TV6" spectrum to just one "Franken FM station"); Rogers Comments at 3 (TV channels 2-6 "are seen as a no-man's land by TV stations now with only a handful of stations broadcasting across these five channels"); REC Comments at 9 (the current trend for full-service TV stations is to move from low VHF channels to channels in the high VHF and UHF spectrum).

²⁵⁷ See NAB Comments at 2 (July 18, 2022).

populated areas where the relatively low power consumption of TV6 transmitters makes it economical to provide television service to rural Americans. Others serve densely populated urban areas where no alternative channels exist in more desirable spectrum.²⁵⁸ Furthermore, ATBA contends a number of TV6 stations could also serve as “lighthouse” stations for NextGen TV, providing a critical transition path for television broadcasters as they migrate to ATSC 3.0.²⁵⁹ The record persuades us that 82-88 MHz is still needed for television, especially given that the UHF spectrum available for broadcast television has been dramatically reduced in recent years.²⁶⁰ Therefore, we decline to repurpose TV6 spectrum in areas where there are presently no TV6 stations to permit the construction of new FM stations that, in many cases, listeners will be unable to receive because their receivers cannot “tune down” to the lower portions of the 82-88 MHz frequency (i.e., 82.1-87.5 MHz).²⁶¹

E. Elimination of Certain TV6 Interference Protections

65. Although we received comments on this matter,²⁶² we did not receive sufficient technical studies and analysis upon which to base any final decisions to revise our TV6 interference rules. Any changes to these rules, which were originally adopted when television was operating in analog, would need to reflect the fact that all television is now operating in digital. Despite asking in the *Further Notice* for commenters to analyze the existing digital television landscape and suggest whether and how the existing TV6 interference provisions should be retained, revised or updated, we received little comment to that effect.²⁶³ Therefore, given the incomplete nature of the record, we decline to revise the TV6 interference rules at this time. We will seek additional comment about this matter at a future date.²⁶⁴ We

²⁵⁸ *Id.* See also PCPC Reply Comments at 15-16 (“Between the need for television service on channel 6 and the demonstrated problems with an expanded FM band, preserving existing channel 6 stations and service to their viewers remains in the public interest.”).

²⁵⁹ ATBA Comments at 6 (“But it also cannot be ignored that LPTV stations are uniquely situated to deliver next generation video and data services that harness the power of broadcast technology to benefit the public without the constraints faced by many full power stations....”). See also Public Media Reply Comments at 1 (“Any reduction in spectrum available for television services could severely hinder implementation of new innovative television technologies, such as NextGen TV (ATSC 3.0) and distributed transmission systems . . .”).

²⁶⁰ See Public Media Comments at 2-3 (discussing the impact of the television incentive auction and post-incentive auction repacking process).

²⁶¹ See NAB Comments at 3 (July 18, 2022) (“However, the minimal relief afforded by a limited repurposing of TV channel 6 to the FM service in areas where there are presently no channel 6 stations is unlikely to outweigh the potential costs.”); Bovis Reply at 2 (arguing that NPR’s proposal prioritizes currently non-existent radio listeners over existing TV viewers of channels 5 and 6).

²⁶² See University of Alabama Reply Comments at 1-3; ATBA Comments at 7-8; Bovis Comments at 2; CFI Comments at 10; CMC Comments at 1; CTI Reply Comments at 1; EMF Reply Comments at 1-5; IBS Comments at 4; Luna Comments at 1; NAB Comments at 9-10 and Reply Comments at 5-6; NPR Comments at 12-15 and Reply Comments at 5-6; OMI Comments at 1; PCPC Comments at 23-24 and Reply Comments at 17-18; Public Media Reply Comments at 1-2; Reed Comments at 6-7; REC Networks Comments at 25 and Reply Comments at 5-13 and 21-22; SOL Comments at 11-12; WPVI Comments at 2-6 and Reply Comments at 1-4; Letter from Michelle Bradley, Founder, REC Networks, MB Docket No. 03-185 at 1-2 (filed July 3, 2023).

²⁶³ See *Further Notice* at paras. 54 and 56.

²⁶⁴ In addition, NPR proposed that the Commission adopt a narrow rule change to enable existing NCE FM radio stations to modify their authorizations to relocate to channel 200 (87.9 MHz). See NPR Comments at 15-16; NPR Reply Comments at 6-7. As this change could impact our revisions to the TV6 interference rules, we find that it would be more appropriate to consider NPR’s proposal in conjunction with a future TV6 interference proceeding.

encourage interested parties to continue to work together to find a solution and develop comprehensive technical studies to support their position.²⁶⁵

IV. PROCEDURAL MATTERS

66. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),²⁶⁶ 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.”²⁶⁷ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

67. *Paperwork Reduction Act.* The R&O contains a new or modified information collection requirement subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirement contained in the proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,²⁶⁸ we previously sought specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”²⁶⁹ We have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA), attached as Appendix C.

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

69. *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.

70. *Additional Information.* For additional information on this proceeding, please contact Shaun Maher, Video Division, Media Bureau at (202) 418-2324 or, [Mark Colombo](mailto:Mark.Colombo@fcc.gov), Video Division, Media Bureau at (202) 418-7611 or Mark.Colombo@fcc.gov.

V. ORDERING CLAUSES

71. Accordingly, **IT IS ORDERED**, pursuant to the authority contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, and 336, this Fifth Report Order **IS ADOPTED**.

72. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in sections 1, 4, 301, 303, 307, 308, 309, 310, 316, 319, and 336 of the Communications Act of 1934, as amended, 47

²⁶⁵ REC Networks (REC) included a petition for rulemaking requesting that the Commission consider the reallocation of television channels 5 and 6 for use with a new “WIDE FM” service. See REC Comments at 26-109; REC Reply Comments at 58. We conclude that REC’s proposal is outside of the scope of this proceeding and will not be considered in this R&O.

²⁶⁶ 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).

²⁶⁷ 5 U.S.C. § 605(b).

²⁶⁸ Pub. L. No. 107-198.

²⁶⁹ 44 U.S.C. § 3506(c)(4).

U.S.C. §§ 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 336, part 74 of the Commission's rules, 47 CFR part 74, **IS AMENDED** as set forth in Appendix B effective thirty (30) days after publication in the Federal Register, except for sections 74.790(o)(9) and 74.790(o)(10) which contain new or modified information collection requirements that require review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The Commission directs the Media Bureau to announce the effective date of that information collection in a document published in the Federal Register after the Commission receives OMB approval.

73. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, Reference Information Center, **SHALL SEND** a copy of the Fifth Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

74. **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 Fifth Report and Order to Congress and to the Government Accountability Office.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters and Reply Commenters****Comments**

Advanced Television Broadcasting Alliance (ATBA)
AlmaVision Hispanic Network, Inc. (AHNI)
Public Media - America's Public Television Stations, Joint Licensee Group, National Educational
Telecommunications Association, Public Broadcasting Service (Public Media)
Barreto, Juan Matos (Barreto)
Bogner, Richard (Bogner)
Bovis, Hank (Bovis)
CMC Broadcasting Company Incorporated (CMC)
Cocola Broadcasting Cos. LLC (Cocola or CBC)
Common Frequency, Inc. (CFI)
Flinn, George (Flinn)
Gerald Benavides (Benavides)
Guadalupe Radio (GR)
Intercollegiate Broadcasting System, Inc. (IBS)
Kids Television LLC (KTL)
Woodward - KORE Broadcasting, LLC (Woodward)
Luna Foods, Inc. (Luna)
Marquee Broadcasting, Inc. (MBI)
Metro TV, Inc. (Metro TV)
National Association of Broadcasters (NAB)
National Public Radio, Inc. (NPR)
Rogers, Nelson Jay (Rogers)
One Ministries, Inc. (OMI)
Preserve Community Programming Coalition (PCPC)
Lee - QXZ Media Works LLC (Lee)
Read, Aaron (Read)
REC Networks (REC)
Signal Above, LLC (Signal)
Sound of Long Island, Inc. (Sound)
T Z Sawyer Technical Consultants (TZ)
VCY America, Inc. (VCY)
WPVI Television (Philadelphia), LLC (WPVI)

Reply Comments

Bogner
Bovis
California State University Long Beach Research Foundation (Cal State)
Cocola or CBC
Communications Technologies, Inc. (CTI)
Educational Media Foundation (EMF)
La Favorita Radio Network, Inc. (LFRN)
OMI
Public Media
Metro TV
NAB
NPR
PCPC
REC

Squires, Caleb (Squires)
Ridgeline TV (Ridgeline)
University of Alabama
WPVI

Ex Partes

Metro TV, filed June 1, 2022
Metro TV, filed November 7, 2022
Metro TV, filed November 15, 2022
NPR, filed July 25, 2022
REC, filed September 14, 2022
REC, filed July 7, 2023
Venture Technologies Group, filed July 1, 2022 (Venture)

APPENDIX B**Final Rules**

Part 74 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

2. Add section 74.790(o) to read as follows:

74.790 - Permissible service of digital TV translator and LPTV stations.

* * * * *

(o) Provision of analog FM radio operations by digital LPTV channel 6 stations (FM6 LPTV stations). FM6 LPTV stations may provide analog FM radio operations (FM6 operations) on an ancillary or supplementary basis subject to the following:

- (1) The FM6 LPTV station must have been providing FM6 operations pursuant to an active engineering special temporary authority on June 7, 2022, or as otherwise permitted by the Commission.

- (2) The FM6 LPTV station must be operating in ATSC 3.0 digital format, as authorized in § 74.782.

- (3) FM6 operations may only be conducted on 87.75 MHz.

- (4) FM6 operations shall be conducted on a non-interference basis to any other licensed user, including but not limited to broadcast television or radio users.

- (5) the FM6 LPTV station's FM6 service contour must be contained within and may not exceed the protected contour of the FM6 LPTV station's synchronized video/audio programming stream. These contours shall be determined using established methodologies in § 73.313 of this chapter (FM radio) and § 74.792 (LPTV).

- (6) the FM6 LPTV station must provide at least one stream of synchronized video and audio programming, at any time the station is operating.

- (7) FM6 LPTV stations may make minor modifications to their technical facilities, as otherwise permitted under parts 73 or 74 of this chapter, so long as the station's proposed modified "protected contour," as defined in § 74.792, does not exceed its protected contour as it was authorized on July 20, 2023, or where the station can demonstrate that such change is being made due to an engineering necessity such as the loss of a tower site or change in equipment due to malfunction and where the station can also demonstrate that the modification will not cause any interference to other licensed users.

- (8) FM6 LPTV stations may be assigned or transferred; however, an FM6 LPTV station's FM6 operation is not severable from its digital license and may not be assigned or transferred separate from the FM6 LPTV station.

- (9) FM6 LPTV stations must notify the Media Bureau within 30 days of permanently ceasing FM6 operations. Such notification shall be made by written letter and mailed to the FCC Office of the Secretary, Attention: Chief, Video Division, Media Bureau. If an FM6 LPTV station permanently ceases FM6 operations, FM6 operations may not resume.

- (10) FM6 LPTV stations must certify in an attachment to their license renewal application that they have continued to provide FM6 service in accordance with the FM6 rules during the prior license term.

(11) FM6 LPTV stations shall continue to be subject to all part 73 and 74 rules applicable to low power television stations. In addition, the following rules shall apply to FM6 LPTV stations with respect to their FM6 operations:

- Part 11 of this chapter The Emergency Alert System (EAS)
- 73.293 Use of FM multiplex subcarriers.
- 73.295 FM subsidiary communications services.
- 73.297 FM stereophonic sound broadcasting.
- 73.310 FM technical definitions.
- 73.313 Prediction of coverage.
- 73.319 FM multiplex subcarrier technical standards.
- 73.322 FM stereophonic sound transmission standards.
- 73.333 Engineering charts
- 73.1201 Station identification.
- 73.1206 Broadcast of telephone conversations.
- 73.1207 Rebroadcasts.
- 73.1208 Broadcast of taped, filmed, or recorded material.
- 73.1209 References to time.
- 73.1211 Broadcast of lottery information.
- 73.1212 Sponsorship identification; list retention; related requirements.
- 73.1216 Licensee-conducted contests.
- 73.1217 Broadcast hoaxes.
- 73.1250 Broadcasting emergency information.
- 73.1300 Unattended station operation.
- 73.1635 Special temporary authorizations (STA).
- 73.1740 Minimum operating schedule.
- 73.1750 Discontinuance of operation.
- 73.1940 Legally qualified candidates for public office.
- 73.1941 Equal opportunities.
- 73.1942 Candidate rates.
- 73.1943 Political file.
- 73.1944 Reasonable access.
- 73.2080 Equal employment opportunities (EEO).
- 73.3526 Online public inspection file of commercial stations.
- 73.4005 Advertising - refusal to sell.
- 73.4045 Barter agreements.
- 73.4055 Cigarette advertising.
- 73.4060 Citizens agreements.
- 73.4075 Commercials, loud.
- 73.4095 Drug lyrics.
- 73.4097 EBS (now EAS) attention signals on automated programing systems.
- 73.4165 Obscene language.
- 73.4170 Obscene broadcasts.
- 73.4180 Payment disclosure: Payola, plugola, kickbacks.
- 73.4185 Political broadcasting and telecasting, the law of.
- 73.4190 Political candidate authorization notice and sponsorship identification.
- 73.4215 Program matter: Supplier identification.
- 73.4242 Sponsorship identification rules, applicability of.
- 73.4250 Subliminal perception.
- 73.4255 Tax certificates: Issuance of.
- 73.4260 Teaser announcements.
- 73.4265 Telephone conversation broadcasts (network and like sources).

APPENDIX C

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking (*Further Notice*) released June 7, 2022.² The Commission sought written public comment on the proposals in the *Further Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need For, and Objectives of, the Report and Order

2. This *Report and Order* adopts rule changes to allow channel 6 digital low power television stations that have been providing analog FM radio services, and only those stations, to continue their FM6 operations, subject to certain conditions which will also be codified in the rules. Continuing to allow existing FM6 operations serves the public interest and minimizes service disruptions to programming on which listeners have relied.

3. In the *Report and Order*, the Commission adopts rules for FM6 operations, including that FM6 LPTV stations must operate in ATSC 3.0 digital format, must transmit FM6 at 87.75 MHz, and FM6 operations must not interfere with any other licensed user. The coverage area of an FM6 LPTV station's analog FM radio operation may not exceed the coverage area of the LPTV station's ATSC 3.0 synchronized video/audio programming stream. FM6 LPTV stations must also provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating. FM6 LPTV stations may make modifications to their technical facilities, as otherwise permitted under Part 74 of the rules, so long as the protected contour of the station's modified facilities remains within its current protected contour.

4. The *Report and Order* also adopts reporting requirements, requiring that if an FM6 LPTV station decides to permanently discontinue FM6 operations, it must notify the Media Bureau within 30 days of permanently ceasing FM6 operations. FM6 LPTV stations must also certify in an attachment to their octennial license renewal application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term. Section 74.763(c) of the rules apply to FM6 operations, so that an FM6 LPTV station that does not provide an FM6 operation for a period of 30 days or more, absent circumstances beyond its control, will be deemed to have permanently discontinued FM6 operations. Additionally, FM6 LPTV stations must include all of the items required by the public inspection file (PIF) rule for full service FM radio stations in their LPTV station PIF.

5. The *Report and Order* also adopts requirements for application of Part 73 and 74 rules to these stations and services. FM6 LPTV stations will continue to be subject to all applicable Part 73 and 74 rules that pertain to their television station operations, and their FM6 operations will be separately subject to those Part 73 rules to which full service FM radio stations are currently subject, as contained in our new FM6 rule – 74.790(o).

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. 847 (1996).

² See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking, MB Docket No. 03-185, FCC 22-40, Appx. C (2022) (*Further Notice*).

³ See 5 U.S.C. § 604.

6. Finally, the *Report and Order* adopts the fee requirements for FM6 LPTV stations. Any FM6 LPTV station that receives compensation for the transmission of material by a third party, other than commercial advertisements used to support non-subscription based broadcasting, on its FM6 operation shall be subject to the existing rule requiring a five percent fee on gross revenues from such compensation. FM6 LPTV stations that do not receive such compensation shall not be subject to the five percent fee. Any FM6 LPTV station providing feeable ancillary or supplementary services must submit an Annual DTV Ancillary/Supplementary Services Report and report that they provided such fee-based services, the amount of gross revenues of such services, and whether they have remitted the requisite five percent fee.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

7. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Response to comments by the Chief Counsel for Advocacy of the Small Business Administration

8. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁴

9. 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

10. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.⁸

11. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”⁹ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.¹⁰ These

⁴ *Id.* § 604(a)(3).

⁵ *Id.* § 603(a)(4).

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

⁸ 15 U.S.C. § 632.

⁹ See U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

¹⁰ *Id.*

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.¹¹ Programming may originate in their own studio, from an affiliated network, or from external sources.¹² 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.

12. As of March 31, 2023, 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 Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,887 LPTV stations and 3,119 TV translator stations.¹⁷ The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

13. The *Report and Order* contains new reporting, recordkeeping, and other compliance requirements for the licensing and certification for small entity FM6 LPTV stations that provide FM6 service.

14. 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, the approaches we have taken to implement the requirements have minimal or de minimis cost implications for impacted entities because many of these requirements are part of an existing reporting process.

15. The *Report and Order* adopts four new reporting requirements for FM6 LPTV stations that wish to continue to or cease to provide FM6 service, including the requirement that FM6 LPTV stations notify the Media Bureau within 30 days if they decide to permanently discontinue FM6 operations. FM6 LPTV stations must certify in an attachment to their octennial license renewal

¹¹ *Id.*

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 March 31, 2023*, Public Notice, DA 23-300 (MB rel. Apr. 6, 2023) (*March 2023 Broadcast Station Totals PN*), <https://www.fcc.gov/document/broadcast-station-totals-march-31-2023>.

¹⁷ *Id.*

application that they have continued to provide FM6 operations in accordance with the FM6 rules during their prior license term. FM6 LPTV stations must also include all of the items required by the PIF rule for full service FM radio stations in their LPTV station PIF. Additionally, FM6 LPTV stations that provided feeable ancillary or supplementary service must submit an Annual DTV Ancillary/Supplementary Services Report and report that they provided feeable services, the amount of gross revenues of such services and whether they have remitted the requisite five percent fee. These requirements will result in a modified paperwork obligation for small entities and other licensees. The Commission will seek the requisite approval, such as those required to comply with the Paperwork Reduction Act of 1995 (PRA),¹⁸ to account for the increased burdens resulting from this modified reporting requirement.

F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”¹⁹

17. The actions taken by the Commission in the *Report and Order* were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below we discuss actions we take in the *Report and Order* to minimize any significant economic impact on small entities and some alternatives that were considered.

18. Among the alternatives considered to minimize significant impact on small entities, the Commission considered whether FM6 programming could be delivered via another delivery method such as other broadcast methods or internet only, and found that these methods were less efficient and potentially more costly to small entities than maintaining the existing service.²⁰ The Commission also considered whether to preserve or alter the service contour for FM6 service. In deciding that the service contour not exceed the protected contour of the LPTV station’s ATSC 3.0 synchronized video/audio programming stream, the Commission determined that alternative approaches presented were impractical and overly burdensome.²¹

19. It is anticipated that some of the new reporting requirements will likely result in minimal additional costs because the Commission adopted requirements which can be executed as part of an existing process and within the timeframe for certain other filing requirements. This includes certifying in an attachment to an existing octennial license renewal application that the station provided FM6 service during the prior license term in accordance with the FM6 rules. Further, FM6 LPTV stations must adhere to the requirements of licensed users providing similar services, including the PIF rule for full service FM radio stations in their LPTV station PIF, and submitting an Annual DTV Ancillary/Supplementary Services Report if they provide a feeable service, report provision of feeable services, their gross revenues, and whether they have remitted the requisite five percent fee.

¹⁸ Pub. L. No. 104-13.

¹⁹ 5 U.S.C. § 604(a)(6).

²⁰ *Report and Order* at paras. 13-15; *Further Notice* at para. 21.

²¹ *Report and Order* at paras. 40-41; *Further Notice* at para. 30-31.

G. Report to Congress

20. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.²² In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.²³

²² 5 U.S.C. § 801(a)(1)(A).

²³ *See Id.* § 604(b).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Fifth Report and Order (July 20, 2023).

Back in the 1980's a small number of low power television stations operating on channel 6 began to provide supplemental audio programming. They took advantage of the physics of their location on the broadcast television band, because the uppermost portion of the channel where these television stations made their home was also capable of reception on the lowermost portion of the FM radio dial.

So far, so good. Because ultimately this led to more broadcast services to more people in the community. But when the low power digital television transition rolled around, this got complicated—fast. That's because when these stations upgraded to digital transmission, they were unable to reach their analog radio audience.

For the past two years, we have kept these stations on the air with the equivalent of regulatory gum and bailing wire. We set up a temporary process that allowed for the use of a separate analog radio transmitter in combination with a digital television facility.

Now it is time for something sturdier and more permanent. In light of the fact that we have had two years of experience with this arrangement and no incidents of interference with television operations and adjacent licensees, including other stations on FM radio, we are authorizing these FM6 stations to continue providing analog radio service as “ancillary or supplementary services” under the Communications Act.

That may sound technical. But to the communities these stations serve it really matters. Right here in Washington, for instance, WDCN—La Nueva is one of these stations. Broadcasting out of Fairfax, Virginia, it is targeted to those with ties to Central America, featuring public service programming, music, and content from El Salvador, Honduras, and Guatemala. This is a small station that is a big deal to its listeners. We make it possible today for them to continue to broadcast to their radio listeners, because we know in a world where content feels like it is everywhere, there is still something special about local radio and a signal in the air.

Thank you to the team responsible for this effort, including Jim Bradshaw, Mark Colombo, Robin Fagan, Tom Horan, Barbara Kreisman, Shaun Maher, Evan Morris, Holly Saurer, and Al Shuldiner from the Media Bureau as well as David Konczal and Anjali Singh from the Office of General Counsel.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Fifth Report and Order (July 20, 2023).

Throughout his life, Percy Spencer was many things—an orphan, a farmer, a drop out, a Navy man, and a self-taught engineer. In 1945, it was his love of electricity that had brought him to the Raytheon Corporation. Among other things, Percy was responsible for testing magnetrons, which are vacuum tubes inside of radars that operate at very high power levels.

Now, in addition to being a jack of all trades, Percy had a bit of a sweet tooth. And on one particular day, he had a candy bar in his pocket. After a while, and more than a few close passes to the magnetrons, he noticed that the candy bar had melted. In fact, it had gotten quite warm.

Percy thought he might be on to something, but, being a man of science, he needed more proof. Next came some popcorn kernels that started popping like mad. Then came an egg that blew up in the face of a skeptical colleague. I can't say for certain that this is where we got the expression "egg on your face," but I can say that these culinary adventures brought us what we now know as the microwave.

Today's item presents us with a similar story of serendipity. For many years, the Commission has been trying to figure out what to do with the FM6 stations. And just when it looked like the DTV transition would be the final entry in the FM6 Wikipedia page—yes, they have their own Wikipedia page—a new technology breathed life into the service. I have long believed that ATSC 3.0 would revolutionize the broadcast television industry, but I had no idea that this cutting-edge technology would help preserve over-the-air radio service near the bottom of the TV band. So I applaud the ingenuity of these stations, and I am pleased that, moving forward, they will also be increasing their video programming in ATSC 3.0.

If I'm being honest, I doubt our action today will be as consequential as Percy's discovery. After all, there are probably over a hundred microwaves in the FCC Headquarters alone. But for the listeners in these markets who have come to rely on these stations for entertainment and emergency information, our action today may be just as meaningful.

I would like to thank the Media Bureau staff for their long and diligent work on this matter. The item has my support.

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

In the Matter of	)	
	)	
Q Link Wireless LLC and	)	File No.: EB-TCD-22-00034450
Hello Mobile Telecom LLC	)	NAL/Acct. No.: 202332170014
	)	FRN: 0021593975; 0027619089

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 20, 2023

Released: July 28, 2023

By the Commission:

I. INTRODUCTION

1. Safeguarding the privacy of American consumers and ensuring the protection of their sensitive data have been longstanding priorities for the Federal Communications Commission (FCC or Commission). In furtherance of these important goals, we take enforcement action against two companies—Q Link Wireless LLC (Q Link) and Hello Mobile Telecom LLC (Hello Mobile) (collectively, the Companies)—that apparently relied impermissibly upon readily available biographical information and account information to authenticate online customers. In doing so, the Companies appear to have flagrantly placed the security of their customers’ information at risk.

2. Telecommunications carriers maintain increasingly large amounts of sensitive customer data, including information about the types of services their customers receive and how and when they use those services. This service-related information—known as “customer proprietary network information,” or CPNI—includes, among other things, customer calling records and location information. Because of the sensitivity of this data, the Communications Act of 1934, as amended (the Act), and the Commission’s rules require service providers to take reasonable measures to discover and protect against unauthorized use, access and disclosure of CPNI.

3. Under the Commission’s rules, a carrier’s customer must be authenticated by, and provide a password to, the carrier before being allowed online access to their CPNI. However, in order to protect CPNI from unauthorized third parties who could “pretext” or impersonate a customer, the Commission’s rules prohibit carriers from authenticating a customer for online access to CPNI by using readily available biographical information or account information. Carriers also cannot create backup customer authentication methods (to address lost or forgotten passwords) that prompt customers for such biographical or account information

4. Accordingly, we propose a penalty of \$20,000,000 against Q Link and Hello Mobile—which have common ownership and used the same app to provide their customers with access to CPNI—for apparently violating section 64.2010(c) of the Commission’s CPNI rules by using readily available biographical information and account information for customer authentication. Finally, though we do not assess separate proposed forfeitures, we also find that (1) the Companies’ use of readily available biographical information and account information to control access to CPNI apparently violated section 222 of the Act and section 64.2010(a) of the Commission’s CPNI rules, and (2) Q Link’s use of such information for back-up authentication and password reset purposes apparently violated section 64.2010(e) of the Commission’s CPNI rules.

II. BACKGROUND

A. Legal Framework

5. The Act and the Commission's rules govern and limit telecommunications carriers' use and disclosure of certain customer information. Section 222(a) of the Act imposes a duty on telecommunications carriers to "protect the confidentiality of proprietary information," including that of "customers," and section 222(c) of the Act establishes specific privacy requirements for CPNI.¹

6. CPNI is broadly defined in the Act and includes "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship."² It also includes "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier."³ The Commission has promulgated rules implementing the privacy requirements of section 222 (the CPNI Rules),⁴ and has amended those rules over time. Most relevant to this proceeding are the rules that the Commission adopted in its 2007 CPNI Order,⁵ specifically section 64.2010, establishing safeguards on the disclosure of CPNI.⁶

7. The Commission's 2007 rulemaking was largely in response to concerns about the practice of "pretexting,"⁷ and included the adoption of section 64.2010 of the Commission's rules. Ultimately, the Commission wanted to ensure that carriers were only granting CPNI access to the consumer to whom the CPNI belonged and not to other third party impersonators. As such, the Commission implemented requirements that carriers first authenticate customers before granting them access to CPNI. Recognizing that authentication methods could easily be bypassed if they hinged on

¹ 47 U.S.C. § 222(a), (c). The Commission has also stated that section 222 of the Act imposes on Eligible Telecommunications Carriers (ETC) a duty to protect the confidentiality of documentation provided by Lifeline customers and applicants, and the personally identifiable information contained therein. *See* 47 U.S.C. § 222(a); *Lifeline and Link Up Reform and Modernization, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order*, WC Docket Nos. 11-42 et al., *Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order*, 30 FCC Rcd 7818, 7896, para. 234 (2015) (*2015 Lifeline Order on Reconsideration*). This includes a requirement that ETCs "employ the following practices to secure any subscriber information that is stored on a computer connected to a network: firewalls and boundary protections; protective naming conventions; user authentication requirements; and usage restrictions, to protect the confidentiality of consumers' proprietary personal information...." *2015 Lifeline Order on Reconsideration*, 30 FCC Rcd at 7896, para. 235. The Commission also requires providers participating in the Emergency Broadband Benefit Program and the Affordable Connectivity Program to "[s]ecurely retain[n] all information and documentation it receives related to the eligibility determination and enrollment..." 47 CFR §§ 54.1606(b)(3), 54.1806(b)(3).

² 47 U.S.C. § 222(h)(1)(A).

³ *Id.* § 222(h)(1)(B).

⁴ 47 CFR §§ 64.2001-64.2011.

⁵ *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) (*2007 CPNI Order*).

⁶ 47 CFR § 64.2010.

⁷ As used in the *2007 CPNI Order*, "pretexting" means "the practice of pretending to be a particular customer or other authorized person in order to obtain access to that customer's call detail or other private communications records." *2007 CPNI Order*, 22 FCC Rcd at 6928 & n.1. *See also AT&T Inc.*, Notice of Apparent Liability, 35 FCC Rcd 1743, 1746, 1763, paras. 7, 59 (2020).

readily obtainable account or biographical information, the Commission placed limits on the information that carriers are permitted to use for customer authentication.⁸

8. As the Commission explained in 2007, “some carriers permit customers to establish online accounts by providing readily available biographical information,”⁹ and the record showed “holes” in carriers’ authentication methods, such as “authenticating a customer’s identity through information the carrier readily provides to any person purporting to be the customer without authentication.”¹⁰ The Commission also observed that “biographical identifiers are widely available on websites and easily obtained by pretexters” and that “biographical information like social security number can be found on the Internet.”¹¹ Therefore, the Commission established a framework for customer authentication and specified that, because of their inherent vulnerabilities, certain types of data could not be used for authentication or related purposes.

9. Section 64.2010(a) of the Commission’s rules requires that telecommunications carriers “take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI” and “properly authenticate” customers before disclosing CPNI over the telephone, online, or in-store.¹² Subsections (c) and (e) articulate specific rules about online access to CPNI and establishing/resetting customer passwords—with both sections prohibiting carriers from authenticating a customer through the use of “readily available biographical information” or “account information.”¹³ “Readily available biographical information” means “information drawn from the customer’s life history and includes such things as the customer’s social security number, or the last four digits of that number; mother’s maiden name; home address; or date of birth.”¹⁴ “Account information” is “information that is specifically connected to the customer’s service relationship with the carrier, including such things as an account number or any component thereof, the telephone number associated with the account, or the bill’s amount.”¹⁵

10. With respect to online access to CPNI, section 64.2010(c) of the Commission’s rules requires carriers to authenticate their customers “without the use of readily available biographical information, or account information.”¹⁶ Once authenticated, customers may only obtain online access to CPNI through a password “that is not prompted by the carrier asking for readily available biographical information, or account information.”¹⁷ Section 64.2010(e) of the Commission’s rules sets forth requirements for password establishment and back-up authentication methods. Specifically, a carrier must authenticate a customer—without the use of “readily available biographical information, or account information”—before the customer sets a password.¹⁸ Similarly, while a carrier may establish back-up customer authentication methods in the event of lost or forgotten passwords, “such back-up customer

⁸ 2007 CPNI Order, 22 FCC Rcd at 6936-41, paras. 13-23.

⁹ *Id.* at 6940, para. 20.

¹⁰ *Id.* at 6940, para. 20 & n.73.

¹¹ *Id.* at 6940, para. 20 & n.74.

¹² 47 CFR § 64.2010(a).

¹³ *Id.* § 64.2010(c), (e). The Commission made clear that the specific customer authentication requirements it adopted were “minimum standards” and emphasized the Commission’s commitment “to taking resolute enforcement action to ensure that the goals of section 222 [were] achieved.” 2007 CPNI Order, 22 FCC Rcd at 6959-60, para. 65.

¹⁴ 47 CFR § 64.2003(m).

¹⁵ *Id.* § 64.2003(a).

¹⁶ *Id.* § 64.2010(c).

¹⁷ *Id.*

¹⁸ *Id.* § 64.2010(e).

authentication method may not prompt the customer for readily available biographical information, or account information.”¹⁹

B. Factual Background

11. Q Link is a common carrier and mobile virtual network operator (MVNO) that offers wireless voice and data service under the Commission’s Lifeline program²⁰ to qualifying low-income subscribers, as well as prepaid wireless services for both Lifeline and non-Lifeline subscribers.²¹ Hello Mobile, an affiliate of Q Link, also is a common carrier and provides nationwide mobile wireless voice and data service to consumers as an MVNO. Both Companies are also identified as participating providers in the Commission’s Affordable Connectivity Program.²² Therefore, both Q Link and Hello Mobile are telecommunications carriers subject to the requirements of section 222 and the Commission’s rules for the conduct relevant here.²³ Q Link and Hello Mobile are wholly owned by Florida-based Quadrant Holdings Group LLC (Quadrant), which in turn is wholly owned by Quadrant’s Chief Executive Officer, Mr. Issa Asad.²⁴ In addition, Mr. Asad is listed as the CEO for both Q Link and Hello Mobile.²⁵

¹⁹ *Id.*

²⁰ The Lifeline program, administered by the Universal Service Administrative Company (USAC) on the Commission’s behalf, provides qualifying low-income consumers discounts on voice and/or broadband Internet access service to help ensure that all Americans have access to affordable service. *Bridging the Digital Divide for Low-Income Consumers*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, 10887, para. 3 (2019); *see also* 47 CFR § 54.401 (describing the Lifeline program).

²¹ *See* Q Link Wireless, *About Q Link Wireless*, <https://qlinkwireless.com/about-q-link-wireless.aspx> (last visited June 8, 2023).

²² The Affordable Connectivity Program (ACP) provides qualifying low-income households discounted monthly broadband service and a one-time discount of up to \$100 on a tablet, desktop computer, or laptop. *See Affordable Connectivity Program*, WC Docket No. 21-450, Second Report and Order, FCC 22-64, at 1-2, para. 3 (2022). *See also* 47 CFR § 54.1803 (describing ACP support amounts). A list of ACP participating providers is available at FCC, Affordable Connectivity Program Providers, <https://www.fcc.gov/affordable-connectivity-program-providers> (last visited June 8, 2023). Both Companies also participated in the Emergency Broadband Benefit Program, the predecessor to the ACP. Q Link is the subject of a pending Commission enforcement action that proposes a \$62 million penalty against the company for apparently violating Emergency Broadband Benefit Program rules by seeking and receiving reimbursement for connected devices in excess of market value. *See Q Link Wireless, LLC*, Notice of Apparent Liability for Forfeiture, DA 23-2, 2023 WL 345342 (Jan. 17, 2023).

²³ *See* 47 U.S.C. § 222; 47 CFR § 64.2003(o) (defining *telecommunications carrier or carrier* for purposes of the rules implementing section 222); 47 U.S.C. §§ 153(51) (providing that “[a] telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services”), 332(c) (providing that a person engaged in the provision of a commercial mobile service shall be treated as a common carrier for purposes of the Act).

²⁴ Response to Letter of Inquiry, from John T. Nakahata, et al., HWG LLP, Counsel to Q Link Wireless LLC, to Kristi Thompson, Chief, Telecommunications Consumer Division, FCC Enforcement Bureau, at 1-2, Response to Inquiry 1 (Feb. 7, 2022) (on file in EB-TCD-00032935) (App LOI Response). We note Quadrant’s registration on the Commission’s Form 499 Filer Database, as well as registrations in both Delaware and Florida, list the company as “Quadrant Holdings Group, LLC”, while the App LOI Response list them as “Quadrant Holdings LLC,” and Quadrant’s website names the entity “Quadrant Holdings, LLC.” We also note that Hello Mobile’s registration in Florida lists the company as “Hello Mobile Telecom LLC.”

²⁵ *See* FCC Form 499 Filer Database, Q Link Wireless LLC, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829223> (last visited June 8, 2023); FCC Form 499 Filer Database, Hello Mobile Telecom LLC, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=832680> (last visited June 8, 2023).

12. The Companies provide online access to CPNI through their respective websites and the My Mobile Account app (App). Through the Q Link website (Website), Q Link customers can log in to their account to “complete an order, upload documents, view order status, check usage, refill account or recertify.”²⁶ Q Link describes the App as a user’s “on-the-go hub to monitor and enjoy every aspect of your account with Q Link,” including the ability to “view a detailed report of your monthly usage” and “add more minutes and data at any time with just the click of a button.”²⁷ As explained in more detail below in the Discussion section, some of the information that customers can access through both the Website and the App constitutes CPNI. As such, those platforms are subject to the Commission’s rules governing customers’ online access to their CPNI and proper customer authentication methods.

13. On April 9, 2021, the Ars Technica website published an article claiming that a security flaw in the App potentially exposed the private information of an unknown number of Q Link subscribers.²⁸ Consequently, the Telecommunications Consumers Division (TCD) of the Commission’s Enforcement Bureau’s (Bureau) opened an investigation (App Investigation). On December 3, 2021, TCD issued an initial Letter of Inquiry (App LOI) to Quadrant, directing Quadrant and the Companies to provide information and documents regarding the Companies’ duty to protect CPNI and other proprietary information under section 222 of the Act and section 64.2010 of the Commission’s rules.²⁹ TCD then issued a supplemental LOI (App SLOI) on June 10, 2022, that directed Quadrant and the Companies to provide detailed information regarding the App login, authentication, and account access features.³⁰ The responses to these inquiries³¹ were not complete or, with regard to the response to the supplemental LOI, timely. As a result, the Bureau issued a Notice of Apparent Liability (NAL) proposing a \$100,000 forfeiture against Quadrant, Q Link, and Hello Mobile for apparently violating section 503(b)(1)(B) of the Act by failing to respond to a Commission order.³²

14. TCD’s review of Quadrant and the Companies’ joint responses in the App Investigation indicated that some of the Companies’ customer authentication practices may violate the CPNI Rules. As described in more detail below, the Companies apparently made impermissible use of readily available

²⁶ Q Link Wireless, *My Q Link Login*, <https://qlinkwireless.com/members/Login.aspx> (last visited June 8, 2023).

²⁷ Q Link Wireless, *What is My Mobile Account?*, <https://support.qlinkwireless.com/what-is-my-mobile-account/> (last visited June 8, 2023).

²⁸ See Dan Goodin, *No password required: Mobile carrier exposes data for millions of accounts* (Apr. 9, 2021), <https://arstechnica.com/information-technology/2021/04/no-password-required-mobile-carrier-exposes-data-for-millions-of-accounts/>.

²⁹ Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Issa Asad, CEO, Quadrant Holdings Group LLC (Dec. 3, 2021) (on file in EB-TCD-21-00032935 (erroneously captioned EB-TCD-00032200)) (App LOI). This LOI was addressed to Quadrant, but directed Quadrant, Q Link, and Hello Mobile to answer the inquiries. Quadrant and the Companies provided a single, joint response to this LOI, as well as to the supplemental LOI issued in the App Investigation.

³⁰ Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to John T. Nakahata, Counsel to Q Link Wireless LLC (June 10, 2022) (on file in EB-TCD-00032935 (erroneously captioned EB-TCD-21-00032200)) (App SLOI). Similar to the App LOI, this SLOI directed Quadrant, Q Link, and Hello Mobile to answer the inquiries; they did so in a single, joint response.

³¹ App LOI Response; Supplemental Response to Letter of Inquiry, from John T. Nakahata, et al., HWG LLP, Counsel to Q Link Wireless LLC, to Kristi Thompson, Chief, Telecommunications Consumer Division, FCC Enforcement Bureau et al. (Mar. 31, 2022) (on file in EB-TCD-21-00032935) (App LOI Supplemental Response); Response to Supplemental Letter of Inquiry, from John T. Nakahata, et al., HWG LLP, Counsel to Q Link Wireless LLC, to Kristi Thompson, Chief, Telecommunications Consumer Division, FCC Enforcement Bureau et al. (Aug. 8, 2022) (on file in EB-TCD-21-00032935) (App SLOI Response).

³² *Quadrant Holdings LLC; Q Link Wireless LLC; Hello Mobile LLC*, Notice of Apparent Liability for Forfeiture, DA 22-825, 2022 WL 3339390 (EB Aug. 5, 2022).

biographical information and account information to authenticate online users.³³ Accordingly, TCD opened a separate investigation into the Companies' authentication practices (Authentication Investigation). On November 4, 2022, TCD issued an initial LOI (Authentication LOI)³⁴ in connection with the new investigation, followed by a supplemental LOI (Authentication SLOI)³⁵ on March 1, 2023, seeking additional and updated information. Q Link submitted responses on December 5, 2022, and March 15, 2023, respectively.³⁶

15. The Companies' responses to the letters of inquiry explained what information customers can access through their accounts via the Website and the App, the methods that the Companies deployed to verify customers, and (at least for the App) some numbers related to how many customers logged in. According to the Companies, Q Link customers who successfully log in to their account via the Website can access a variety of information about their account, profile, and usage. This information includes "[REDACTED]"³⁷ and voice and SMS usage data.³⁸ Similarly, the "App allows account holders to check and 'top up' their balances, review recent voice, text, and data-usage history,"³⁹ and "monitor . . . every aspect of [their] account . . .",⁴⁰ and is described as "complete account management in the palm of your hand."⁴¹ The Website's initial login process differs from the App's initial login process. According to the Q Link Website, new customers are "directed to the National Verifier website" to verify their Lifeline eligibility; once that process is complete, they are "redirected back to Q Link's Members page to login to [their] account."⁴² After this initial login, customers have the

³³ See App SLOI Response at 4-5, Response to Inquiry No. 1.

³⁴ Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to Issa Asad, CEO, Quadrant Holdings Group LLC (Nov. 4 2022) (on file in EB-TCD-22-00034450) (Authentication LOI). This LOI was addressed to Issa Asad as CEO of Quadrant, and directed Hello Mobile, Q Link, and Quadrant to answer the inquiries. Quadrant and the Companies submitted a single, joint response to the Authentication LOI, as well as to the supplemental LOI issued in the Authentication Investigation.

³⁵ Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to John T. Nakahata, Counsel to Q Link Wireless LLC (Mar. 1, 2023) (on file in EB-TCD-22-00034450) (Authentication SLOI). Similar to the Authentication LOI, this SLOI directed Quadrant, Q Link, and Hello Mobile to answer the inquiries; they did so in a single, joint response.

³⁶ Response to Letter of Inquiry, from Patrick O'Donnell et al., HWG LLP, Counsel to Q Link Wireless LLC, to Kristi Thompson, Chief, Telecommunications Consumer Division, FCC Enforcement Bureau et al. (Dec. 5, 2023) (on file in EB-TCD-22-00034450) (Authentication LOI Response); Response to Letter of Inquiry, from Patrick O'Donnell et al., Counsel to Q Link Wireless LLC, to Shana Yates, Deputy Chief, Telecommunications Consumer Division, FCC Enforcement Bureau et al. (Mar. 15, 2023) (on file in EB-TCD-22-00034450) (Authentication SLOI Response).

³⁷ Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

³⁸ See Q Link Wireless, *How do I check my minutes or data balance?*, <https://support qlinkwireless.com/how-do-i-check-my-minutes-or-data-balance/> (last visited June 8, 2023); Authentication LOI Response at 9-11, Response to Inquiry No. 7.

³⁹ App LOI Response at 4-5, Responses to Inquiry No. 5(a) and 5(h).

⁴⁰ Q Link Wireless, *What is My Mobile Account?*, <https://support qlinkwireless.com/what-is-my-mobile-account/> (last visited June 8, 2023). See also App SLOI Response at 7-8, 11-12, Responses to Inquires No. 7 and 15 (information that authenticated customers can access via the App includes "[REDACTED]"⁴¹).

⁴¹ Apple App Store, *My Mobile Account App Store Preview*, <https://apps.apple.com/us/app/my-mobile-account/id1408895511> (last visited June 8, 2023).

⁴² See Q Link Wireless, *What do I need to do to complete my application using National Verifier?*, <https://support qlinkwireless.com/what-do-i-need-to-do-to-complete-my-application-using-national-verifier/> (last visited June 8, 2023).

option to create a unique password or leave in place the default password, which is the customer's { [REDACTED] }⁴³ According to the Companies, an initial login to the App requires customers to enter their { [REDACTED] }.⁴⁴ Like the Website, a customer { [REDACTED] } after their initial login to the App.⁴⁵ As to how many customers performed an initial login to the Website or the App, the Companies { [REDACTED] } and so did not produce any information about the number of initial Website logins.⁴⁶ However, the Companies reported a total of { [REDACTED] } initial logins to the App between August 2022 and January 2023.⁴⁷

16. The Companies also explained the methods it uses for authentication when a customer forgets their password. When a customer loses or forgets their password, that customer can log in via the “Forgot Your Login?” section of the Website. When a customer selects “Forgot Your Login?”, the customer is logged in to their account after the customer enters their { [REDACTED] }⁴⁸ In the alternative, a customer may reset their password by selecting the “{ [REDACTED] }” option on the Website.⁴⁹ If a customer selects “{ [REDACTED] }”, the customer’s password is reset after the customer enters their { [REDACTED] }⁵⁰ As noted above, the Companies do “{ [REDACTED] }”⁵¹ and thus did not produce relevant data pertaining to the number of customers who have logged in to their account via the Website after forgetting their password. According to the Companies, customers cannot { [REDACTED] } through the App.⁵² Via the App, customers { [REDACTED] } by { [REDACTED] }⁵³

⁴³ See Q Link Wireless, { [REDACTED] } (last visited June 8, 2023) (“{ [REDACTED] }”). See also Authentication LOI Response at 5-6, Response to Inquiry No. 1; see also App LOI Supplemental Response at 5-6, Response to Inquiry 5(g).

⁴⁴ App SLOI Response at 4-5, Response to Inquiry 1. See also My Mobile account, *Account Login* (last visited June 8, 2023) (screenshot on file in EB-TCD-22-00034450) (login screen prompts user to enter “{ [REDACTED] }”).

⁴⁵ *Id.* at 4-5, Response to Inquiry No. 1.

⁴⁶ Authentication LOI Response at 18, Response to Inquiry No. 18.

⁴⁷ Authentication SLOI Response at 6-7, Response to Inquiry No. 4.

⁴⁸ See Q Link Wireless, { [REDACTED] } (last visited June 8, 2023) (“{ [REDACTED] }”). See also Authentication LOI Response at 7-8, Response to Inquiry No. 4.

⁴⁹ Authentication LOI Response at 7-8, Response to Inquiry No. 4.

⁵⁰ *Id.* We note that this system was described in the Companies’ December 5, 2022, Authentication LOI Response. At some point after that response, the Website appears to have been changed (see Q Link, *My Q Link Login*, <https://qlinkwireless.com/members/Login.aspx> (last visited June 8, 2023)), removing prompts that the customer (if they had forgotten their login) supply { [REDACTED] }. However, on another portion of the Website the previous “{ [REDACTED] }” still appears to be available, prompting the user to enter their { [REDACTED] } (last visited June 8, 2023)).

⁵¹ Authentication LOI Response at 18, Response to Inquiry No. 18.

⁵² App LOI Supplemental Response at 5-6, Response to Inquiry No. 5(g).

⁵³ App SLOI Response at 5-6, Response to Inquiry No. 3. In their response, the Companies did not describe the information required by customer service to reset customers’ passwords.

III. DISCUSSION

17. We find that the Companies apparently willfully and repeatedly violated section 64.2010 of the Commission's rules and section 222 of the Act. Three specific provisions of section 64.2010 of the Commission's rules are at issue in this investigation: section 64.2010(a) regarding "reasonable measures" to protect CPNI;⁵⁴ section 64.2010(c) regarding online access to CPNI;⁵⁵ and section 64.2010(e) regarding password establishment and resets.⁵⁶ Among the latter two provisions, two common elements exist: (1) customer authentication requirements, and (2) restrictions on the use of account information and readily available biographical information for authentication purposes. Ultimately, section 64.2010 of the Commission's rules sets baseline requirements for carriers to safeguard CPNI. The Companies' apparent failure to comply with these minimum standards has put their customers' personal information at risk of misappropriation, breach, and unauthorized access and disclosure.

A. The Companies Apparently Willfully and Repeatedly Violated Section 64.2010(a) of the Commission's Rules and Section 222 of the Act

18. We find that the Companies' methods for controlling access to CPNI apparently violate the requirement to "take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI" set forth in section 64.2010(a) of the Commission's rules,⁵⁷ as well as section 222 of the Act (which requires carriers to protect customer information).⁵⁸ The obligation to employ "reasonable measures" to protect CPNI is an overarching responsibility that applies to each carrier and that is separate and independent from the more specific requirements in the CPNI rules regarding customer authentication. As the Commission stated when section 64.2010(a) was adopted, "[w]e fully expect carriers to take every reasonable precaution to protect the confidentiality of proprietary or personal customer information."⁵⁹

19. Here, the Companies failed to meet that expectation because they made CPNI accessible to effectively any party who knew—or could obtain—a customer's readily available biographical information or account information – namely a customer's {[REDACTED]}⁶⁰ On the App, the customer's username was account information (their {[REDACTED]}) and the customer's password was set by default to biographical information (their {[REDACTED]}).⁶¹ Moreover, the Companies placed consumers' CPNI at even greater risk by not requiring customers to {[REDACTED]} biographical information ({[REDACTED]}) as the password indefinitely.⁶² The types of biographical and account information at issue here (namely {[REDACTED]}) are often widely known and easily obtainable, and {[REDACTED]} only exacerbates the issue. These practices plainly do not constitute reasonable data security measures and therefore violate both section 64.2010(a) of the CPNI rules and section 222 of the Act,⁶³ which establishes carriers' duties for protecting customer information. However, as discussed in more detail below in the Proposed Forfeiture section, we decline at this time to propose a penalty for the Companies' apparent violations of section 64.2010(a) and section 222.

⁵⁴ 47 CFR § 64.2010(a).

⁵⁵ *Id.* § 64.2010(c).

⁵⁶ *Id.* § 64.2010(e).

⁵⁷ *Id.* § 64.2010(a).

⁵⁸ 47 U.S.C. § 222.

⁵⁹ 2007 CPNI Order, 22 FCC Rcd at 6959, para. 64.

⁶⁰ See App SLOI Response at 4-5, Response to Inquiry No. 1.

⁶¹ *Id.*

⁶² *Id.*

⁶³ 47 U.S.C. § 222.

Nonetheless, assessing a proposed penalty for such practices is within our authority and we may do so in future cases.

B. The Companies Apparently Willfully and Repeatedly Violated Section 64.2010(c) of the Commission's Rules

20. The Companies' practice of using customer readily available biographical information and account information (i.e., { [REDACTED] }) as a default method to authenticate users apparently violates section 64.2010(c) of the Commission's CPNI Rules. Section 64.2010(c) of the Commission's rules provides that:

[a] telecommunications carrier must authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI related to a telecommunications service account. Once authenticated, the customer may only obtain online access to CPNI related to a telecommunications service account through a password, as described in paragraph (e) of this section, that is not prompted by the carrier asking for readily available biographical information, or account information.⁶⁴

21. *The Website and App Provide Online Access to CPNI.* The Q Link Website allows customers to access a variety of information about their account, profile, and usage. This information includes { [REDACTED] } and voice and SMS usage data.⁶⁵ A number of these data elements (including, at a minimum, usage information such as { [REDACTED] }) constitute CPNI, as they relate to the "quantity, . . . type, destination, location, and amount of use" of a telecommunications service.⁶⁶ The App provides access to customers' usage history, allowing customers to check their balances⁶⁷ and "monitor . . . every aspect of [their] account."⁶⁸ Similarly, the App also enables users to review, among other things, their { [REDACTED] }⁶⁹ These categories of usage information also satisfy the definition of CPNI because they relate to the "quantity" or "amount of use" of a telecommunications service.⁷⁰

22. *The App Impermissibly Relies Upon Readily Available Biographical Information and Account Information to Authenticate Customers.* According to Q Link's responses to the App SLOI, when a customer initially logs in to the App, they must enter account information—specifically, their { [REDACTED] }—and password to access their account.⁷¹ Unless a customer has opted to change their password, it continues to be the customer's default password, namely their { [REDACTED] }. Upon accessing

⁶⁴ 47 CFR § 64.2010(c).

⁶⁵ See Q Link Wireless, *How do I check my minutes or data balance?*, <https://support qlinkwireless.com/how-do-i-check-my-minutes-or-data-balance/> (last visited June 8, 2023); Authentication LOI Response at 9-11, Response to Inquiry No. 7 (accessible information included { [REDACTED] })).

⁶⁶ 47 U.S.C. § 222(h)(1)(A).

⁶⁷ App LOI Response at 4-5, Responses to Inquiry No. 5(a) and 5(h).

⁶⁸ Q Link Wireless, *What is My Mobile Account?*, <https://support qlinkwireless.com/what-is-my-mobile-account/> (last visited June 8, 2023). See also App SLOI Response at 7-8, 11-12, Responses to Inquires No. 7 and 15 (information that authenticated customers can access via the App includes "{ [REDACTED] }" which Q Link defines to include { [REDACTED] })).

⁶⁹ App SLOI Response at 11-12, Response to Inquiry No. 15.

⁷⁰ 47 U.S.C. § 222(h)(1)(A).

⁷¹ App SLOI Response at 4-5, Response to Inquiry No. 1.

their accounts, customers are {[REDACTED]}⁷² Thus, any customer that does not change their password from the default, is required to use biographical information (their {[REDACTED]}) as a password to log in.⁷³

23. A customer's {[REDACTED]} qualifies as “readily available biographical information” as it “is information drawn from the customer’s life history.”⁷⁴ Both the CPNI Rules and the 2007 CPNI Order identify a customer's {[REDACTED]} as an example of readily available biographical information.⁷⁵ Because a person's {[REDACTED]} is part of their {[REDACTED]} and is information easily associated with their life history, it constitutes readily available biographical information. Likewise, the {[REDACTED]} associated with a customer's account is “account information” pursuant to the CPNI Rules.⁷⁶

24. By requiring some customers (specifically, those who did not choose to reset their password from the default) to enter account information and readily available biographical information (in the form of their {[REDACTED]}) to initially log in to the App, the Companies have failed to “authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI.”⁷⁷ Further, by establishing a login process in which customers’ default passwords—which many, if not most, customers will not change—consist of readily available biographical information—the Companies have failed to grant online access to CPNI “only . . . through a password . . . that is not prompted by the carrier asking for readily available biographical information, or account information.”⁷⁸ Accordingly, the Companies apparently violated section 64.2010(c) of the Commission’s rules in connection with their authentication process for the App—a violation that was repeated each time a customer was permitted to log in using their default password.

⁷² App SLOI Response at 4-5, Response to Inquiry No. 1. In one of the Companies’ prior responses, they claimed that {[REDACTED]} suggesting that in some instances an initial login to the App might not require use of a default password. App LOI Supplemental Response at 5-6, Response to Inquiry No. 5(g).

⁷³ Many consumers do not set secure passwords on their accounts unless a company requires them to do so. Given that 80% of hacking-related breaches are linked in some way to passwords, it is imperative that companies require secure passwords. See Aimee O’Driscoll, 25+ Password statistics (that may change your password habits), comparitech (Mar. 24, 2023), <https://www.comparitech.com/blog/information-security/password-statistics/>. In fact, a survey of 2500 consumers revealed that “35 percent of people never change their passwords; they only do it if they’re prompted.” Angela Moscaritolo, 35 Percent of People Never Change Their Passwords, PCMag (updated July 20, 2018), <https://www.pcmag.com/news/35-percent-of-people-never-change-their-passwords>. Other surveys show that up to 44% of consumers worldwide only “rarely” reset passwords and that 15% of owners with “internet of things” devices do not change their default passwords. See Statista, Frequency of resetting passwords worldwide in 2022 (Mar. 31, 2023), <https://www.statista.com/statistics/1303484/frequency-of-password-resets-worldwide>; Catalin Cimpanu, 15% All IoT device Owners Don’t Change Default Passwords, Bleeping Computer (June 19, 2017), <https://www.bleepingcomputer.com/news/security/15-percent-of-all-iot-device-owners-dont-change-default-passwords/>.

⁷⁴ 47 CFR § 64.2003(m).

⁷⁵ See *id.* § 64.2003(m); 2007 CPNI Order at 6937, para. 15 n.55.

⁷⁶ 47 CFR § 64.2003(a).

⁷⁷ *Id.* § 64.2010(c). As discussed earlier, the Companies employ a different process for the Website, where customers are authenticated through {[REDACTED]}.

⁷⁸ *Id.*

C. Q Link’s Password Reset Method on the Website Apparently Violated Section 64.2010(e) of the Commission’s Rules

25. The method through which Q Link customers can access their accounts on the Website, and reset their passwords, in the case of lost or forgotten login credentials apparently violates section 64.2010(e) of the CPNI Rules. Namely, the rule provides in relevant part:

Telecommunications carriers may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical information, or account information.⁷⁹

26. A customer who claims to have forgotten their password can access their account on the Website by using a combination of certain readily available biographical information—their { [REDACTED] }⁸⁰ They can also reset their password by using a combination of their { [REDACTED] }⁸¹ As discussed above, a customer’s { [REDACTED] } constitute readily available biographical information; the CPNI Rules also identify a customer’s { [REDACTED] } as readily available biographical information.⁸² The use of such information plainly violates the requirement that any back-up authentication method used by a carrier in the event of a lost or forgotten password “not prompt the customer for readily available biographical information, or account information.”⁸³ Therefore, Q Link apparently violated section 64.2010(e) of the Commission’s rules with respect to the alternative account access and password reset processes for the Website.

D. Proposed Forfeiture

27. Section 503(b)(1)(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 under [the Act].”⁸⁴ Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against common carriers of up to \$237,268 for each day of a continuing violation, up to a statutory maximum of \$2,372,677 for a single act or failure to act.⁸⁵ 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.”⁸⁶ In addition, the Commission has established

⁷⁹ *Id.* § 64.2010(e).

⁸⁰ See Q Link Wireless, { [REDACTED] } (last visited June 8, 2023) (“{ [REDACTED] }.”); see also Authentication LOI Response at 7-8, Response to Inquiry No. 4.

⁸¹ Authentication LOI Response at 7-8, Response to Inquiry No. 4. But note, this system appears to have been changed since the Companies submitted their Authentication LOI Response in December 2022. See *infra* note 50.

⁸² 47 CFR § 64.2003(m).

⁸³ *Id.* § 64.2010(e).

⁸⁴ 47 U.S.C. § 503(b)(1)(B).

⁸⁵ *Id.* § 503(b)(2)(B) (authorizing a forfeiture of up to \$100,000 against a common carrier, which amount is subject to adjustment for inflation); see 47 CFR § 1.80(b)(11), Table 5 to paragraph (b)(11)(ii) (stating the current statutory maximum forfeiture amounts, including the adjusted amount for section 503(b)(2)(B)); see also 47 CFR § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356, 2022 WL 18023008 (EB Dec. 23, 2022); *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).

⁸⁶ 47 U.S.C. § 503(b)(2)(E).

forfeiture guidelines that contain base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁸⁷ Under these guidelines, we may adjust a base forfeiture upward based on seven listed criteria—including for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator—or downward based on four listed criteria.⁸⁸

28. The Commission’s forfeiture guidelines do not establish a base forfeiture for violations of section 222 of the Act or the accompanying CPNI Rules. Nor has the Commission previously calculated forfeitures for violations of section 64.2010(c) or section 64.2010(e). Thus, we look to the forfeitures established or issued in analogous cases for guidance.

29. *Prior Commission Cases.* The Commission has a history of investigations and enforcement actions aimed at consumer protection generally, and the privacy of customer information specifically. In 2014, the Commission issued a Notice of Apparent Liability against TerraCom, Inc. and YourTel America, Inc., for apparently violating section 222(a) of the Act.⁸⁹ In *TerraCom*, the carriers’ failure to reasonably secure their computer systems exposed the sensitive personal information of individual Lifeline program applicants. The Commission found that “[e]ach unprotected document [containing customer information] constitutes a continuing violation.”⁹⁰ The Commission noted that even assuming each affected customer only had one unprotected document, it would still amount to 305,065 violations.⁹¹ The Commission noted that it had used a \$29,000 base forfeiture per violation in prior CPNI cases, but after considering the large number of apparent violations (over 300,000) and the massive forfeiture amount that would result by multiplying these numbers, it instead proposed a penalty of \$8,500,000 for the section 222 violations in that case as “sufficient to protect the interests of consumers and to deter future violations of the Act.”⁹² The Commission noted:

In determining the proper forfeiture . . . we are guided by the principle that the protection of consumer [proprietary information] is a fundamental obligation of all telecommunications carriers. Consumers are increasingly concerned about their privacy and the security of the sensitive, personal data that they must entrust to service providers of all stripes. Given the increasing concern about the security of personal data, we must take aggressive, substantial steps to ensure that carriers implement necessary and adequate measures to protect consumers’ [proprietary information].⁹³

In other contexts involving consumer protections under the Act and the Commission’s rules, the Commission has applied a base forfeiture of \$40,000 for a single act.⁹⁴ Such a base forfeiture (whether in a privacy context or more generally in a consumer protection context) appropriately deters wrongful conduct and – where consumer data is concerned – reflects the increased risk consumers face when their

⁸⁷ 47 CFR § 1.80(b)(10), Note 2 to paragraph (b)(10) (*Guidelines for Assessing Forfeitures*). Table 1 to paragraph (b)(10) lists base forfeiture amounts for section 503 forfeitures and Table 3 to paragraph (b)(10) lists the upward and downward adjustment criteria for section 503 forfeitures.

⁸⁸ 47 CFR § 1.80(b)(10), Table 3 to paragraph (b)(10).

⁸⁹ *TerraCom, Inc. and YourTel America, Inc., Notice of Apparent Liability for Forfeiture*, 29 FCC Rcd 13325 (2014) (*TerraCom*).

⁹⁰ *Id.* at 13343, para. 50.

⁹¹ *Id.* at 13343, para. 50.

⁹² *Id.* at 13343, para. 52.

⁹³ *Id.* at 13341-42, para. 46.

⁹⁴ See, e.g., *Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723 (2017); *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711 (2015).

information is not secured in a timely manner. When applied in cases involving the CPNI rules, the \$40,000 base forfeiture also provides consistency with other consumer protection and privacy cases involving serious risk of harm to consumers.

30. *Applying Commission Precedent and the Statutory Factors to the Companies.* In this case, we find that each time the Companies used readily available biographical information or account information either to authenticate a customer or carry out a password reset—whether on the Website or via the App—constitutes a separate violation of section 64.2010 of the Commission’s rules for which a forfeiture may be assessed. We further find that, as in other consumer protection and privacy cases, a \$40,000 base forfeiture for violations of section 64.2010 of the Commission’s rules is appropriate. The record shows that at least {[REDACTED]} unique customers initially logged in to the App during the period within the statute of limitations of this case.⁹⁵ As discussed earlier, each such login in which a customer used their default password constituted a violation of section 64.2010(c) of the Commission’s rules because it involved authentication using readily available biographical information or account information (i.e., the customer’s {[REDACTED]}). Likewise, each time a customer was permitted to use readily available biographical information to reset their password on the Website constitutes a separate apparent violation of 64.2010(e) of the Commission’s rules.

31. To the extent that customers modified their passwords after establishing their accounts via the Website, yet before initially logging in to the App, the App logins would not necessarily have constituted violations of section 64.2010(c) of the Commission’s rules. The record, however, does not reflect how many such customers there may have been because the Companies do not track information related to how many customers maintained their default passwords, nor how many selected a new password.⁹⁶ Similarly, the Companies were not able to respond to requests for information about the number of customers that reset their passwords on the Website.⁹⁷

32. Accordingly, we conservatively find that there were at least 500 apparent violations of section 64.2010(c)⁹⁸ of the Commission’s rules during the relevant time period—which, at a \$40,000 base forfeiture, results in a proposed penalty of \$20,000,000. This tally of apparent violations is amply grounded in the record and falls well under the maximum number that the Commission could reasonably identify, given that it represents less than {[REDACTED]}% of the {[REDACTED]} App logins that occurred here.⁹⁹

33. As discussed earlier, we also find that the Companies’ use of readily available biographical information and account information to control online access to CPNI is apparently a patently insecure practice inconsistent with section 222 of the Act and the “reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI” requirement of section 64.2010(a) of the Commission’s rules.¹⁰⁰ Notwithstanding this failure to employ “reasonable measures” to protect CPNI, given that the other apparent violations of section 64.2010 for which we are proposing a forfeiture in this case more than justify the proposed penalty, we decline at this time to propose an

⁹⁵ Authentication SLOI Response at 6-7, Response to Inquiry No. 4 (reporting a total of {[REDACTED]} initial logins to the App between August 2022 and January 2023).

⁹⁶ Authentication LOI Response at 19, Response to Inquiry No. 21.

⁹⁷ *Id.* at 18, Response to Inquiry No. 18 (stating that they do “not count or maintain records of website logins”).

⁹⁸ Given the apparent violations related to the App upon which we base the proposed forfeiture, as well as the Companies’ lack of records pertaining to Website authentication, we have declined to estimate the number of additional Website-related violations arising under 64.2010(e). Nonetheless, we underscore that the Companies’ failure to keep such records does not absolve them of responsibility for those apparent violations nor prevent the Commission from making such an estimation in the future (whether related to violations of 64.2010(e) or to other violations where any company has failed to maintain records). Poor recordkeeping is no shield to liability.

⁹⁹ This finding is further supported by the statistics related to consumer password practices (suggesting significant numbers of people do not change their passwords). *See supra* note 73.

¹⁰⁰ 47 U.S.C. § 222; 47 CFR § 64.2010(a).

additional penalty under section 64.2010(a) of the Commission's rules or section 222 of the Act. Nevertheless, the Commission has the authority to and may impose a penalty for such a practice in future cases.

34. In determining the appropriate forfeiture amount in the instant case, we have considered the factors enumerated in section 503(b)(2)(E) of the Act, including the “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 factors as justice may require.”¹⁰¹ Several factors lead us to believe that a substantial forfeiture—as reflected in the proposed amount of \$20,000,000—is warranted for the Companies' apparent violations of section 64.2010 of the Commission's rules.

35. The current matter deals with violations of the Commission's rules regarding customer authentication. Here, the Commission has unambiguous rules requiring that customers be authenticated before accessing their CPNI online.¹⁰² These rules are explicit that authentication may not hinge on a customer's account information or readily available biographical information.¹⁰³ The Companies in this matter apparently failed to comply with these explicit requirements, and as a result, placed the CPNI of their customers at risk.

36. We further note that, as a Lifeline provider and provider in the Affordable Connectivity Program, Q Link markets and offers its services primarily to low-income consumers. As the Commission observed in *TerraCom*, this is “an already vulnerable population”¹⁰⁴—the Companies' approximately {[REDACTED]} subscribers¹⁰⁵ should not be subject to weaker privacy protections than other Americans, or forced to choose between safeguarding their personal data and obtaining access to vital communications services.¹⁰⁶

37. The proposed forfeiture also is well within applicable statutory limits. As noted, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against the Companies 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.¹⁰⁷ Although we have conservatively grounded the proposed forfeiture in a finding of at least 500 apparent violations, the record reflects at least {[REDACTED]} initial logins to the App between August 2022 and January 2023—each of which is a presumptive violation of section 64.2010(c) of the Commission's rules.¹⁰⁸ As such, the proposed forfeiture is well under the limits established by section 503(b)(2)(B) of the Act.

¹⁰¹ 47 U.S.C. § 503(b)(2)(e).

¹⁰² 47 CFR § 64.2010.

¹⁰³ *Id.* § 64.2010(c), (e).

¹⁰⁴ *TerraCom*, 29 FCC Rcd at 13343, para. 51.

¹⁰⁵ Authentication LOI Response at 16, Response to Inquiry No. 16 (noting that for each month between August and October 2022, Q Link had in excess of {[REDACTED]} subscribers and Hello Mobile had in excess of {[REDACTED]} subscribers).

¹⁰⁶ Some scholars have found that low-income Americans are especially vulnerable to identity theft and other harms associated with data breaches. See Greene, Sara S., “Stealing (Identity) From the Poor,” (2021). *Minnesota Law Review*. 3295. <https://scholarship.law.umn.edu/mlr/3295>.

¹⁰⁷ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). These amounts reflect the inflationary adjustments to the forfeitures specified in section 503(b) of the Act. See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 21-1631, 2021 WL 6135287 (EB Dec. 22, 2021).

¹⁰⁸ In quantifying apparent violations, we have looked to the information the Companies produced regarding how many of the Companies' customers actually obtained online access to CPNI or reset their passwords through methods that did not meet the requirements of sections 64.2010(c) and (e) of the Commission's rules. We note, however, that the Companies' reliance on readily available biographical information and account information for

(continued...)

38. Therefore, after applying the Commission's *Guidelines for Assessing Forfeitures*, section 1.80 of the Commission's rules, and the statutory factors in section 503(b)(2)(E), we propose a total forfeiture of \$20,000,000 for which the Companies are apparently liable.¹⁰⁹

E. We Propose to Hold the Companies Jointly and Severally Liable for the Apparent Violations.

39. We propose to hold Q Link and Hello Mobile jointly and severally liable for the apparent violations. "Related companies operating in common enterprise or as a single business entity may be held jointly liable for wrongful conduct."¹¹⁰ Courts have identified several factors to determine the existence of a single business entity or a common enterprise, including whether the companies: (1) operate under common control, (2) share office space, (3) share employees, (4) commingle funds, and (5) coordinate advertising.¹¹¹ Companies that operate as a common enterprise can be held jointly and severally liable for each other's actions.¹¹² The Commission has taken a similar approach in previous enforcement actions.¹¹³

40. Here, the business operations of Q Link and Hello Mobile significantly overlap such that we find that they apparently operate as a common enterprise. Both Companies are wholly owned by Quadrant Holdings Group, LLC,¹¹⁴ and Issa Asad holds management roles in both companies' operations.¹¹⁵ Hello Mobile apparently only has one employee, presumably, Mr. Asad, and states that it

customer authentication jeopardized the security of all of their customers' CPNI (to the extent that information was vulnerable to effectively any third party who knew a customer's { [REDACTED] }). Thus, in future cases involving authentication practices under section 64.2010, we may look more expansively when calculating violations and setting a forfeiture, and take into account the full universe of customers whose data was placed at risk.

¹⁰⁹ 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.

¹¹⁰ *Thomas Dorsher; Charitel Inc; Ontel Inc; Scammerblaster Inc*, Notice of Apparent Liability for Forfeiture, FCC 22-57 at 15, 2022 WL 2805894 *11, para. 33 (July 14, 2022) (citing *Continental Cas. Co. v. Symons*, 817 F.3d 979, 993-94 (7th Cir. 2016); *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2d Cir. 1964); *FTC v. PayDay Financial LLC*, 989 F.Supp.2d 799, 809 (D.S.D. 2013)).

¹¹¹ See *FTC v. On Point Capital Partners LLC*, 17 F.4th 1066, 1081-82 (11th Cir. 2021) (adopting the test previously adopted by the Sixth Circuit in *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 636-37 (6th Cir. 2014)); *FTC v. Lanier Law, LLC*, 715 Fed. Appx. 970, 979-80 (11th Cir. 2017); *CFTC v. Trade Exch. Network Ltd.*, 117 F. Supp.2d 29, 38-39 (D.D.C. 2015) (adopting the test in *FTC v. E.M.A. Nationwide*).

¹¹² See *On Point*, 17 F.4th at 1081; *FTC v. E.M.A. Nationwide*, 767 F.3d at 637.

¹¹³ See *Sumco Panama SA, et al.*, Notice of Apparent Liability for Forfeiture, FCC 22-99, 2022 WL 17958841 at *24-28, paras. 82-96 (rel. Dec. 23, 2022); *ScammerBlaster Notice of Apparent Liability for Forfeiture*, FCC 22-57 at 15-17, paras. 33-34 (holding related companies liable as a single business entity); see also *Rising Eagle Forfeiture Order*, 36 FCC Rcd at 6254, para. 55 (holding related companies liable due to the misconduct of their common directors).

¹¹⁴ App LOI Response at 1-2, Response to Inquiry No. 1.

¹¹⁵ *Id.* at 2, Response to Inquiry No. 1 (stating that Issa Asad is "Q Link's only Manager and corporate officer as defined in the Company's Operating Agreement."); Florida Department of State Division of Corporations, *Detail by Entity Name*, Hello Mobile Telecom LLC, <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=HELLOMOBILETELECOM%20M180000067631&aggregateId=forl-m18000006763-3feb2ac1-686c-4c69-a18d-56a57ee7147d&searchTerm=hello%20%20mobile&listNameOrder=HELLOMOBILEMEDIA%20L150000294100> (last visited June 8, 2023) (identifying Issa Asad as a Manager). In addition, Mr. Asad is listed as the CEO of both Q Link and Hello Mobile in the FCC's Form 499 Filer Database; see <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829223> and <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=832680> (last visited June 8, 2023).

has no officers or directors.¹¹⁶ The Companies also share resources, including office space¹¹⁷ and the My Mobile Account App.¹¹⁸ Moreover, the two telecommunications Companies appear to engage in some coordinated advertising with regards to promotional material for the App.¹¹⁹ Taken as a whole, these factors indicate that Q Link and Hello Mobile are functionally a single business entity, and the Commission proposes to hold them jointly and severally liable for the proposed forfeiture.

IV. CONCLUSION

41. We have determined that the Companies apparently willfully and repeatedly violated sections 64.2010(a), (c) and (e) of the Commission's rules. As such, the Companies are apparently jointly and severally liable for a forfeiture of \$20,000,000.

V. ORDERING CLAUSES

42. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act¹²⁰ and section 1.80 of the Commission's rules,¹²¹ Q Link Wireless LLC and Hello Mobile Telecom LLC are hereby **NOTIFIED** of their **APPARENT JOINT AND SEVERAL LIABILITY FOR A FORFEITURE** in the amount of Twenty Million Dollars (\$20,000,000) for willful and repeated violations of section 222 of the Act, 47 U.S.C. § 222, and sections 64.2010(a), (c) and (e) of the Commission's rules, 47 CFR § 64.2010(a), (c), (e).

43. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,¹²² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Q Link Wireless LLC and Hello Mobile Telecom 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 46 below.

¹¹⁶ App LOI Response at 1, Response to Inquiry 1.

¹¹⁷ Quadrant Holdings Group LLC, Q Link Wireless LLC, and Hello Mobile Telecom LLC each have registered with the Florida Department of State and each list the same principal address – 499 East Sheridan Street, Suite 400, Dania Beach, Florida 33004. See Florida Department of State Division of Corporations, *Detail by Entity Name*, Quadrant Holdings Group LLC, <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=QUADRANTHOLDINGSGROUP%20M120000013480&aggregateId=forl-m12000001348-500f9edb-37d5-4327-b1bb-f06a868ff282&searchTerm=quadrant%20holdings%20group&listNameOrder=QUADRANTHOLDINGSGROUP%20M120000013480> (last visited June 8, 2023); Florida Department of State Division of Corporations, *Detail by Entity Name*, Q Link Wireless LLC, <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=QLINKWIRELESS%20M110000051580&aggregateId=forl-m11000005158-aada382b-d2f1-40ba-a7fe-f862b6a21801&searchTerm=q%20link%20wireless&listNameOrder=QLINKWIRELESS%20M110000051580> (last visited June 8, 2023); Florida Department of State Division of Corporations, *Detail by Entity Name*, Hello Mobile Telecom LLC, <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=HELLOMOBILETELECOM%20M180000067631&aggregateId=forl-m18000006763-3feb2ac1-686c-4c69-a18d-56a57ee7147d&searchTerm=hello%20%20mobile&listNameOrder=HELLOMOBILEMEDIA%20L150000294100> (last visited June 8, 2023).

¹¹⁸ App LOI Supplemental Response at 4-8, Response to Inquiry 5. We note that the Companies apparently keep records of the 30-day average number of unique App users. However, such records apparently do not identify how many App users are Q Link customers versus Hello Mobile Customers (the Companies estimate that 97% of its subscriber base is made up of Q Link customers). This overlap in record keeping further suggests that the Companies operate as a single enterprise.

¹¹⁹ See, My Mobile Account, *Convenient App to Manage Your Great Service*, <https://mymobileaccount.com/> (last visited June 8, 2023).

¹²⁰ 47 U.S.C. § 503(b).

¹²¹ 47 CFR § 1.80.

¹²² *Id.* § 1.80.

44. In order for Q Link Wireless LLC and Hello Mobile Telecom LLC to pay the proposed forfeiture, Q Link Wireless LLC and Hello Mobile Telecom LLC shall notify Shana Yates at Shana.Yates@fcc.gov, Michael Epshteyn at Michael.Epshteyn@fcc.gov, and Lauren Merk at Lauren.Merk@fcc.gov of their intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Q Link Wireless LLC and Hello Mobile Telecom LLC shall send electronic notification of payment to Shana Yates at Shana.Yates@fcc.gov, Michael Epshteyn at Michael.Epshteyn@fcc.gov, and Lauren Merk at Lauren.Merk@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹²³

- 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 159¹²⁴ or printed CORES form¹²⁵ 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).¹²⁶ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at <https://apps.fcc.gov/cores/userLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which

¹²³ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

¹²⁴ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹²⁵ 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>.

¹²⁶ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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

45. 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. 20554.¹²⁷ 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.

46. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.¹²⁸ 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 – Consumer Protection Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Shana Yates at Shana.Yates@fcc.gov, Michael Epshteyn at Michael.Epshteyn@fcc.gov, and Lauren Merk at Lauren.Merk@fcc.gov.

47. 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.¹²⁹ 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.¹³⁰

48. **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 Issa Asad, Chief Executive Officer, Q Link Wireless LLC, 499 East Sheridan Street, Suite 400, Dania, FL 33004; Issa Assad, Chief Executive Officer, Hello Mobile Telecom LLC, 499 East Sheridan Street, Suite 400, Dania, FL 33004; and to John Nakahata, Esq., Counsel for Q Link Wireless LLC and Hello Mobile Telecom LLC, HWG LLP, 1919 M Street NW, Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹²⁷ See 47 CFR § 1.1914.

¹²⁸ 47 CFR §§ 1.16, 1.80(g)(3).

¹²⁹ 47 U.S.C. § 503(b)(2)(E).

¹³⁰ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678–79, paras. 44–45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903–904, paras. 32–33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of	)	
	)	
Connect America Fund: A National Broadband	)	WC Docket No. 10-90
Plan for Our Future High-Cost Universal Service	)	
Support	)	
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Telecommunications Carriers Eligible to	)	WC Docket No. 09-197
Receive Universal Service Support	)	
	)	
Connect America Fund – Alaska Plan	)	WC Docket No. 16-271
	)	
Expanding Broadband Service Through the ACAM	)	RM-11868
Program	)	
	)	

**REPORT AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF
INQUIRY**

Adopted: July 23, 2023

Released: July 24, 2023

NPRM Comment Date: [30 days after publication in the Federal Register]

NPRM Reply Comment Date: [45 days after publication in the Federal Register]

NOI Comment Date: [60 days after publication in the Federal Register]

NOI Reply Comment Date: [90 days after publication in the Federal Register]

By the Commission: Commissioner Starks approving in part and concurring in part.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	4
A. High-Cost Universal Service Support	4
B. The Broadband DATA Act	7
C. The Infrastructure Investment and Jobs Act, The Broadband Interagency Coordination Act, and Related Federal Programs	11
III. REPORT AND ORDER ADOPTING ENHANCED ALTERNATIVE CONNECT AMERICA COST MODEL	19
A. Background	20
1. Current A-CAM	20
2. ACAM Broadband Coalition Proposal	26
B. Discussion	31
1. Enhanced Deployment and Service Obligations	37
2. Support Amounts	60
3. Carrier Eligibility, Elections, and Other Enhanced A-CAM Processes	88

IV. NOTICE OF PROPOSED RULEMAKING	115
A. Background.....	117
B. Discussion.....	123
1. Updates to CAF BLS and Other Legacy Support Mechanisms and to the Budget	124
2. Deployment Obligations for CAF BLS Recipients	138
3. Adjustments to Support to Reflect Funding from Other Federal and State Programs	143
4. Digital Equity	153
V. NOTICE OF INQUIRY	154
A. Background.....	155
B. Discussion	159
1. Definition of a “Full-Service Network”	161
2. Developing a Support Methodology	164
3. Setting a Budget and Support Term	180
4. Service Obligations and Accountability	183
VI. PROCEDURAL MATTERS.....	184
VII. ORDERING CLAUSES.....	198
APPENDIX A – FINAL RULES	
APPENDIX B – FINAL REGULATORY FLEXIBILITY ANALYSIS	
APPENDIX C – INITIAL REGULATORY FLEXIBILITY ANALYSIS	

I. INTRODUCTION

1. With this Report and Order, Notice of Proposed Rulemaking (NPRM), and Notice of Inquiry (NOI), we take significant next steps in achieving our goal of ensuring all consumers, even those living in the costliest areas in the nation, have access to affordable and reliable broadband service so that they can work, learn, engage, and obtain essential services no matter where they live. We also focus on the future and seek comment on how to reform our high-cost programs so that we can continue to efficiently promote broadband deployment and meaningfully support networks long term in the face of a significantly changing broadband landscape.

2. In the Report and Order, we adopt the Enhanced Alternative Connect America Cost Model (A-CAM) program as a voluntary path for supporting the widespread deployment of 100/20 Mbps broadband service¹ throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by legacy rate-of-return support recipients. In adopting this program, we further our long-standing goals by promoting the universal availability of voice and broadband networks, while also taking measures to minimize the burden on the nation’s ratepayers. We also adopt requirements for the Enhanced A-CAM program to complement existing federal, state, and local funding programs, so that broadband funding can be used efficiently to maximize the deployment of high-quality broadband service across the United States.

3. In the NPRM, we seek comment on how to address the immediate needs of legacy rate-of-return support mechanisms, while balancing our objectives of maintaining our commitment to supporting broadband at evolving levels of service and also avoiding unnecessary duplication of support in light of other available funding programs. Finally, in the NOI, we take a longer term view and seek to build a record to help the Commission explore methods for modifying the Universal Service Fund (USF) high-cost program to promote affordable and available broadband services in the years to come.

¹ When referring to broadband service of 100/20 Mbps, we include broadband service of 100/20 Mbps or greater unless otherwise specified.

II. BACKGROUND

A. High-Cost Universal Service Support

4. One of the Commission's central missions is to make "available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges."² This principle of "universal service" ensures affordable telecommunications services for all, including consumers living in high-cost areas.³

5. In the 2011 *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost program and the intercarrier compensation system to focus support on networks capable of providing voice and broadband services and transition outdated support mechanisms to more efficient model-based and competitive bidding programs.⁴ In the years since adoption of the *USF/ICC Transformation Order*, the Commission has taken numerous actions to implement and improve upon these reforms. In 2014, the Commission adopted a forward-looking Connect America Cost Model (CAM) to determine an offer of model-based support to price-cap carriers.⁵ For those carriers receiving rate-of-return support, the Commission adopted the *2016 Rate-of-Return Reform Order*, which made significant changes to support mechanisms for rate-of-return carriers. Among other reforms, that Order provided carriers with a voluntary path to model-based support, known as Alternative Connect America Model (A-CAM) support, as well as support for stand-alone broadband for carriers remaining on the legacy support mechanism, known as Connect America Fund Broadband Loop Support (CAF BLS).⁶ The Commission provided rate-of-return carriers an additional opportunity to elect model-based support in 2018 and established a budget cap for those remaining on legacy support.⁷ In addition, to ensure that carriers are meeting their commitments to provide high-quality broadband services, the Commission has

² 47 U.S.C. § 151.

³ See *id.* § 254(b).

⁴ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., 26 FCC Rcd 17663, 17672, para. 17 (2011), *aff'd sub nom. In re FCC*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order or FNPRM*). The *USF/ICC Transformation Order* created the Connect America Fund (CAF) and established a budget for the high-cost program. *Id.* at 17710, para. 123. In the *USF/ICC Transformation Order*, as noted below, the Commission adopted the Connect America Fund (CAF) Phase II program to provide ongoing support in price-cap areas through a combination of "a new forward-looking model of the cost of constructing modern multi-purpose networks" and a "competitive bidding process." *Id.* at 17725, para. 156. The Commission largely maintained the existing legacy universal support mechanisms for rate-of-return carriers and required that they provide broadband service meeting the Commission's public service obligations upon reasonable request. *Id.* at 17740, para. 206.

⁵ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 28 FCC Rcd 5301 (WCB 2013) (*CAM Platform Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (WCB 2014) (*CAM Inputs Order*); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17727 ("Specifically, we adopt the following methodology for providing CAF support in price cap areas. First, the Commission will model forward-looking costs to estimate the cost of deploying broadband-capable networks in high-cost areas and identify at a granular level the areas where support will be available.").

⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*2016 Rate-of-Return Reform Order*).

⁷ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893 (2018) (*December 2018 Rate-of-Return Reform Order*).

adopted mandatory deployment and reporting requirements for all of the modernized high-cost support mechanisms.⁸

6. The Commission also has awarded support using reverse auctions, including the Mobility Fund Phase I (Auction 901, awarding support to deploy 3G and 4G mobile services to unserved areas),⁹ Tribal Mobility Fund Phase I (Auction 902, awarding support to deploy 3G and 4G mobile services to unserved Tribal areas),¹⁰ CAF Phase II (Auction 903, awarding support to deploy fixed voice and broadband service in certain unserved and underserved price cap areas),¹¹ and the Rural Digital Opportunity Fund (Auction 904, providing support for voice and high-speed broadband in unserved areas).¹²

B. The Broadband DATA Act

7. Since 2013, the Commission has collected information on broadband deployment across the United States through FCC Form 477. On August 1, 2019, the Commission adopted an order setting parameters for a new collection of fixed broadband deployment data with more granular coverage maps and that would include a process for accepting crowdsourced data to challenge the accuracy of the submitted data.¹³ The Commission stated its intention to establish a uniform national dataset of locations where broadband could be deployed and upon which new coverage data could be overlaid.¹⁴

8. On March 23, 2020, the Broadband DATA Act was signed into law.¹⁵ In brief, the Broadband DATA Act requires the Commission to establish a semiannual collection of geographically granular broadband coverage data (which the Commission has titled the Broadband Data Collection or BDC) for use in creating coverage maps,¹⁶ and processes for challenges to the coverage data¹⁷ and for

⁸ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8967 (2014) (*Rural Broadband Experiments Order*); *2016 Rate-of-Return Reform Order*, 31 FCC at 3166, para. 214.

⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17675, para. 28; *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, 4776-77, paras. 184-188 (WTB/WCB 2012) (*Auction 901 Procedures Public Notice*);

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17819, para. 481; *Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013; Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements*, AU Docket No. 13-53, Public Notice, 28 FCC Rcd 2764 (WTB/WCB 2013).

¹¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17727-27, para. 166; *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 (2016) (*CAF Phase II Auction Order and/or FNPRM*); *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428 (2018) (*Auction 903 Procedures Public Notice*).

¹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17675, para. 28; *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686 (2020) (*RDOF Order*).

¹³ *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 et. al., Report and Order and Second Further Notice of Proposed Rulemaking, 34 FCC Rcd 7505, 7506, 7521, paras. 2, 3, 35 (2019).

¹⁴ *Id.* at 7518-19, para. 30.

¹⁵ Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act). In Division N of the Consolidated Appropriations Act, 2021, Congress appropriated \$65 million for the Commission to carry out its responsibilities related to the Broadband DATA Act. See Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 906(1), 134 Stat. 1182, 2144 (2020).

¹⁶ 47 U.S.C. § 642(a)(1)(A), (a)(2).

accepting crowdsourced information,¹⁸ and it directs the Commission to create a comprehensive database of broadband serviceable locations—i.e., the Broadband Serviceable Location Fabric (Fabric).¹⁹ Further, it requires the Commission to use these maps “to determine the areas in which terrestrial fixed, fixed wireless, mobile, and satellite broadband internet access service is and is not available,” and “when making any new award of funding with respect to the deployment of broadband internet access intended for use by residential and mobile customers.”²⁰

9. In July 2020, the Commission completed the required rulemaking to align its data collection with the requirements of the Broadband DATA Act.²¹ The Commission also adopted additional measures in January 2021 to ensure that the data will be accurate and reliable by establishing certain reporting obligations and requirements for challenges to service coverage reporting and Fabric data.²²

10. The Commission released the latest version of the National Broadband Map in May 2023 and will continue to release major updates to the map twice per year.²³ The map is based on location-level data from the Fabric and BDC data submitted by facilities-based broadband service providers that reflect where providers make mass-market internet service available.²⁴ The Commission will continue to improve the data underlying the map by incorporating challenges from individuals and other stakeholders to both the broadband availability data and Fabric data.²⁵

C. The Infrastructure Investment and Jobs Act, The Broadband Interagency Coordination Act, and Related Federal Programs

11. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (Infrastructure Act).²⁶ The Act includes the largest-ever federal broadband investment, totaling approximately \$65 billion, and directs multiple agencies to work towards expanding broadband access. In particular, section 60104(c) of the Infrastructure Act instructs the Commission to report on how it may “improv[e] its effectiveness in achieving the universal service goals for broadband in light of this Act,”²⁷

(Continued from previous page) —————

¹⁷ *Id.* § 642(b)(5).

¹⁸ *Id.* § 644(b).

¹⁹ *Id.* § 642(b)(1).

²⁰ *Id.* § 642(c)(2)(A)-(B).

²¹ *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195 et al., Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460 (2020) (*Digital Data Collection Second Report and Order and Third Further Notice of Proposed Rulemaking*) (adopting rules regarding reporting standards for fixed and mobile services consistent with Broadband DATA Act requirements, adopting the Fabric, and establishing processes for verifying the data collected from providers).

²² *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195 et al., Third Report and Order, 36 FCC Rcd 1126 (2021).

²³ Federal Communications Commission, *National Broadband Map: It Keeps Getting Better*, <https://www.fcc.gov/national-broadband-map-it-keeps-getting-better> (last visited July 23, 2023); Federal Communications Commission, *FCC National Broadband Map*, <https://broadbandmap.fcc.gov/home> (last visited July 23, 2023).

²⁴ *Broadband Data Task Force Releases Pre-Production Draft of the National Broadband Map; Announces the Start of the Broadband Availability Challenge Processes*, WC Docket Nos. 11-10 et al., Public Notice, DA 22-1210, at 1 (BDTF/WTB/WCB/OEA/CGB Nov. 18, 2022).

²⁵ *Id.* at 2-3.

²⁶ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act).

²⁷ *Id.* § 60104(c).

while section 60104(b) instructs the Commission to commence a proceeding “to evaluate the implications of this Act . . . on how the Commission should achieve the universal service goals for broadband.”²⁸

12. In accordance with these statutory directives, the Commission adopted a Notice of Inquiry initiating a proceeding regarding the future of the Universal Service Fund (USF) on December 15, 2021,²⁹ and released the *Report on the Future of the Universal Service Fund (Future of USF Report or Report)* on August 15, 2022.³⁰ The *Report* provides recommendations for further actions by the Commission and Congress to build upon the Infrastructure Act’s investment in broadband and improve the ability of the Commission to achieve its broadband goals through the Universal Service Fund and other Commission programs.³¹

13. Other provisions of the Infrastructure Act likewise aim to expand broadband access for all consumers. Section 60102 of the Infrastructure Act directs the National Telecommunications and Information Administration (NTIA) to establish the Broadband Equity, Access, and Deployment Program (BEAD Program), through which NTIA will allocate \$42.45 billion to states for grants “to bridge the digital divide.”³² NTIA will provide minimum allocations of \$100 million for each state and \$100 million to be divided equally among the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.³³ Remaining funds will be allocated using a formula based on total unserved locations in each state.³⁴ The Infrastructure Act instructs states to award funding in a way that gives priority to projects that will provide service to unserved locations (defined as those without access to 25/3 Mbps service), then to underserved locations (defined as those without access to 100/20 Mbps service), and next to community anchor institutions (defined as those without gigabit connections).³⁵ Broadband networks funded by the BEAD Program must provide download speeds of at least 100 Mbps and upload speeds of at least 20 Mbps and “latency that is sufficiently low to allow reasonably foreseeable, real-time, interactive applications.”³⁶ Grant recipients must provide service to every customer that desires broadband service in the project area and must offer at least one low-cost service option for eligible subscribers.³⁷

14. On May 13, 2022, NTIA released its Notice of Funding Opportunity detailing the process for requesting BEAD Program funding (BEAD Program NOFO).³⁸ NTIA will first provide BEAD funding to states and territories to support planning efforts and coordination with local communities and

²⁸ *Id.* § 60104(b)-(c).

²⁹ See *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Notice of Inquiry, FCC 21-127 (Dec. 15, 2021) (*Future of USF Notice*).

³⁰ *Report on the Future of the Universal Service Fund*, WC Docket No. 21-376, Report, FCC 22-67, at 22, para. 8 (Aug. 15, 2022) (*Future of USF Report*).

³¹ *Id.*

³² Infrastructure Act § 60102(b)(1).

³³ *Id.* § 60102(c)(2)(A)-(B). Puerto Rico and the District of Columbia are included in the Act’s definition of State. *Id.* § 60102(a)(2)(M) (citing 47 U.S.C. § 942).

³⁴ Infrastructure Act § 60102(c)(3)(B).

³⁵ *Id.* § 60102(h)(1)(A).

³⁶ *Id.* § 60102(h)(4)(A)(i). Networks must also be reliable, with outages not exceeding, on average, 48 hours over any 365-day period. *Id.*

³⁷ *Id.* § 60102(h)(4)(A)(ii), (B), (C).

³⁸ See Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (NOFO) (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (last visited July 23, 2023) (BEAD Program NOFO).

stakeholders.³⁹ Next, states and territories must collaborate with local and regional entities in submitting an initial broadband plan to NTIA. After submitting the initial broadband plan, the state or territory must conduct a “transparent, evidence-based, and expeditious challenge process under which a unit of local government, nonprofit organization, or other broadband service provider can challenge a determination made by the [state or territory] in the initial proposal as to whether a particular location or community anchor institution . . . is eligible for the grant funds, including whether a particular location is unserved or underserved.”⁴⁰ When NTIA approves a state’s or territory’s initial plan, the state or territory will then be able to access additional funds from its BEAD allocation, and final approval of a plan will permit access to the remaining allocated funds.

15. The BEAD Program NOFO set a July 18, 2022 deadline for NTIA to receive letters of intent from states and territories, as well as an August 15, 2022 deadline for any supplemental information.⁴¹ The BEAD Program NOFO also specifies a number of a program requirements, including principles that states and territories must observe in their subgrantee selection, prioritization, and scoring processes. In particular, the BEAD Program NOFO prohibits states and territories from “treat[ing] as ‘unserved’ or ‘underserved’ any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband” at the conclusion of the state’s or territory’s challenge process.⁴² States and territories must also ensure that subgrantees comply with obligations spelled out in the BEAD Program NOFO regarding network capabilities (i.e., speed, latency, and uptime), deployment requirements, and service obligations. Finally, the BEAD Program NOFO requires states and territories to ensure that prospective subgrantees have the managerial and financial capacity to meet the commitments of the subgrant and any BEAD Program requirements.

16. On June 28, 2023, NTIA issued the BEAD Challenge Process Policy Notice (Policy Notice), providing guidance on several BEAD Program processes, such as the identification of existing broadband funding and the required challenge processes that states must conduct, that aim to avoid broadband funding overlaps.⁴³ The Policy Notice explains how, as part of BEAD Program challenge processes, the states and other eligible entities conducting those challenge processes must accept or reject certain kinds of evidence for challenges to the identification of previous federal, state, or local enforceable commitments, challenges to claimed broadband availability at particular locations, and challenges demonstrating that there is planned service to locations without an enforceable commitment.⁴⁴

17. Other federal programs also work to further the goal of universal service. For instance, the U.S. Department of Agriculture (USDA)’s Rural Utilities Service supports broadband through a number of programs, including the Learning, Telemedicine, and Broadband Program, for which the Infrastructure Act provided an additional \$2 billion, and its ReConnect Loan and Grant program.⁴⁵ The Department of the Treasury also has several programs that fund broadband projects,⁴⁶ and other NTIA

³⁹ *Id.* at 22-28.

⁴⁰ Infrastructure Act § 60102(h)(2).

⁴¹ BEAD Program NOFO at 1, 8, 17, 23-24.

⁴² *Id.* at 36-37.

⁴³ Department of Commerce, National Telecommunications and Information Administration, BEAD Challenge Process Policy Notice (June 28, 2023), https://ntia.gov/sites/default/files/publications/beat_challenge_process_policy_notice_final.pdf (BEAD Challenge Process Policy Notice).

⁴⁴ *Id.* at 15-19.

⁴⁵ See Infrastructure Act, div. J, tit. II.; U.S. Department of Agriculture, *ReConnect Loan and Grant Program*, <https://www.usda.gov/reconnect> (last visited July 23, 2023).

⁴⁶ See American Rescue Plan Act of 2021, Pub. L. No. 117–2, § 9901, 135 Stat. 4, 223 (2021) (American Rescue Plan Act); U.S. Department of the Treasury, *Coronavirus State and Local Fiscal Recovery Funds for Tribal*

(continued....)

programs beyond the BEAD Program provide funding for broadband deployment, affordability, adoption, availability, and equitable access.⁴⁷ Pursuant to the Broadband Interagency Coordination Act (BICA),⁴⁸ the Commission, USDA, and NTIA must share information regarding these high-cost universal service efforts. Specifically, the BICA required the FCC, USDA, and NTIA to enter into an agreement within six months to provide for sharing information about existing or planned projects that have received, or will receive, funding through the Commission's high-cost programs and programs administered by NTIA and the USDA.⁴⁹ The BICA also mandates that the interagency agreement requires the agencies to "consider basing the distribution of funds for broadband deployment" under the referenced programs "on standardized data regarding broadband coverage."⁵⁰ On June 25, 2021, the agencies announced that they had entered into the agreement.⁵¹ In an effort to further facilitate broadband deployment funding coordination, on May 9, 2022, the FCC, USDA, and NTIA entered into an interagency agreement with the Department of Treasury.⁵² Representatives of the agencies have been meeting regularly pursuant to the agreements. On February 17, 2023, the Commission released a report on the effectiveness of BICA, detailing the steps that the agencies were taking to ensure the most efficient allocation of federal broadband funding.⁵³

18. To further facilitate coordination amongst the various federal funding programs, section 60105 of the Infrastructure Act requires the Commission "to establish an online mapping tool to provide a locations overview of the overall geographic footprint of each broadband infrastructure deployment project funded by the Federal Government."⁵⁴ The Commission released the National Broadband Funding Map in May 2023.⁵⁵ The map contains data received from USDA, NTIA, and the Department of Treasury, as well as the Commission's own data.⁵⁶ Any funding data that are submitted to the

(Continued from previous page)

Governments, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-fund/tribal-governments> (last visited July 23, 2023); U.S. Department of the Treasury, *Capital Projects Fund*, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund> (last visited July 23, 2023).

⁴⁷ See, e.g., Infrastructure Act, div. J, tit. II.

⁴⁸ Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, § 904, 134 Stat. 1182, 3214 (codified at 47 U.S.C. § 1308 *et seq.*).

⁴⁹ 47 U.S.C. § 1308(b)(2).

⁵⁰ *Id.* § 1308(b)(3)(C).

⁵¹ Press Release, FCC, FCC, NTIA and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment (June 25, 2021), <https://www.fcc.gov/document/fcc-ntia-usda-sign-interagency-pact-broadband-funding-deployment> (last visited July 23, 2023) (FCC, NTIA and USDA Interagency Agreement Press Release).

⁵² *Id.*

⁵³ Wireline Competition Bureau, Report on the Effectiveness of the Broadband Interagency Coordination Agreement Pursuant to § 1308 of the Broadband Interagency Coordination Act (2023), <https://docs.fcc.gov/public/attachments/DOC-391167A1.pdf>; see also Press Release, FCC, FCC Reports to Congress on Success of Broadband Interagency Coordination Act (Feb. 17, 2023), <https://www.fcc.gov/document/fcc-reports-success-broadband-interagency-coordination-act>.

⁵⁴ Infrastructure Act § 60105; 47 U.S.C. § 1704.

⁵⁵ *FCC Releases Broadband Funding Map*, WC Docket No. 11-10 et al., Public Notice, DA 23-410 (OEA/WCB May 15, 2023) (*Broadband Funding Map Public Notice*); Federal Communications Commission, *Broadband Funding Map*, <https://fundingmap.fcc.gov/home> (last visited July 23, 2023).

⁵⁶ *Broadband Funding Map Public Notice* at 1.

Commission by other federal agencies in the future will be added to the map as part of regular updates the Commission will make to the map in accordance with the Infrastructure Act.⁵⁷

III. REPORT AND ORDER ADOPTING ENHANCED ALTERNATIVE CONNECT AMERICA COST MODEL

19. In this Report and Order, we adopt the Enhanced A-CAM program to promote the widespread deployment of 100/20 Mbps broadband across areas served by A-CAM recipients and rate-of-return carriers eligible to receive legacy support. We adopt deployment and service obligations to align deployment with the requirements of the Infrastructure Act, encourage the deployment of affordable broadband service, and allow us to monitor compliance with the program rules. Next, we extend by 10 years beyond the remaining five years, for a total of 15 years, the term of support for electing carriers, and set a methodology for determining support amounts for locations without 100/20 Mbps broadband service within a potential budget of no more than \$1.27 billion annually, or no more than \$1.33 billion annually if certain conditions are met, using an updated version of the A-CAM. Finally, we make eligible for Enhanced A-CAM all current A-CAM recipients as well as rate-of-return carriers eligible to receive legacy support, and adopt a voluntary election process for eligible carriers.

A. Background

1. Current A-CAM

20. In the *2016 Rate-of-Return Reform Order*, the Commission provided rate-of-return carriers a voluntary path from traditional rate-of-return support, based on the carrier's costs, to model-based high-cost universal service support (A-CAM I), tailored to reflect the specific characteristics of rate-of-return areas.⁵⁸ The A-CAM model was used to establish fixed monthly support amounts over a 10-year term in exchange for broadband deployment to a pre-determined number of eligible locations.⁵⁹ The Commission directed the Bureau to calculate support as model-estimated costs for eligible census blocks in excess of the funding threshold of \$52.50 per location per month up to a cap of \$200.⁶⁰ Carriers were obligated to deploy broadband at speeds of at least 25/3 Mbps or 10/1 Mbps to a number of locations equal to the number of fully funded locations (i.e., locations in eligible census blocks which the model determined could be served for costs at or below the funding cap), and at least 4/1 Mbps or service on reasonable request to a number of locations equal to the number of capped locations (i.e., locations in eligible census blocks which the model determined could be served for costs above the funding cap). Each carrier's specific mix of 25/3 Mbps or 10/1 Mbps obligations, and 4/1 Mbps or reasonable request obligations, was based on the housing unit density of the eligible areas in the offer. These deployment obligations could be met by serving any eligible location within the carrier's service area in the state, whether fully funded or capped. Carriers that elected A-CAM I were required to elect for all affiliated study areas in the state.⁶¹

21. The Commission excluded from A-CAM eligibility carriers that had reported deploying 10/1 Mbps service to more than 90% of eligible locations.⁶² For those carriers eligible to participate in A-CAM I, the Commission concluded that it would not provide support for locations in census blocks

⁵⁷ Infrastructure Act § 60105(e)(1); 47 U.S.C. § 1704(e)(1).

⁵⁸ See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3094-3117, paras. 17-79. For aspects of the model tailored to the specific characteristics of rate-of-return areas, see *id.* at 3102-11, paras. 36-59.

⁵⁹ *Id.* The Commission noted that it expected that it would conduct a rulemaking to determine support after the end of the term during year eight of the term, which is 2024. *Id.* at 3097, para. 22.

⁶⁰ *Id.* at 3102, para. 37. The \$52.50 funding threshold is based on the Bureau's prior estimate of the reasonable amount of monthly end-user revenues. See *CAM Inputs Order*, 29 FCC Rcd at 4035-41, paras. 170-82.

⁶¹ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 65.

⁶² *Id.* at 3113, para. 66.

served by an unsubsidized competitor offering at least 10/1 Mbps, and locations in census blocks where the incumbent already deployed fiber to the premises (FTTP) or was providing 10/1 Mbps or better broadband using cable technologies.⁶³

22. To award support, the Wireline Competition Bureau (Bureau or WCB) announced A-CAM I offer amounts and deployment obligations predicated on a monthly funding cap of \$200 per location.⁶⁴ Faced with substantial carrier interest in the offer and demand beyond the Commission-approved budget, however, the Commission later allocated an additional \$50 million annually to the A-CAM I budget and adopted other measures to ensure that the model-based support stayed within the revised budget, including a reduced funding cap below \$200 per location for most carriers.⁶⁵ In the *March 2018 Rate-of-Return Reform Order and NPRM*, the Commission authorized additional support for another offer to A-CAM I carriers, pursuant to which the funding cap was increased to \$146.10 per location for carriers that elected it.⁶⁶

23. In the *December 2018 Rate-of-Return Reform Order*, the Commission adopted an additional offer for carriers that had previously elected A-CAM.⁶⁷ Pursuant to this Revised A-CAM I, the funding cap was increased to \$200 per location per month for all electing carriers, and the term of support was extended by two years, through 2028, in exchange for increased 25/3 Mbps deployment obligations.⁶⁸ The Bureau extended offers to eligible carriers in April 2019 and authorized Revised A-CAM I support in May 2019.⁶⁹

24. In the *December 2018 Rate-of-Return Reform Order*, the Commission also adopted a new model offer, A-CAM II, for carriers still receiving support pursuant to legacy support mechanisms based on historical costs, including carriers not previously eligible for A-CAM I.⁷⁰ Consistent with Revised A-CAM I, the Commission set the per-location cap for A-CAM II at \$200.⁷¹ For A-CAM II, the Commission revised the model parameters to include as eligible blocks those census blocks where the

⁶³ *Id.* at 3109, para. 56.

⁶⁴ See *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8641, 8642 (WCB 2016) (*A-CAM Offer Public Notice*).

⁶⁵ See *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13775, 13776-80, paras. 5-16 (2016) (*A-CAM Revised Offer Order and/or FNPRM*). Carriers whose original A-CAM I offer was less than the amount of legacy support they received in 2015 (“glide path carriers”) retained a \$200 per location per month funding cap, while other carriers received revised offers with funding caps that varied based on the percentage of locations lacking 10/1 Mbps service, up to \$146.10 per location. *Id.*

⁶⁶ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, 33 FCC Rcd 2990, 3018-20, paras. 62-67 (2018) (*March 2018 Rate-of-Return Reform Order and NPRM*). See *Wireline Competition Bureau Announces Offers of Revised A-CAM Support Amounts to 217 Authorized A-CAM Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 4591, 4591 (WCB 2018). The Commission proposed, at the same time, the Revised A-CAM I offer that increased the funding cap and deployment obligations. *March 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 3018-21, paras. 62-68.

⁶⁷ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11898-903, paras. 14-30.

⁶⁸ *Id.*

⁶⁹ See *Wireline Competition Bureau Authorizes 186 Rate-of-Return Companies to Receive an Additional \$65.7 Million Annually in Alternative Connect Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2780 (WCB 2019).

⁷⁰ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11903-15, paras. 31-69.

⁷¹ *Id.* at 11904-05, para. 37.

incumbent or its affiliate already provided FTTP or cable service.⁷² Further, the Commission excluded as ineligible census blocks served by unsubsidized competitors only if the unsubsidized competitors provided voice and at least 25/3 Mbps service under the then-most recently available FCC Form 477 data.⁷³ Finally, the A-CAM II model parameters included a Tribal Broadband Factor, which set the funding threshold for locations on Tribal lands at \$39.38 while increasing the support cap to \$213.12.⁷⁴ A-CAM II was offered for a 10-year term, ending in 2028.⁷⁵ Carriers electing A-CAM II were required to deploy at least 25/3 Mbps service to a number of locations equal to the number of fully funded locations, and at least 4/1 Mbps or on reasonable request to a number of locations equal to the number of capped locations.⁷⁶ The Commission adopted a single-step election process, under which the Bureau released a public notice announcing the offers of A-CAM II support amounts and deployment obligations, after which each carrier had 45 days to make an irrevocable acceptance of the offer.⁷⁷ On August 22, 2019, the Bureau authorized 171 companies to receive A-CAM II support.⁷⁸

25. Currently, 262 companies are authorized to receive A-CAM I, including 243 companies that elected Revised A-CAM I, with a term ending in 2028, and 19 companies that did not elect Revised A-CAM I, whose term ends in 2026.⁷⁹ These A-CAM I carriers collectively receive \$607.6 million per year and have an obligation to deploy at least 25/3 Mbps service to 451,059 eligible locations, at least 10/1 Mbps to 170,491 eligible locations, and at least 4/1 Mbps service to 26,868 eligible locations, with an additional 65,555 locations subject to the reasonable request standard.⁸⁰ In addition, there are 185 A-CAM II companies, with support terms ending in 2028, that collectively receive \$494.3 million per year.⁸¹ These carriers have an obligation to provide at least 25/3 Mbps service to 364,108 eligible locations, at least 4/1 Mbps to 24,103 eligible locations, and service on reasonable request to another 68,034 locations.⁸² For the A-CAM I and A-CAM II areas, there are approximately 1,170,000 eligible locations in the model. The total support currently provided to A-CAM I and A-CAM II companies is \$1.1 billion per year.

⁷² *Id.* at 11907, para. 45.

⁷³ *Id.* at 11907-09, paras. 46-51. The Commission declined to adopt a challenge process with respect to unsubsidized competitor coverage, as it had pursuant to A-CAM I, finding the process to be administratively burdensome and providing limited benefit. *Id.* at 11909-10, paras. 52-54.

⁷⁴ *Id.* at 11910-12, paras. 55-57.

⁷⁵ *Id.* at 11912, paras. 58-59.

⁷⁶ *Id.* at 11913-14, paras. 64-65. The mix of 4/1 Mbps and reasonable request obligations was based on the density of housing units in the eligible areas. *Id.*

⁷⁷ *Id.* at 11915, para. 69.

⁷⁸ *Wireline Competition Bureau Authorizes 171 Rate-of-Return Companies to Receive \$491 Million Annually in Alternative Connect America Cost Model II Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 7271, 7271 (WCB 2019).

⁷⁹ See Wireline Competition Bureau, CAF - A-CAM 2.3.2 - Authorization Report 5.1 (2019), <https://docs.fcc.gov/public/attachments/DOC-352788A1.xlsx> (summarizing authorized A-CAM I support amounts and deployment obligations).

⁸⁰ *Id.*

⁸¹ See Wireline Competition Bureau, CAF - A-CAM 2.5.2 - Authorization Report 6.2 (2022), <https://docs.fcc.gov/public/attachments/DOC-359222A1.xlsx> (summarizing authorized A-CAM II support amounts and deployment obligations).

⁸² *Id.*

2. ACAM Broadband Coalition Proposal

26. On October 30, 2020, the ACAM Broadband Coalition (Coalition) filed a Petition for Rulemaking asking the Commission to initiate a proceeding to consider the Coalition's proposal to extend both A-CAM I and A-CAM II.⁸³ Pursuant to this original proposal, the terms of A-CAM I and A-CAM II would be extended in exchange for increased obligations to deploy 25/3 Mbps service.⁸⁴ The Commission initially sought comment on the Petition for Rulemaking on November 4, 2020.⁸⁵ In response, several commenters supported the Coalition's request that the Commission initiate a rulemaking.⁸⁶ One commenter objected, but said the Commission "should consider alternatives to the Coalition's recommended approach" if the Commission were to adopt a notice of proposed rulemaking.⁸⁷ More recently, commenters also discussed the Coalition's proposal in response to the aforementioned *Future of USF Notice*.⁸⁸

27. On December 15, 2021, the Coalition revised its proposal to require deployment of at least 100/20 Mbps service to 90% of locations, as determined by the Fabric, in eligible census blocks, and at least 25/3 Mbps service to the remaining 10%.⁸⁹ To fund the increased deployment costs, the Coalition proposed increasing monthly support for participating A-CAM carriers to the higher of 80% of a company's model-estimated costs or \$300 per location.⁹⁰ The Coalition provided additional details on its proposal on January 19, 2022.⁹¹ On February 17, 2022, the Coalition further proposed support, in exchange for the same revised deployment obligations, for locations in census blocks that had been excluded from A-CAM I because an unsubsidized competitor reported providing at least 10/1 Mbps service.⁹²

⁸³ Petition of ACAM Broadband Coalition for Expanding Broadband Service Through the ACAM Program, Petition for Rulemaking, RM-11868 (rec. Oct. 30, 2020) (ACAM Broadband Coalition Petition for Rulemaking).

⁸⁴ *Id.* at 11-12.

⁸⁵ See *Consumer & Governmental Affairs Bureau Reference Information Center: Petition for Rulemakings Filed*, RM-11868, Public Notice, Report No. 3161 (Nov. 4, 2020).

⁸⁶ See generally A-CAM I Cooperatives Comments, RM-11868 (rec. Dec. 4, 2020); Comments of NTCA-The Rural Broadband Association, RM-11868, WC Docket No. 10-90 (rec. Dec. 4, 2020); Comments of the Nebraska Companies, RM-11868 (rec. Dec. 4, 2020); WTA-- Advocates for Rural Broadband Comments, RM-11868 (rec. Dec. 4, 2020); ACAM Broadband Coalition Reply, RM-11868 (rec. Dec. 18, 2020); Reply Comments of NTCA-The Rural Broadband Association, RM-11868, WC Docket No. 10-90 (rec. Dec. 21, 2020).

⁸⁷ Wireless Internet Service Providers Association Comments, RM-11868, at 1 (rec. Dec. 4, 2020).

⁸⁸ See, e.g., Comments of NCTA – The Internet & Television Association, WC Docket No. 21-476, at 10 (rec. Feb. 18, 2022) (NCTA Comments) (urging the Commission to “decline to consider [the] ACAM Broadband Coalition’s proposal . . . until the new federal broadband funding has been fully distributed”); Letter from Victoria S. Goldberg, VP & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 21-476 and 10-90 (filed May 5, 2022); Reply Comments of WTA – Advocates for Rural Broadband, WC Docket No. 21-476, at 4 (rec. Mar. 17, 2022) (opposing NCTA’s “request for a moratorium on new or additional . . . high-cost support (including consideration of the pending ACAM Broadband Coalition proposals) until the Commission can ‘assess the effects of new broadband programs’”). We encourage these commenters to discuss the Coalition’s proposal in this proceeding as well so that we may develop a complete, thorough record.

⁸⁹ See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90, at 1 (filed Dec. 17, 2021) (ACAM Broadband Coalition Dec. 17, 2021 Letter).

⁹⁰ See *id.* at 2.

⁹¹ See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90, Attach. A (filed Jan. 19, 2022) (ACAM Broadband Coalition Jan. 19, 2022 Letter).

⁹² See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90, at 1 (filed Feb. 17, 2022) (ACAM Broadband Coalition Feb. 17, 2022 Letter).

28. On May 19, 2022, the Commission adopted a *Notice of Proposed Rulemaking (Enhanced A-CAM NPRM)* seeking comment on how “enhancements to the A-CAM program, as the Coalition has proposed, may be an efficient means of funding deployment in a manner complementary to other federal and state efforts.”⁹³ The Commission explained that cost-effective broadband deployment by A-CAM carriers pursuant to the cost model could allow other agencies and the states to use Infrastructure Act funds to achieve more widespread deployment.⁹⁴ In response to the *Enhanced A-CAM NPRM*, 23 parties filed comments, and 12 parties filed reply comments. Among the commenters were the ACAM Broadband Coalition, other groups of A-CAM carriers, interested trade associations, state public utility commissions, and various individual broadband service providers. NTIA also submitted comments in which it advocated for the maximum possible alignment between Enhanced A-CAM and NTIA’s BEAD Program.⁹⁵

29. More recently, the ACAM Broadband Coalition has proposed additional alternative deployment obligations and funding scenarios, including scenarios in which at least some carriers would commit to deploying 100/20 Mbps or faster broadband to 100% of study area locations. The Coalition suggested that the Commission could either allow Enhanced A-CAM carriers to commit to deploying 100/20 Mbps or faster broadband to 100% or 98% of study area locations, or the Commission could “mandate one of the two percentage requirements” for all Enhanced A-CAM carriers.⁹⁶ Such scenarios, the Coalition explained, could be associated with total support amounts of up to \$24.5 billion over the entire Enhanced A-CAM term ending in either 2036 or 2039.⁹⁷

30. In its comments in response to the *Enhanced A-CAM NPRM*, NTCA suggested a voluntary incentive regulation path for legacy carriers and recalibrating the high-cost annual budget.⁹⁸

⁹³ *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking, FCC 22-35, 2022 WL 1684348 (May 20, 2022) (*Enhanced A-CAM NPRM* or *NPRM*).

⁹⁴ See *id.* at 1, para. 1.

⁹⁵ See Comments of the National Telecommunications and Information Administration, RM-11868, WC Docket No. 09-197 et al., at 2-3 (rec. Aug. 1, 2022) (NTIA Comments) (“To ensure that the Administration’s goal of ‘Internet for all’ (*i.e.*, ubiquitous high-speed broadband coverage) is realized and that taxpayer funds are efficiently utilized, and to fulfill Congress’s directive that NTIA and the Commission (among others) coordinate on broadband deployment matters, it is essential to align A-CAM and BEAD Program requirements to the greatest extent possible.”). Although NTIA submitted this filing during the *NPRM*’s reply comment period, the filing is presented as comments, rather than reply comments.

⁹⁶ See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 19-90 et al., at 1 (filed Oct. 27, 2022) (ACAM Broadband Coalition Oct. 27, 2022 Letter); Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 1 (filed Nov. 10, 2022) (ACAM Broadband Coalition Nov. 10, 2022 Letter). See also Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 1 (filed Feb. 10, 2023) (ACAM Broadband Coalition Feb. 10, 2023 Letter) (“We reiterated our commitment to deploying at a minimum speed of 100/20 Mbps to whatever number of eligible locations future Fabric-based maps identify *with no change in support levels*.”); Comments of the Nebraska Rural Independent Companies, WC Docket No. 10-90 et al., at 4-7 (rec. July 18, 2022) (NRIC Comments) (proposing to allow Enhanced A-CAM carriers to commit to serving 100% of study area locations with 100/20 Mbps or faster broadband).

⁹⁷ See ACAM Broadband Coalition Oct. 27, 2022 Letter at 1-2.

⁹⁸ Comments of the NTCA—The Rural Broadband Association, RM-11868, WC Docket No. 10-90 et al., at 33 (rec. July 18, 2022) (NTCA Comments). Several commenters supported NTCA’s initial proposal. See, e.g., Reply Comments of Southeastern Rural Broadband Alliance, WC Docket No. 10-90 et al., at 5-10 (rec. Aug. 1, 2022) (Southeastern Rural Broadband Alliance Reply) (encouraging the Commission to adopt companion CAF BLS and HCLS reforms and the creation of an incentive regulation pathway for legacy rate-of-return carriers); Reply Comments of TCA, RM-11868, WC Docket No. 10-90 et al., at 2-5 (rec. Aug. 1, 2022) (supporting 5-step plan put
(continued....)

NTCA and Hargray Telephone Company, LLC (Hargray), on behalf of the Southeastern Rural Broadband Alliance, have since modified and built on this proposal.⁹⁹ Both NTCA and the Rural Broadband Alliance now support a framework to allow CAF BLS “recipients to voluntarily elect an incentive regulation that would freeze [CAF BLS] support at the adjusted baseline for six years,” from 2024 to 2029.¹⁰⁰ Support would then decline by 4% each year over a five year period and remain frozen at this lower level of support until the Commission adopts a new framework.¹⁰¹ CAF BLS carriers, in exchange, “would commit to serve 100% of the serviceable locations in their study area(s) at 100/20 Mbps.”¹⁰² Electing carriers would not be subject to the budget control mechanism.¹⁰³

B. Discussion

31. With this Order, we adopt the Enhanced A-CAM support mechanism to facilitate the widespread deployment of broadband at speeds of at least 100/20 Mbps across eligible rate-of-return carriers’ service areas by the end of 2028. In exchange for the commitment to complete this deployment, the Commission will extend offers to current A-CAM carriers and current legacy support recipients within a budget totaling no more than \$1.27 billion annually, or no more than \$1.33 billion annually if certain conditions are met, over a 15-year term beginning January 1, 2024.

32. We conclude that it is in the public interest to adopt Enhanced A-CAM before BEAD Program grants are made, and thus we require below that carriers make their elections by no later than October 1, 2023 to ensure alignment with the expected BEAD Program timeline as required by the Infrastructure Act.¹⁰⁴ By proceeding now with Enhanced A-CAM, we are able to complement and bolster congressionally appropriated programs, like the BEAD Program. Importantly, we obligate carriers electing Enhanced A-CAM to serve 100% of unserved locations with service levels consistent with the standard established in the Infrastructure Act.¹⁰⁵ This requirement helps establish a federal enforceable commitment and alleviates the need for BEAD and other broadband funding for these areas,¹⁰⁶ allowing

(Continued from previous page) _____
forward by NTCA); Reply Comments of Minnesota Telecom Alliance, South Dakota Telecommunications Association, Broadband Association of North Dakota, and Iowa Communications Alliance, RM-11868, WC Docket No. 10-90 et al., at 3, 7 (rec. Aug. 1, 2022) (Minnesota Telecom Alliance et al. Reply) (supporting NTCA’s proposal).

⁹⁹ Letter from Michael Romano, Exec. Vice Pres., NTCA, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 2 (filed Oct. 14, 2022) (NTCA Oct. 14, 2022 Letter); Letter from Trey Judy, Director—Regulatory, Hargray Communications, on behalf of the Southeastern Rural Broadband Alliance, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 2 (filed Apr. 28, 2023) (Southeastern Rural Broadband Alliance April 28, 2023 Letter); Letter from Michael Romano, Exec. Vice Pres., NTCA, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 2 (filed May 26, 2023) (NTCA May 26, 2023 Letter); Letter from Trey Judy, Director—Regulatory, Hargray Communications, on behalf of the Southeastern Rural Broadband Alliance, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90, at 1-3 (filed May 30, 2023) (Southeastern Rural Broadband Alliance May 30, 2023 Letter).

¹⁰⁰ NTCA May 26, 2023 Letter at 2; Southeastern Rural Broadband Alliance April 28, 2023 Letter at 2.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *infra* section III.B.3. See also 47 U.S.C. § 1702(h)(4)(C).

¹⁰⁵ See *infra* section III.B.1. See also 47 U.S.C. § 1702(h)(4)(A)(i)(I) (requiring subgrantees to provide broadband at speeds of 100/20 Mbps).

¹⁰⁶ See BEAD Program NOFO at 36-37 n.52. See also Reply Comments of WTA – Advocates for Rural Broadband Reply, RM 11868, WC Docket No. 10-90 et al., at 8-9 (rec. Aug. 1, 2022) (WTA Reply) (noting that there is “no possibility of duplication” in areas where a rate-of-return carrier has an enforceable federal commitment that meets the BEAD Program requirements); Reply Comments of the ACAM Broadband Coalition, RM-11868, WC Docket

(continued....)

those funds to be used for other means like extending networks further or funding other broadband initiatives.¹⁰⁷ We also establish a framework to avoid duplicating existing efforts from other government programs funding broadband deployment.¹⁰⁸ We acknowledge that some commenters urge the Commission to wait until the BEAD Program and other federal funding programs have allocated their funding, or at least have determined how to allocate funding, before deciding how to proceed with supporting the remaining areas without 100/20 Mbps or faster service with universal service support.¹⁰⁹ However, we disagree that standing by would serve the public interest.

33. Instead, we find that proceeding now to fund these areas with universal service support is an efficient use of federal funds. Enhanced A-CAM builds upon years and billions of dollars of universal service support by leveraging rate-of-return carriers' existing networks to incrementally increase broadband speeds across eligible areas and supporting the ongoing operations of those networks.¹¹⁰ We

(Continued from previous page)

No. 10-90 et al., at 7-8 (rec. Aug. 1, 2022) (ACAM Broadband Coalition Reply). For this reason, we disagree that proceeding now with Enhanced A-CAM would "result in wasteful spending of limited universal service funds." NCTA Comments at 4-5.

¹⁰⁷ See, e.g., Comments of the ACAM Broadband Coalition, RM-11868, WC Docket No. 10-90 et al., at 4-5 (rec. July 18, 2022) (ACAM Broadband Coalition Comments); Comments of the Iowa A-CAM Carriers, RM-11868, WC Docket No. 10-90 et al., at 6 (rec. July 18, 2022); Comments of ACA Connects on the Notice of Proposed Rulemaking, RM-11868, WC Docket No. 10-90 et al., at 13 (rec. July 18, 2022) (ACA Comments); NTCA Comments at 16; Comments of State and Regional Telecommunications Associations, RM-11868, WC Docket No. 10-90 et al., at 3-4 (rec. July 18, 2022) (State and Regional Telecommunications Associations Comments); (Minnesota Telecom Alliance et al. Reply at 3-4; Comments of GTBA—Georgia's Rural Telephone and Broadband Association, RM-11868, WC Docket No. 10-90 et al., at 6 (rec. July 18, 2022) (GTBA Comments); Southeastern Rural Broadband Alliance Reply at 4; Reply Comments of Home Telecom, RM-11868, WC Docket No. 10-90 et al., at 2 (rec. Aug. 1, 2022) (Home Telecom Reply); WTA Reply at 3.

¹⁰⁸ See *infra* section III.B.1, B.2.b.

¹⁰⁹ See, e.g., Comments of Windstream Services, LLC, RM-11868, WC Docket No. 10-90 et al., at 2-3 (rec. July 18, 2022) (Windstream Comments); Comments of INCOMPAS, RM-11868, WC Docket No. 10-90 et al., at 3-7 (INCOMPAS Comments); NCTA Comments at 2-6; Reply Comments of WISPA—Broadband Without Boundaries, RM-11868, WC Docket No. 10-90 et al., at 2-3 (rec. Aug. 1, 2022) (WISPA Reply). See also *Enhanced A-CAM NPRM* at 13, para. 32 (seeking comment on the sequencing of Enhanced A-CAM with the BEAD Program). We note that some commenters in the Future of USF docket generally encouraged the Commission to reassess its high-cost programs before providing any further high-cost funding. See, e.g., INCOMPAS Comments at 5-6 (citing comments from the Future of USF docket). In the below Notice of Inquiry, we seek comment on issues raised in this proceeding. See *infra* section V. However, for all the reasons discussed herein, we find it serves the public interest to move forward with Enhanced A-CAM at this time while we separately build a record to help the Commission consider how to modify the high-cost program to adjust to the changing broadband landscape.

¹¹⁰ See, e.g., TDS Telecommunications LLC Comments, WC Docket No. 10-90 et al., at 4-5 (rec. July 18, 2022) (TDS Comments) ("The decision thus is between potentially starting over anew in A-CAM carriers' territories to fund overbuilds using BEAD funding, or simply making incremental [universal service] investments to enhance the networks already being deployed using A-CAM funding."); NTCA Comments at 14-15 (noting that Enhanced A-CAM "represents the most direct route—leveraging proven programs, existing networks, and demonstrated displays of community commitment—to achieving the ongoing mission of universal service"); GTBA Comments at 5 ("Sequencing A-CAM reform before BEAD will allow ETCs electing A-CAM to offer 100/20 Mbps to locations by extending existing network assets."); Minnesota Telecom Alliance et al. Reply at 4 ("The Commission, which has already invested billions of [universal service] dollars during the past decades to facilitate the transformation of the formerly voice-centric networks of [rate-of-return carriers] into higher and higher speed broadband networks, should continue to build upon its successful broadband deployment efforts . . ."); WTA Reply at 3, 6-7 ("[T]he Commission has already invested billions of [universal service] dollars since its initial 1997 implementation of Section 254 of the Communications Act, as amended, in the upgrade of [rate-of-return] networks to deploy higher and higher broadband speeds as the local exchange industry evolved from a voice-centric network into a national broadband network"); A-CAM Broadband Coalition Comments at 4 ("Adoption of the ACAM program enhancements would provide for the leveraging of ACAM companies' already (partially)-built networks and money (continued....)

are not convinced that it would be more efficient for another program to overbuild these areas by funding competitive carriers to deploy new networks,¹¹¹ particularly when we have already committed years of long-term universal service support to these areas.¹¹² Although it is possible that a rate-of-return carrier will successfully compete for support through an alternative funding program,¹¹³ it is also possible that other providers may cherry pick and receive funding for certain portions of a rate-of-return carrier's study area,¹¹⁴ leading to multiple funding programs supporting different locations within the service area and delays in deployment to the remaining locations while the Commission determines how to fill in any gaps with universal service support.¹¹⁵ Instead, we conclude that obligating one service provider with an existing supported network to serve 100% of unserved locations across its study area now will provide more certainty that the unserved locations in rate-of-return carriers' study areas will be served with broadband at speeds of 100/20 Mbps in a timely manner.

34. As explained in more detail below, we require carriers authorized for Enhanced A-CAM to serve all Enhanced A-CAM required locations in their study areas.¹¹⁶ We delegate to the Bureau to determine the exact set of locations that must be served based on the Fabric, the Broadband Data Collection, and further deduplication of enforceable commitments. Although Enhanced A-CAM required locations in each study area will be identified at the time Enhanced A-CAM offers are made, the Bureau may make adjustments, by no later than the end of 2025, to identify: (1) locations in the Fabric when the Bureau sets final obligations; (2) locations that were already served by an unsubsidized competitor at the time the offer was made but this competitive service was not reflected in the Broadband Data Collection; and (3) locations that were subject to an enforceable commitment for the deployment of broadband of 100/20 Mbps or greater at the time the offer was made. In making adjustments to the Enhanced A-CAM required locations, the Bureau will determine which vintage of National Broadband Map data best reflects serviceable locations and broadband coverage at the time of the offer.¹¹⁷ If there is a substantial decrease

(Continued from previous page) _____

would not be squandered to duplicate their already deployed facilities.”); Southeastern Rural Broadband Alliance Reply at 4 (“Enhancing A-CAM will leverage the existing programs as a trusted model to more quickly deploy robust broadband service.”); Home Telecom Reply at 3 (“Delaying or failing to adopt Enhanced A-CAM . . . would disrupt the steady progress the Commission has made for years to ensure broadband is available in these most rural [rate-of-return] areas—progress that has been highly successful.”); Iowa A-CAM Carriers Reply at 4-5 (“[A]-CAM carriers already have network infrastructure, operational and customer service teams along with retail stores in place within their study areas, making them the best positioned to timely upgrade broadband service availability in their areas.”).

¹¹¹ See, e.g., Windstream Comments at 3 (claiming “the competitive nature of the BEAD Program grant process, and other similar state broadband programs, represents a more cost-effective and timely approach to delivering high-speed service in these areas”); INCOMPAS Comment at 5 n. 8; NCTA Comments at 5-6.

¹¹² See, e.g., TDS Comments at 4-5; WTA Reply at 9-10.

¹¹³ INCOMPAS Comments at 5 n.8 (noting that incumbents “are in an advantageous position with a current network and customers to obtain funding from the competitive deployment programs funded by Congress”).

¹¹⁴ Reply Comments of NTCA—The Rural Broadband Association, RM-11868, WC Docket No. 10-90 et al., at 11 (rec. Aug. 1, 2022) (NTCA Reply) (explaining “the processes recommended by those who support enhancement and extension of A-CAM would precisely *facilitate* increased broadband availability in those service areas – and in a manner that ensures delivery of a comparable level of services *across* those areas” while noting other funding programs “could ultimately carve up unserved and underserved geographies in yet-to-be-determined ways, serving some portions while still leaving to-be-determined parts of these areas behind”) (emphasis in original); Home Telecom Reply at 3-4 (explaining that if companies that cherry pick “successfully divide these highest-cost rural areas with a separate network, it could jeopardize the broadband deployment throughout areas that are too sparsely populated to support a single carrier, let alone newcomers”).

¹¹⁵ NTCA Comments at 16.

¹¹⁶ “Enhanced A-CAM required locations” is defined *infra*, para. 37.

¹¹⁷ See *infra* n.146.

in the number of locations, Enhanced A-CAM support will be decreased according to the procedures adopted herein.¹¹⁸ However, if the number of locations that must be served increases, the Enhanced A-CAM carrier may receive additional support if consistent with the available budget, but such increases are not guaranteed.¹¹⁹ Because Enhanced A-CAM carriers are the incumbent provider in their service areas, we expect that they are in the best position to know the number of locations in their study areas and the availability of competitive broadband alternatives. Therefore, we find that Enhanced A-CAM carriers are well positioned to know the maximum number of locations they may have to serve and based on their knowledge of their study areas determine whether they should accept Enhanced A-CAM funding.

35. While we recognize that funding these areas through the universal service program will increase the contribution factor,¹²⁰ as we explain below, we have adopted a budget that balances our goals of supporting universal access to voice and broadband service, and minimizing the burden on contributors.¹²¹ We are also not persuaded by commenters' speculation that the Commission should not act now because congressionally mandated funding programs could "obviate the need" for any additional funding in these areas.¹²² Because we have the ability now to efficiently support deployment across these areas in a manner that is complementary to other funding programs, we do not believe it would serve the public interest to further delay deployment so that we can wait and see if certain locations remain stranded with no or inferior service after funding programs have finished allocating their funds.¹²³

36. Finally, we adopt requirements and safeguards for Enhanced A-CAM that address other concerns expressed by commenters requesting that we wait before implementing Enhanced A-CAM. In response to concerns that areas will not be served as quickly as they might be if they were funded by the BEAD Program,¹²⁴ we below align the deployment timeline for Enhanced A-CAM recipients with the timeline required by the Infrastructure Act.¹²⁵ And while it is not possible to know whether a service provider that received BEAD Program funding or funding from another program may have provided "comparable (or better) service at a lower price,"¹²⁶ we also adopt performance requirements that align with the Infrastructure Act,¹²⁷ and subject Enhanced A-CAM recipients to performance testing to ensure

¹¹⁸ See *infra* section III.B.2.b.

¹¹⁹ See *infra* para. 78.

¹²⁰ Windstream Comments at 5-6; INCOMPAS Comments at 4-5.

¹²¹ See *infra* section III.B.2.a.

¹²² Windstream Comments at 2-3. See also NCTA Comments at 3. But see ACA Comments at 11-12 ("But, even though the size of these funds is unprecedented, they are unlikely to be sufficient to close the availability gap entirely."); WTA Reply at 4-6 ("[N]o one can be certain at this time whether or not the appropriated federal grant monies will be 'sufficient' in amount or in their manner of use . . ."); ACAM Broadband Coalition Reply at 5-7.

¹²³ See, e.g., NCTA Comments at 3-5; INCOMPAS Comments at 6-7; WISPA Reply at 2-3. But see NTCA Reply at 9 ("[A]cting now . . . would be a prudent and more effective and efficient means of ensuring delivering of higher-quality and more affordable services across wide rural spaces than 'waiting to see if BEAD might show up' in these areas."); WTA Reply at 6 ("[S]hould the federal grant programs ultimately provide no funding for an [rate-of-return] service area or fund a proposal that results in an uncompleted or inferior network, local residents can remain underserved for a much longer period.").

¹²⁴ See, e.g., Windstream Comments at 3 ("Among many other factors, the pandemic underscored the need to act quickly and aggressively, and the proposed Enhanced ACAM program does not embrace this urgency.").

¹²⁵ See *infra* section III.B.1; 47 U.S.C. § 1702(h)(4)(c); BEAD Program NOFO at 65. See also WTA Reply at 11-12; ACAM Broadband Coalition Reply at 7.

¹²⁶ NCTA Comments at 5.

¹²⁷ 47 U.S.C. § 1702(h)(4)(A)(i)(I).

those performance requirements will be met.¹²⁸ Additionally, we subject Enhanced A-CAM recipients to the reporting requirements and non-compliance measures that we apply to all high-cost support recipients so that we can monitor and incentivize deployment.¹²⁹

1. Enhanced Deployment and Service Obligations

37. *Final Deployment Obligations.* We adopt deployment obligations requiring every Enhanced A-CAM recipient to deploy, by the end of 2028, 100/20 Mbps or faster broadband service, with latency of 100 milliseconds or less, to all Enhanced A-CAM required locations in their service areas.¹³⁰ In the context of this Enhanced A-CAM program, Enhanced A-CAM carriers are required to deploy to those locations for which voice and terrestrial broadband services of speeds 100/20 Mbps or faster are not yet available or lack an enforceable commitment¹³¹ for deployment (“Enhanced A-CAM required locations”).¹³² These deployment obligations are designed to maximize the Enhanced A-CAM program’s compatibility with the Infrastructure Act and BEAD Program, which also require deployment of 100/20 Mbps or faster broadband to all locations within a funded “project” and will exclude areas covered 100% by existing federal, state, or local commitments to deploy broadband at such speeds.¹³³ By committing support through Enhanced A-CAM to deploy broadband at these speeds to electing carriers’ required

¹²⁸ See *infra* section III.B.1. See also WTA Reply at 9-10. INCOMPAS speculates that congressional broadband programs would “likely” fund “much greater network capacity” than the technologically neutral Enhanced A-CAM program. INCOMPAS Comments at 4. However, we note that states and other eligible entities will have the opportunity to determine whether an Enhanced A-CAM provider commits to offer broadband using a technology that meets the BEAD Program’s definition of “reliable broadband service” in determining whether the Enhanced A-CAM recipient has an enforceable federal commitment that would preclude BEAD funding to a location. BEAD Program NOFO at 15, 36-37 n.52 (defining reliable broadband service and the requirements for an enforcement commitment for the deployment of qualifying broadband); BEAD Challenge Process Policy Notice at 11 (“If the service provided in such a [enforceable] commitment meets the BEAD definition and requirements of reliable broadband, it will be considered an enforceable commitment regardless of the type of reliable broadband technology deployed.”).

¹²⁹ NCTA Comments at 5-6 (noting that “the BEAD [P]rogram incorporates a number of safeguards to ensure that providers are competent and that consumers receive the high-speed broadband services that have been promised”). But see *infra* section III.B.1, NTCA Comments at 15 (“The [universal service] programs have a demonstrable track record in enabling deployment and sustainability of broadband networks, and they incorporate substantial accountability measures to ensure that consumers receive what is promised, with performance testing, location reporting for deployment, and [ETC] oversight at both the federal and state level.”); WTA Reply at 8 (“NCTA has not, and cannot, make any plausible prediction or provide any credible evidence that the future NTIA and state safeguards that are yet to be devised and implemented will be more effective in fighting waste, fraud and abuse than the Commission’s proven system and procedures.”).

¹³⁰ See *Enhanced A-CAM NPRM* at 11, paras. 25-33. Unlike in previous iterations of the A-CAM program, Enhanced A-CAM recipients will be obligated to serve all such locations in their service areas, including in census blocks that are below the funding threshold, i.e., not just in “eligible census blocks.”

¹³¹ In the context of Enhanced A-CAM, an “enforceable commitment” exists where a carrier commits to deploying broadband service as a condition of any federal or state grants or other funding.

¹³² We note that the BEAD Program distinguishes between locations with broadband service with speeds between 25/3 Mbps and 100/20 Mbps as “underserved,” rather than “unserved,” and defines “unserved” as those locations with speeds less than 25/3 Mbps. For purposes of Enhanced A-CAM, we define unserved areas in paragraph [[44]], below.

¹³³ See *infra*, section III.B.3 (discussing carriers’ elections of Enhanced A-CAM support and deployment commitments). See also 47 U.S.C. § 1702(h)(4); BEAD Program NOFO at 36-37 n.52. In the context of the BEAD Program, “project” refers to “an undertaking by a subgrantee to construct and deploy infrastructure for the provision of broadband service,” which is equivalent to the study area for which an Enhanced A-CAM carrier may elect to participate in the Enhanced A-CAM program. See *id.* at 14.

locations, we will avoid overlap with the BEAD Program and help more Americans become connected at modern broadband speeds.

38. Moreover, since the Commission adopted the original A-CAM program, the nature and use of broadband Internet access services have continued to change. The Infrastructure Act defines an “underserved location” as a location that lacks reliable service with latency characteristics sufficient to support real-time, interactive applications at speeds below 100/20 Mbps.¹³⁴ We believe the same deployment goal would be appropriate to future-proof the next iteration of A-CAM to the maximum extent possible. We thus reject the Coalition’s earlier proposal to deploy 100/20 Mbps or faster service to only 90% of eligible locations and 25/3 Mbps or faster service to the remaining 10% of eligible locations.¹³⁵ We also reject suggestions that Enhanced A-CAM recipients be required to deploy broadband with symmetrical download and upload speeds.¹³⁶ Requiring 100 Mbps upload speed is at odds with the congressional determination in the Infrastructure Act.

39. Consistent with past A-CAM offers, we will determine compliance with deployment obligations based on meeting the minimum service levels regardless of technology.¹³⁷ We do, however, require Enhanced A-CAM recipients to provide voice service to their required locations. The Commission’s high-cost program historically supported traditional voice services until 2011, when the Commission reformed the program to support networks capable of providing both voice and broadband services.¹³⁸ Consistent with the Commission’s universal service goals of connecting Americans to both kinds of services, A-CAM carriers, like other high-cost support recipients, must already provide voice service along with broadband service to their required locations.¹³⁹

40. More specifically, we require a carrier electing Enhanced A-CAM to provide 100/20 Mbps or faster broadband and voice service to all Enhanced A-CAM required locations within its study area,¹⁴⁰ as determined by the National Broadband Map as of the date of the Enhanced A-CAM offer with

¹³⁴ See Infrastructure Act § 60104(c).

¹³⁵ We note, however, that in more recent filings, the Coalition has suggested that requiring deployment to 100/20 Mbps or faster service to all Enhanced A-CAM locations may be appropriate. See *supra* para. 29 (citing ACAM Broadband Coalition Oct. 27, 2022 Letter at 1; ACAM Broadband Coalition Nov. 10, 2022 Letter at 1).

¹³⁶ See Comments of the Nebraska Public Service Commission, RM-11868, WC Docket No. 10-90 et al., at 2-4 (rec. July 13, 2022)..

¹³⁷ See Letter from Louis Peraertz, Vice President of Policy, WISPA – Broadband Without Boundaries, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 2 (filed June 26, 2023) (WISPA June 26, 2023 Letter) (asking that the Commission “maintain[] a technology neutral approach for 100/20 Mbps deployment”).

¹³⁸ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17680-81, paras. 48, 51-52.

¹³⁹ See *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11913-14, para. 64. High-cost support recipients are not bound to one particular technology in offering the required voice service. See *RDOF Order*, 35 FCC Rcd 686, 708, para. 43 (2020) (“The Commission made clear when it adopted the standalone voice requirement as a condition of receiving Connect America Fund support in 2011 that the definition of the supported service, voice telephony service, is technologically neutral, allowing ETCs to provision voice service over many platforms.”).

¹⁴⁰ A support recipient is deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request. *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900, 12905 (WCB 2016). As with all of our high-cost support mechanisms with defined broadband deployment obligations, we will not consider a location to be served if a service provider intends to charge the consumer a fee that is attributable to the extension of the network. The goal of these high-cost support mechanisms is to make reliable and affordable broadband available to consumers, and line extension fees may make services supported by these programs inaccessible to consumers. This approach is consistent with the Broadband DATA Act, which defines a “standard broadband installation” in part as “the initiation by a provider of fixed broadband internet access service in an area (continued....)

adjustments adopted by the Bureau no later than the end of 2025, including extremely high-cost locations and locations that currently receive no support because their estimated cost to serve is below the support threshold. A carrier electing Enhanced A-CAM must also continue serving locations where it already provides 100/20 Mbps or faster broadband service. Conversely, Enhanced A-CAM recipients are not required to provide broadband to locations where, in addition to voice service, there is existing 100/20 Mbps or faster broadband service using wireline or terrestrial fixed wireless technology, offered by an unsubsidized competitor, or where any carrier has an enforceable federal or state commitment to deploy 100/20 Mbps or faster broadband service.¹⁴¹

41. In doing so, we decline to adopt the Coalition's proposed "two-pronged analysis" for identifying areas to be excluded due to competitive overlap.¹⁴² Under the Coalition's proposed analysis, the Commission would first make a determination for each Enhanced A-CAM provider and unsubsidized competitor at the state level before making a separate determination at the census block level.¹⁴³ The Coalition's proposal would, in our judgment, likely result in funding for many locations that are already served with 100/20 Mbps by an unsubsidized competitor. We exclude such locations to ensure that our limited universal service funds may help bring broadband at today's standards to as many areas as possible, while avoiding spending in areas where there either is existing broadband service of the same quality or for which carriers are already committed to deploy such service in exchange for other federal or state support.

42. Consistent with the Broadband DATA Act and the Broadband Interagency Coordination Act, Enhanced A-CAM offers will be made using location data from Fabric v.2, broadband coverage data from the National Broadband Map, and federal broadband funding data from the National Broadband Funding Map. We recognize that there are ongoing efforts to improve the accuracy of each data set, and those maps will continue to be refined over the coming months. To avoid unnecessarily duplicating federal broadband funding, we direct the Bureau to coordinate the areas under consideration for Enhanced A-CAM offers with other federal agencies, e.g., the Rural Utilities Service, NTIA, and the Department of Treasury,¹⁴⁴ and to remove from eligibility locations already subject to enforceable commitments to deploy 100/20 or faster broadband service.

(Continued from previous page) —————

in which the provider has not previously offered that service, with no charges or delays attributable to the extension of the network of the provider." 47 U.S.C. § 641(14)(A). As required by the Broadband DATA Act, a location can only be identified as having broadband available in the National Broadband Map if the provider can initiate service with a "standard broadband installation." *Digital Data Collection Second Report and Order and Third Further Notice of Proposed Rulemaking*, 35 FCC Rcd at 7465-66, paras. 12, 14.

¹⁴¹ See BEAD Program NOFO at 36-37 & n.52.

¹⁴² See ACAM Broadband Coalition Feb. 10, 2023 Letter at 2.

¹⁴³ The Coalition proposes that the Commission provide an Enhanced A-CAM recipient the full amount of support even where an unsubsidized competitor is providing 100/20 Mbps or faster broadband and voice service if the competitor is not offering such services to over 20 percent of the Enhanced A-CAM recipient's locations in eligible census blocks in a state. If the competitor is offering such broadband and voice services to over 20 percent of the Enhanced A-CAM recipient's locations in eligible census blocks in a state, the Commission would, according to the Coalition's proposal, not provide Enhanced A-CAM support for those census blocks where 100 percent of the locations are reported to have 100/20 Mbps or faster broadband service. See ACAM Broadband Coalition Feb. 10, 2023 Letter at 2.

¹⁴⁴ See FCC, NTIA and USDA Interagency Agreement Press Release; FCC, NTIA, USDA and Treasury Interagency Agreement Press Release. While the Commission has entered into interagency agreements with NTIA, USDA, and Treasury, many other federal agencies also have broadband funding programs. See GAO, *National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide* (May 2022) (finding "more than 100 programs administered by 15 agencies"). We direct the Bureau to expand its coordination to include other such federal agencies, e.g., the Department of Education and the Department of Housing and Urban Development, and the Commission will continue to explore interagency agreements with other relevant federal agencies, if such agreements prove useful.

43. Complete information on federal commitments will likely not be available in the National Broadband Funding Map at the time Enhanced A-CAM offers are made or elected, and the Map is not expected to include information regarding commitments made using state funds. Accordingly, we direct the Bureau and Office of Economics and Analytics to adjust carriers' lists of required deployment locations as more complete data become available.¹⁴⁵ These adjustments specifically shall reflect locations and broadband deployment that existed at the time Enhanced A-CAM offers were made, but were not reflected in the Fabric or the National Broadband Map, and locations for which an enforceable commitment to deploy had been made prior to Enhanced A-CAM offers but were not included in the National Broadband Funding Map.¹⁴⁶ We direct the Bureau to conduct a process, as necessary, to identify enforceable commitments not reflected in the National Broadband Funding Map. Because these adjustments are consistent with the BEAD Program's requirements, we expect that they will not result in de-confliction issues that may cause unnecessary duplication between Enhanced A-CAM and BEAD. Further, as discussed below, the Bureau should adjust deployment obligations where BEAD awards are made for Tribal locations and the Enhanced A-CAM carrier and the Tribal government mutually agree to forego Enhanced A-CAM deployment obligations.¹⁴⁷ We anticipate that the Bureau will make all adjustments to the required deployment locations no later than December 31, 2025.

44. We direct the Bureau to treat as served and therefore exclude in the Enhanced A-CAM offers any locations for which 100/20 Mbps or faster service is provided only by an unsubsidized competitor via terrestrial fixed wireless technology utilizing entirely unlicensed spectrum. Although we acknowledge that this approach is not consistent with NTIA's BEAD Program,¹⁴⁸ we decline to depart from the Commission's long-standing policy of technological neutrality at this time.¹⁴⁹ We recognize that there are concerns regarding the accuracy of claimed deployment by fixed wireless providers utilizing entirely unlicensed spectrum. In particular, some parties assert that, although such providers may be able to serve many locations with fixed wireless technology utilizing entirely unlicensed spectrum, they may not be able to simultaneously serve all locations within their coverage footprint.¹⁵⁰ However, to the extent that any such coverage claims may be deficient, there have been and will continue to be opportunities for

¹⁴⁵ We discuss later whether adjustments to support will occur concurrently with any adjustments to the Enhanced A-CAM locations. See *infra* section III.B.2.b.

¹⁴⁶ We thus expect that the Bureau and the Office of Economics and Analytics will ultimately rely on Fabric v.3 and the National Broadband Map showing broadband serviceable locations as of June 30, 2023 for these adjustments. This is likely to be the most recent Map update prior to the October 1, 2023 deadline for offer acceptance.

¹⁴⁷ See *infra* Section III.B.3.

¹⁴⁸ See BEAD Program NOFO at 28 ("For the purposes of the BEAD Program, locations served exclusively by satellite, services using entirely unlicensed spectrum, or a technology not specified by the Commission for the purposes of the Broadband DATA Maps, do not meet the criteria for Reliable Broadband Service and so will be considered 'unserved.'").

¹⁴⁹ See *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8799-8803, paras. 43-51 (1997) (adopting universal service principles identified in section 254(b) of the Act and the additional principle of competitive neutrality, which includes technological neutrality) (*Universal Service First Report and Order*) (subsequent history omitted). See also WISPA June 26, 2023 Letter at 2 (arguing that the Commission should not use "NTIA's definition of 'qualifying broadband' to any new rules the Commission may adopt for the A-CAM program").

¹⁵⁰ See, e.g., Letter from Michael Romano, Executive Vice President, NTCA-The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 2 (filed June 16, 2023) (NTCA June 16, 2023 Letter) (asserting that, for unlicensed fixed wireless providers, there is "a lack of consistent and widespread reporting of capability to deliver 100/20 Mbps on a reliable basis to every location in a given area"); Letter from Michael Romano, Executive Vice President, NTCA-The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 1 (filed July 3, 2023) ("Regardless of technology, if certain platforms and services have not shown widespread capability to perform consistently at a certain level of performance in rural areas, such claims of coverage should not be accepted on their face.").

carriers electing Enhanced A-CAM to challenge such claims through the BDC processes.¹⁵¹ In fact, Enhanced A-CAM carriers will have ample time to challenge any deficient claims made with respect to the National Broadband Map associated with Fabric v.3, after the release of this Order and to be incorporated in the Bureau's adjustment Enhanced A-CAM carriers' obligations and support.

45. We adopt a deployment timeline that aligns with the Infrastructure Act's requirements. The Infrastructure Act requires that carriers in the BEAD Program complete deployment of 100/20 Mbps or faster broadband to all locations within four years, and, as NTIA notes, aligning the Enhanced A-CAM and BEAD Program deployment timelines will "help[] eliminate gaming by providers seeking to delay deployments."¹⁵² We expect that BEAD Program deployment will not begin until after completion of the processes laid out by NTIA.¹⁵³ If we were to adopt deployment milestones that provided significantly more time for Enhanced A-CAM carriers to deploy broadband than for carriers under the BEAD Program, our adoption of Enhanced A-CAM could actually prevent rural consumers in high-cost areas from being served with broadband as quickly as the BEAD Program requires. We reiterate that, in adopting this program, we intend to maximize the effect of federal dollars to bring broadband to high-cost areas, consistent with our universal service goals. We thus reject the Coalition's proposal to require complete deployment within eight years¹⁵⁴ and adopt a deployment timeline for Enhanced A-CAM ending in 2028.

46. Still, we recognize that there may be unforeseen delays causing BEAD Program broadband deployment to not be entirely complete until 2030 in certain states and that these delays may affect Enhanced A-CAM carriers as well. Although we decline at this time to adopt a final deployment milestone permitting Enhanced A-CAM carriers to complete deployment by 2030, to ensure that the Enhanced A-CAM and BEAD Program deployment timelines remain aligned and to account for possible unforeseen circumstances,¹⁵⁵ we direct the Bureau to consider, in 2027, whether a one-year extension for Enhanced A-CAM carriers' final deployment milestones would be appropriate in light of any such BEAD Program deployment delays.

47. *Interim Deployment Milestones.* We adopt interim deployment milestones requiring Enhanced A-CAM recipients to make continuous progress with deployment until their final milestones at

¹⁵¹ We also decline to require unsubsidized competitors identified within the areas of Enhanced A-CAM offers to provide an officer's certification or other evidence confirming broadband availability to the Commission. *See* NTCA June 16, 2023 Letter at 2-3 (proposing that the Commission implement a process, separate from the BDC, to confirm an unsubsidized competitor's broadband availability). We find that imposing that kind of separate reporting requirement on unsubsidized competitors would be duplicative of BDC processes and create unnecessarily administrative complexity.

¹⁵² *See* NTIA Comments at 7-8 n.13; 47 U.S.C. § 1702(h)(4)(A)(i)(I), (C). We note that the BEAD Program NOFO requires entities to complete deployment within four years after they first receive funding. BEAD Program NOFO at 18. Enhanced A-CAM carriers will receive their first funding in January 2024 and have four years from that date to complete deployment.

¹⁵³ BEAD Program NOFO at 8-10.

¹⁵⁴ *See* ACAM Broadband Coalition Comments at 19. We accordingly reject the Coalition's proposal for interim deployment milestones spread out over an eight-year deployment period.

¹⁵⁵ *See* Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 2 (filed June 26, 2023) (ACAM Broadband Coalition June 26, 2023 Letter) (asking that the Commission require deployment to 100% of Enhanced A-CAM locations by the end of 2030 and suggesting interim deployment milestones conforming to that schedule); Letter from Michael Romano, Executive Vice President, NTCA-The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 2 (filed June 28, 2023) (asking that "the Commission aim for comparable network deployment schedules in its own programs – while also incorporating flexibility with respect to specific timeframes given the still evolving nature of BEAD initiatives and the work now just getting underway in states to implement the program"). We accordingly also reject the Coalition's proposal for interim deployment milestones spread out over a period ending in 2030. *See* ACAM Broadband Coalition June 26, 2023 Letter at 2.

the end of the fourth year of Enhanced A-CAM support. At the end of a carrier's second year of Enhanced A-CAM support, the carrier must deploy 100/20 Mbps or faster broadband service to at least 50% of required new locations, and the carrier must deploy such service to an additional 25% of required new locations at the end of each subsequent year, until the carrier deploys to 100% of required new locations at the end of the fourth year of Enhanced A-CAM support.

48. The following table summarizes Enhanced A-CAM carriers' deployment milestones:

Enhanced A-CAM Interim and Final Deployment Milestones

Milestone Date	Deployment Milestone Requirement
December 31, 2025	N/A
December 31, 2026	50% of required locations
December 31, 2027	75% of required locations
December 31, 2028	100% of required locations

NTIA has not established specific interim deployment milestones for the BEAD Program—instead, allowing states and territories to establish such milestones; the interim deployment milestones we adopt allow the Commission to monitor progress with the goal of achieving buildout to all required locations by 2028, consistent with the Infrastructure Act's four-year, final deployment milestone.¹⁵⁶ As noted above, if there are any changes to the BEAD Program's four-year timeline at a later date, the Bureau will consider whether such common circumstances require modifying the interim and final deployment milestones for Enhanced A-CAM as well.

49. Finally, as the Commission tentatively concluded in the *Enhanced A-CAM NPRM*,¹⁵⁷ Enhanced A-CAM carriers' interim and final deployment milestones will supersede the existing deployment milestones required by the A-CAM I and A-CAM II programs. Subjecting Enhanced A-CAM carriers to a single set of deployment milestones will reduce administrative complexity for both the Commission and for carriers, while holding Enhanced A-CAM carriers to a new, higher standard for broadband deployment. However, to ensure that A-CAM I and A-CAM II carriers have continued in good faith to deploy broadband pursuant to the terms of their existing A-CAM commitments, carriers electing Enhanced A-CAM must still report in USAC's High Cost Universal Broadband (HUBB) portal any progress made this year (2023) towards their existing A-CAM I and A-CAM II deployment milestones.¹⁵⁸ Carriers that elect Enhanced A-CAM, whether currently receiving A-CAM I, A-CAM II, or legacy support, that do not meet their existing deployment milestone due by December 31, 2023, will be subject to the compliance regime set forth in section 54.320(d)(1) of the Commission's rules.¹⁵⁹ As

¹⁵⁶ 47 U.S.C. § 1702(h)(4)(C). We note that, under section 54.320(d)(2), a carrier has an additional 12 months to come into compliance for the final milestone. See 47 CFR § 54.320(d)(2).

¹⁵⁷ See *Enhanced A-CAM NPRM* at 14, para. 34.

¹⁵⁸ See 47 CFR § 54.316(a). Deployment occurring in 2023 must be reported in the HUBB by March 1, 2024. Enhanced A-CAM carriers will then be required to report in the HUBB any progress made in 2024 and subsequent years towards their Enhanced A-CAM deployment milestones. We note that the Commission "require[s] filers whose data in the HUBB conflict with their availability data to submit conforming or corrective information after determining which information is in error." *Digital Data Collection Second Report and Order and Third Further Notice of Proposed Rulemaking*, 35 FCC Rcd at 7485, para. 57. We also direct the Bureau to establish a process for cross-checking location data Enhanced A-CAM carriers report to the HUBB with location data from the Fabric and the National Broadband Map. See *id.* at 7484-85, paras. 56-57 (discussing processes for verifying broadband availability data submitted by providers).

¹⁵⁹ 47 CFR § 54.320(d)(1) (describing the procedures associated with interim buildout milestone compliance gaps).

discussed below, any support withholding or recovery will be based on support at the time the carrier is notified of non-compliance.¹⁶⁰

50. *Deployment Compliance Gaps.* Enhanced A-CAM recipients will also be subject to the same support withholding and recovery provisions currently applicable to A-CAM carriers and other high-cost support recipients.¹⁶¹ Pursuant to our rules, if a high-cost support recipient does not satisfy its final deployment obligation within twelve months of the final milestone deadline, USAC will recover “the percentage of support that is equal to 1.89 times the average amount of support per location received in the state for that carrier over the term of support for the relevant number of locations plus 10 percent of the eligible telecommunications carrier’s total relevant high-cost support over the support term for that state.”¹⁶² For high-cost support recipients that fail to meet their interim deployment milestones, carriers with a compliance gap of five percent or more are subject to quarterly reporting and potentially support withholding/recovery based on the level of non-compliance. The non-compliance procedures apply until the carrier failing to meet its interim deployment milestone reports a compliance gap of less than five percent.¹⁶³ These generally applicable provisions will likewise apply to Enhanced A-CAM recipients.

51. *Performance Measures Requirements.* Similarly, Enhanced A-CAM recipients will be subject to the same performance testing requirements as other high-cost support recipients. It is a priority of the Commission to ensure that high-cost support recipients deploy to required locations on time and at the level of service required.¹⁶⁴ Accordingly, the Commission requires that high-cost support recipients annually test and report the speed and latency of a random sample of locations. Carriers that fail to meet the required performance standards are subject to additional reporting and may have a percentage of universal service support withheld based on the level of non-compliance, but those carriers that later come into compliance may have their support restored.¹⁶⁵ Enhanced A-CAM recipients will therefore be subject to performance testing. We delegate to the Bureau the authority to implement and clarify further details, including the specific schedule, regarding the performance measures testing regime for Enhanced A-CAM.

52. *Federal Funding Coordination Requirements.* As a condition of receiving Enhanced A-CAM support, we require carriers to make efforts to avoid duplicative federal broadband funding. First, we require Enhanced A-CAM recipients to participate, in good faith, in any relevant BEAD Program challenge processes or other processes conducted by states or other BEAD Program eligible entities to determine eligibility of locations for the BEAD Program,¹⁶⁶ to otherwise coordinate with states, Tribes,

¹⁶⁰ See *infra* section III.B.3.

¹⁶¹ See 47 CFR § 54.320(d)(1), (2).

¹⁶² *Id.* § 54.320(d)(2). As we discuss later in this Order, we do not extend to Enhanced A-CAM the flexibility for A-CAM carriers to deploy only to 95% of their required locations by the end of their final milestone without a reduction in support. See *infra* para. 77; *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3101, para. 33. We find that prior concerns about certain locations’ serviceability at the time are now mitigated by our use of the Fabric, which provides more accurate information on broadband serviceability than was previously available. Moreover, allowing an electing carrier not to deploy service at up to 5% of its required locations could prevent other federal or state programs from funding broadband for those locations, while consumers at those locations would still lack broadband access at the end of the carrier’s support term.

¹⁶³ See 47 CFR § 54.320(d)(1).

¹⁶⁴ See, e.g., Press Release, Federal Communications Commission, FCC Creates Rural Broadband Accountability Plan (Jan. 28, 2022), <https://www.fcc.gov/document/fcc-creates-rural-broadband-accountability-plan>.

¹⁶⁵ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 10133-38, paras. 65-75; *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6530-33, paras. 56-67 (WCB 2018) (*First Performance Measures Order*).

¹⁶⁶ The BEAD Program requires that eligible entities conduct an “expeditious challenge process under which a unit of local government, nonprofit organization, or broadband service provider can challenge a determination . . . as to whether a particular location or community anchor institution within the jurisdiction . . . is eligible for grant funds. (continued....)

and other eligible entities to help avoid duplicative federal broadband funding, and to certify their compliance with this obligation annually.¹⁶⁷ This requirement will also extend to any other federal broadband funding program and related processes. By engaging in these processes, carriers will help ensure that more Americans in high-cost areas will have access to broadband, consistent with the Infrastructure Act's goals, as well as the Commission's goals for Enhanced A-CAM.

53. Second, we require, as a condition of receiving Enhanced A-CAM support, that carriers not receive or use BEAD Program funding or other future federal grant funding, unless otherwise specified herein, that supports broadband deployment to those locations for which they are receiving Enhanced A-CAM support, and we require Enhanced A-CAM recipients to certify their compliance with this obligation annually.¹⁶⁸ We impose this requirement as an additional measure to ensure that Enhanced A-CAM recipients use support as intended, consistent with the Commission's goals for the program. Under this requirement, Enhanced A-CAM recipients may seek BEAD funding for locations that are not eligible for Enhanced A-CAM because they are served with at least 100/20 Mbps by an unsubsidized competitor (and not also served by the Enhanced A-CAM carrier), but which are eligible for BEAD because service is not considered "reliable broadband" pursuant to BEAD. Similarly, Enhanced A-CAM recipients may seek other federal funding for locations that are not eligible for Enhanced A-CAM.

54. Third, as we further discuss later in this Order,¹⁶⁹ we require carriers to identify, when electing Enhanced A-CAM, the broadband technologies (e.g., FTTP) with which they intend to fulfill their Enhanced A-CAM deployment obligations. This information may assist states and other BEAD Program eligible entities in identifying which areas remain eligible for BEAD Program funding. This information may also be relevant to other federal broadband funding programs.

55. *Affordability Requirement.* We require Enhanced A-CAM recipients to participate in the Affordable Connectivity Program (ACP) as a condition of receiving Enhanced A-CAM support.¹⁷⁰ We continue to emphasize that "[p]romoting access to affordable, high-speed broadband is a priority for the Commission,"¹⁷¹ and the ACP plays an important role in helping low-income consumers obtain affordable Internet services. Beyond the Commission, the Infrastructure Act requires subgrantees of NTIA's BEAD Program to offer at least one "low-cost broadband service option."¹⁷²

56. Commenters broadly supported requiring Enhanced A-CAM carriers to address affordability.¹⁷³ The ACAM Broadband Coalition, for example, advocated for "making enrollment in ACP a condition of participation" while asking that the Commission "refrain . . . from adopting specific

(Continued from previous page) _____

Among other things, the process must allow for challenges regarding whether a particular location is unserved or underserved . . ." BEAD Program NOFO at 34-35. The BEAD Program defines an "Eligible Entity" as "any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands or, in the case of an application failure, a political subdivision or consortium of political subdivisions that is serving as a Substitute Entity." BEAD Program NOFO at 12.

¹⁶⁷ We codify this requirement at 47 CFR § 54.313(f)(6)(i). See Appendix A.

¹⁶⁸ We codify this requirement at 47 CFR § 54.313(f)(6)(i). See Appendix A.

¹⁶⁹ See *infra* section III.B.3.

¹⁷⁰ We further note that Enhanced A-CAM recipients, like all eligible telecommunications carriers (ETCs), will also be required to participate in the Lifeline program. See 47 CFR § 54.405(a); *infra* para. 59.

¹⁷¹ See *Enhanced A-CAM NPRM* at 15, para. 38.

¹⁷² See Infrastructure Act § 60102(h)(4)(B); BEAD Program NOFO at 66-67.

¹⁷³ See ACAM Broadband Coalition Comments at 40; NTCA Comments at 30-32 (stating that "tying enhanced A-CAM support to participation in the ACP program could be a reasonable initial step . . . that could narrow the 'rural affordability gap'"); Comments of the People of the State of California and the California Public Utilities Commission, RM-11868, WC Docket No. 10-90 et al., at 8-13 (rec. July 18, 2022) (California PUC Comments).

product characteristics for the affordable option under ACP,” consistent with NTIA’s decision to “grant[] states the flexibility to set the parameters that best serve the needs of residents within their jurisdictions” as part of the BEAD Program.¹⁷⁴ Similarly, the California Public Utilities Commission (California PUC) argued that the Commission should “require all carriers participating in Enhanced A-CAM to offer broadband plans that are affordable to low-income households either by participating in the ACP or by creating their own low-cost plans.”¹⁷⁵ The California PUC explained that programs supporting broadband infrastructure in unserved areas improve broadband availability but do not necessarily ensure that broadband is affordable for consumers in those areas, even though affordability may be a greater concern in rural and high-cost areas.¹⁷⁶

57. We agree that it is appropriate to require Enhanced A-CAM carriers to participate in the ACP,¹⁷⁷ and further encourage participating carriers to offer an affordable broadband option. Accordingly, as part of the Enhanced A-CAM offer and as a condition for receiving Enhanced A-CAM support, carriers must certify annually their participation in ACP or a substantially similar successor program. If a carrier accepts the Enhanced A-CAM offer and subsequently elects not to participate or ceases to participate in ACP or a substantially similar successor program, the carrier will be considered in default of its obligations.¹⁷⁸ We also require that the carrier annually describe and certify its compliance with this affordability requirement in the FCC Form 481.¹⁷⁹ We further direct the Bureau to take further action to implement this requirement, as necessary.

58. We decline, however, to make any changes to the ACP itself, including by adopting an “enhanced” ACP benefit of up-to-\$75 per month for households served by high-cost support recipients, as suggested by NTCA.¹⁸⁰ The Infrastructure Act’s direction to the Commission to create an enhanced ACP benefit for service provided in certain high-cost areas by providers experiencing particularized economic hardship is under consideration by the Commission,¹⁸¹ and we believe that proceeding is the more appropriate vehicle to resolve those issues in accordance with the statute’s directive. We also find that the record regarding whether the Commission should provide an increased ACP benefit for households served by support from the high-cost program remains undeveloped in this proceeding and is best addressed in a proceeding focused on that issue in the ACP.¹⁸²

59. *Additional Obligations.* Finally, we note that Enhanced A-CAM recipients will be subject to other obligations generally required of high-cost support recipients. Under the *USF/ICC Transformation Order* and subsequent orders, ETCs subject to broadband public interest obligations must provide broadband at rates that are reasonably comparable to offerings of comparable broadband services

¹⁷⁴ ACAM Broadband Coalition Comments at 40.

¹⁷⁵ California PUC Comments at 8.

¹⁷⁶ *See id.* at 9.

¹⁷⁷ *See* 47 CFR § 54.1801(a) (“Eligible telecommunications carriers. A broadband provider that is designated as an eligible telecommunications carrier may participate in the Affordable Connectivity Program as a participating provider.”); 47 CFR § 54.1800(g).

¹⁷⁸ Any changes the Commission adopts regarding the ACP may also be applicable to Enhanced A-CAM recipients’ participation in the program. *See also* 47 CFR § 54.320(c).

¹⁷⁹ *See id.*

¹⁸⁰ *See* NTCA Comments at 30-32; NTCA Reply at 20-21.

¹⁸¹ *See* 47 U.S.C. § 1752(a)(7); *WCB Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 21-1453 (WCB Nov. 18, 2021); *Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, 605-14, paras. 270-93 (2022).

¹⁸² *See* NTCA Comments at 30-32; NTCA Reply at 20-21.

in urban areas,¹⁸³ with usage allowances reasonably comparable to those available through comparable offerings in urban areas.¹⁸⁴ Likewise, Enhanced A-CAM recipients will be required to file annual reports pursuant to section 54.313,¹⁸⁵ will be subject to the existing audit and record retention requirements applicable to all ETCs pursuant to section 54.320,¹⁸⁶ and will be required to make available Lifeline service to qualifying low-income consumers.¹⁸⁷

2. Support Amounts

a. Budget

60. We adopt a budget for the Enhanced A-CAM offers totaling no more than \$1.27 billion annually, or no more than \$1.33 billion annually if certain conditions are met, over a 15-year term beginning January 1, 2024. This figure includes the existing A-CAM budget, (\$1.1 billion per year over five years, 2024-2028), plus an additional 10-year extension, for a total 15-year support term (2024-2038).¹⁸⁸ The total budget amount will be distributed at a constant annual support amount of up to \$1.27 billion per year. We also delegate to the Bureau the authority to increase the overall budget by \$1 billion, up to no more than \$1.33 billion annually, if it determines that this additional support will allow substantial increases in deployment or if such support is needed to increase support to Enhanced A-CAM carriers because of updates to the National Broadband Map.

61. In setting the budget for Enhanced A-CAM, we are mindful of the Commission's longstanding goals adopted in the *USF/ICC Transformation Order* to “ensure universal availability of modern networks capable of providing voice and broadband,” and to “minimize the universal service burden on consumers and businesses.”¹⁸⁹ Our goal is to provide support that is sufficient but not excessive so as not to impose an unnecessary burden on consumers and businesses who ultimately pay to support the Universal Service Fund. We want to provide enough support to substantially increase the deployment of high-speed broadband to currently unserved locations in rural areas, and to maintain the provision of such service where it is already deployed. At the same time, as stewards of the Universal Service Fund, we are mindful of the effect increases in overall support have on the contribution factor. We believe the budget we have adopted appropriately balances these objectives.

62. The deployment obligations set above are ambitious and will require additional support to achieve. The requirement to provide 100/20 Mbps to 100% of required locations is a substantial increase to both the level of service and the scope of coverage. Further, the number of unserved locations has

¹⁸³ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17695, para. 86.

¹⁸⁴ See *id.* at 17699, para. 99. In the *2016 Rate-of-Return Reform Order* adopting the first A-CAM offer, the Commission adopted Section 54.308(a) in which it required that carriers provide a usage allowance “of 150 GB per month, subject to the requirement that usage allowances remain consistent with median usage in the United States over the course of the ten-year term.” 47 CFR § 54.308(a). However, this was in error, as the text of that Order as well as other orders adopted by the Commission all specify that usage must remain consistent with the mean usage, rather than the median usage. See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3099, para. 27; see also *Connect America Fund et al.*, WC Docket No. 16-271, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10147, para. 23 (2016). We therefore correct Section 54.308(a) of our rules to reflect that usage must be consistent with the mean, not median, usage in the United States.

¹⁸⁵ 47 CFR § 54.313. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17852, para. 580.

¹⁸⁶ 47 CFR § 54.320. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17864, para. 621.

¹⁸⁷ 47 CFR § 54.405(a). See *supra* n.169.

¹⁸⁸ This budget applies to offers to current A-CAM I and A-CAM II recipients only. As noted below, we extend Enhanced A-CAM offers to current legacy support recipients, providing a transition to Enhanced A-CAM that ensures their offers and elections will not increase the total amount of high-cost support and the contribution factor. See *infra* section III.B.3.

¹⁸⁹ *USF/ICC Transformation Order*, 26 FCC Rcd 17663, 17680, para. 48 (footnote omitted).

increased because of the evolving standard for unsubsidized competitors to 100/20 Mbps or faster, from 10/1 Mbps for A-CAM I and 25/3 Mbps for A-CAM II. In addition, locations that might previously have been identified as served by the Commission's Form 477 data are now recognized as unserved by the more granular information in the Commission's National Broadband Map. Finally, where carriers have deployed 100/20 Mbps locations in reliance on the A-CAM I and A-CAM II support commitments through the end of the current terms, we assume some level of continuing support will be required.

63. We find that the Enhanced A-CAM budget appropriately balances these concerns. We estimate that Enhanced A-CAM offers may support deployment to approximately 1 million Enhanced A-CAM required locations, as well as continuing support for locations to which A-CAM carriers have already deployed 100/20 Mbps service, while the effect on the contribution factor will be relatively small. If every A-CAM recipient elects the Enhanced A-CAM offer, the revised budget would add \$166 million per year, or \$41.5 million per quarter, to the current quarterly universal service demand of \$1,947.08 million, an increase of approximately 2%.¹⁹⁰ Based on the current contribution base, this would increase the contribution factor by .7 percentage point. We believe the benefits of supporting this standard of deployment to millions of locations outweighs this limited increase to the contribution factor.

64. Finally, we delegate to the Bureau the ability to increase the budget up to an additional \$1 billion over the term of support, if it finds that doing so will improve significantly the amount of deployment that would be expected to occur through Enhanced A-CAM. For example, the Bureau may increase the funding cap set forth below to permit an extra \$1 billion in the offer amounts, if it estimates that doing so would result in more acceptances of Enhanced A-CAM offers and, accordingly, more commitments to deploy 100/20 Mbps or faster service to locations currently without that level of service. Changes within the funding parameters discussed below, including those for currently served locations, may also be considered, if they would result in higher acceptance rates and more commitments to deploy to unserved locations. Alternatively, the \$1 billion or a portion thereof may be reserved to provide additional support if warranted if updates to the National Broadband Map result in increased deployment obligations. An increase of \$1 billion to the total 15-year budget would increase the annual demand for universal service by approximately \$66.7 million, which would result in an additional .3 percentage point increase to the contribution factor, using the third quarter 2023 forecasted contribution base and funding requirements.¹⁹¹

65. We decline to adopt an annual inflation adjustment to the Enhanced A-CAM support amounts, as proposed by the ACAM Broadband Coalition.¹⁹² Adjusting support annually to account for inflation would require the Commission to reduce the initial annual Enhanced A-CAM support amounts to accommodate future inflation-driven increases or such adjustments could result in support in excess of the budget adopted here. Even small inflation adjustments would, over the term of support, cause Enhanced A-CAM to exceed the budget significantly. Inflation adjustments would undermine the benefits of budgetary certainty provided by fixed, model-based support, including the ability to control the future impact of the mechanism on the contribution factor.

66. We recognize that maintaining this budget will require parameters and funding limitations to calculate the offers, including funding caps as past A-CAM offers have used. It is possible that some current A-CAM I and A-CAM II carriers will not elect the Enhanced A-CAM offers as a result, finding the support amounts to be insufficient in comparison to the obligations. If a current A-CAM I or

¹⁹⁰ The Commission set the quarterly contribution factor for the third quarter of 2023 at 29.2 percent. *See Proposed Third Quarter 2023 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 23-507 (OMD June 14, 2023). The quarterly contribution base used to calculate the third quarter 2023 contribution factor was \$8,534,206. *Id.*

¹⁹¹ *See id.*

¹⁹² Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket Nos. 10-90 *et al.* (filed June 14, 2023).

A-CAM II carrier declines the offer of Enhanced A-CAM support, the carrier will continue to receive A-CAM support until 2026 or 2028, consistent with its current authorizations. The Commission will consider what support, if any, is required in a future proceeding, consistent with the Notice of Inquiry below.¹⁹³

b. Support Calculation

67. Below, we set forth the process for calculating Enhanced A-CAM offers. First, we use an updated version of A-CAM to estimate the cost for each location served by eligible A-CAM and legacy rate-of-return carriers. Second, we set the parameters for calculating support for currently unserved locations.

68. *Model Cost Estimates.* For the Enhanced A-CAM offers, we will use cost estimates from an updated version of A-CAM that incorporates the location data from the Fabric v.2 to calculate the average cost per location in each census block served by an A-CAM or CAF BLS recipient.¹⁹⁴ The Broadband DATA Act requires that, after the creation of the Broadband Serviceable Location Fabric and associated maps, the Commission use those maps “when making any new award of funding with respect to the deployment of broadband internet access.”¹⁹⁵ While we do not believe that the Broadband DATA Act prescribes any particular method for estimating the cost of serving locations, cost estimates from the current version of A-CAM would be nearly impossible to reconcile with location and broadband coverage data from the Fabric and the National Broadband Map. Because prior versions of A-CAM used 2010 census block boundaries, while the Fabric uses 2020 census block boundaries, there are significant differences in census block location counts, including many census blocks that do not have model-estimated costs but have Fabric locations. Rerunning the model with Fabric locations will provide more accurate estimates of the cost of serving unserved and underserved locations in a census block and minimize the amount of reconciliation that will be required in the calculation of offers.¹⁹⁶

69. *Support for Required Locations.* In calculating support for Enhanced A-CAM required locations, we retain the basic principles of, but make critical changes to, the methodology we used to calculate support amounts in prior A-CAM offers. Generally, A-CAM I and A-CAM II carriers receive support based on the model-estimated monthly cost of serving locations in eligible census blocks above a funding threshold of \$52.50 per month, subject to a per-location cap on support of \$200 per month for most locations.¹⁹⁷ As described below, the Enhanced A-CAM offers will use the National Broadband

¹⁹³ See *infra* section V.

¹⁹⁴ For technical documentation purposes, the most recent past version of the model, used for A-CAM II, is A-CAM 2.5.2 and the version updated with Fabric v.2 locations is A-CAM 2.6.0. Although Fabric v.3 is now available, it was not available in time to develop A-CAM 2.6.0 and associated broadband coverage data will not be available in time to determine eligibility of locations. Thus, it was more efficient and necessary to use Fabric v.2 to ensure the availability of model results in a timely manner. A-CAM 2.6.0 incorporates geographic, study area, and network demand updates to the A-CAM platform. Demographic data sources and road data sources were updated to be consistent with US Census 2020 data and US Census TIGER 2020. Study area boundaries were updated based on a study area boundary shape file (based on submissions as of April 23, 2023). FCC staff also compiled updated rate-of-return designation, holding company name, holding company number for use in A-CAM 2.6.0. As mentioned, network demand is based on FCC Fabric v. 2 (December 31, 2022). There are no cost input changes.

¹⁹⁵ 47 U.S.C. § 642(c)(2)(B).

¹⁹⁶ Although we considered conducting a more robust examination of model inputs and other elements of the model, we conclude that such an examination cannot be completed in the time necessary to provide offers and for carriers to make elections, to prevent these areas from potentially receiving duplicative funding through the BEAD Program. A thorough reexamination of the model and its inputs could require an entirely separate proceeding and would take years to complete.

¹⁹⁷ For a small number of A-CAM I carriers that did not accept Revised A-CAM I support in 2019, support is capped at less than \$200 per location. *Enhanced A-CAM NPRM* at 17, para. 42 n.112. For A-CAM II carriers, eligible
(continued....)

Map to determine eligible locations, rather than census block eligibility,¹⁹⁸ use a revised funding threshold of \$63.69 for non-Tribal locations, and utilize a combination of per-location caps and percentages of uncapped support to limit funding above the threshold.

70. For purposes of determining Enhanced A-CAM offers, we update the funding threshold for non-Tribal locations to \$63.69. The funding threshold is the Commission's estimate of the amount of revenue per location, per month, that a carrier can reasonably obtain from end-users. The current funding threshold of \$52.50 was established in 2014, as the Commission was developing the original Connect America Cost Model, and was determined by multiplying an estimated Average Revenue Per User (ARPU) of \$75 by an estimated take rate of 70%.¹⁹⁹ With nine years having passed, we believe the estimated ARPU used there is stale, and should be updated to reflect the revenue a carrier may reasonably expect to recover from its customers now. We believe the rate benchmark for 25/3 Mbps in the most recent Urban Rate Survey reflects a reasonable estimate of end-user rates for a modern broadband network.²⁰⁰ Multiplying that rate benchmark of \$90.98 by the 70% take rate yields a funding threshold of \$63.69. Raising the funding threshold will have a direct impact on the distribution of Enhanced A-CAM support, causing support to be allocated to relatively higher cost locations than would have occurred if the prior funding threshold of \$52.50 had been used. We note that changing the funding threshold in this manner does not require carriers to change their end-user rates, which are not set by the Commission.²⁰¹

71. Consistent with the Coalition's proposal, support amounts for required locations in Enhanced A-CAM offers will be based on the greater of two alternative methodologies: (1) the model-estimated cost of serving the locations above the funding threshold up to a funding cap, or; (2) an alternative percentage of the difference between the model-estimated cost of serving the locations and the funding threshold (i.e., the uncapped support amount). In prior A-CAM offers, only the first methodology was used. For example, for A-CAM II, for non-Tribal locations, carriers received support equal to the amount the model-estimated costs for serving a particular location that exceeded \$52.50 per month, up to \$200 per month.²⁰² The Coalition proposed increasing the funding cap to \$300.²⁰³ The Coalition also proposed applying the second methodology, equaling 80% of the uncapped support amount, when it provided more support.²⁰⁴ We find that including an alternative funding percentage will

(Continued from previous page)

locations in Tribal areas are capped at \$213.12 in order to accommodate a lower support threshold of \$39.38. *Enhanced A-CAM NPRM* at 17, para. 42 & n.113.

¹⁹⁸ Census block eligibility was determined using the FCC's Form 477 data, which collected broadband deployment at the census block level.

¹⁹⁹ *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 29 FCC Rcd 3964, 4036, 4039, paras. 172, 177 (2014).

²⁰⁰ See *Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2023 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, DA 22-1338 at 3 (WCB & OEA Dec. 16, 2022) (*2023 Urban Rate Survey*). We considered using instead the urban rate survey benchmark for 100/20 Mbps service (\$105.03), which would reflect the level of service to which Enhanced A-CAM-electing carriers would be committing to deploy. Carriers will not be required to deploy 100/20 Mbps to all of their locations until the end of 2028, however, and even after deployment has occurred, some customers may choose to subscribe to lower levels of service. For both reasons, we cannot reasonably assume that a carrier would be able to recover revenue equal to the 100/20 Mbps benchmark over the term of support. We conclude the 25/3 Mbps urban rate survey benchmark more accurately reflects a reasonable amount of end-user revenue.

²⁰¹ In the NPRM below, we seek comment on raising the consumer broadband-only loop rate, which represents part of the end-user rates that a rate-of-return carrier (including an A-CAM carrier) may charge its end-users.

²⁰² See *Enhanced A-CAM NPRM* at 4-5, paras. 6-11.

²⁰³ See ACAM Broadband Coalition Dec. 17, 2021 Letter at 2.

²⁰⁴ See *id.*

have the effect of providing additional support to locations with estimated costs that significantly exceed the funding cap. We believe increasing the support to the very high-cost locations is appropriate, given the requirement for each electing carrier to serve 100% of its required locations with 100/20 Mbps service. As such, each carrier's support will be determined at the state level, which will include all its study areas in a state if it has more than one study area.²⁰⁵

72. We do not specify at this time the funding cap or alternative funding percentage to be applied, and instead delegate to the Bureau the authority to set, in an Order prior to or concurrently with the Enhanced A-CAM offers, both the funding cap and an alternative funding percentage within guidelines set below. This delegation is necessary because we cannot determine funding caps or funding percentages that would produce support amounts within the budget we adopt above until we have the updated model results. We therefore direct the Bureau to aim for a funding cap for non-Tribal areas that is no higher than \$300 per location per month,²⁰⁶ with an alternative funding percentage between 40% and 80%. While the Coalition's proposal of a \$300 per location per month funding cap and an 80% alternative funding percentage may not fit within the budget we establish above, these funding guidelines set the Coalition's proposal as the upper boundary of support for Enhanced A-CAM required locations. The lower boundary on the alternative funding percentage ensures that an extra measure of support is provided to carriers that have a significant number of locations that are much higher than the funding cap. In setting the funding cap and the alternative funding percentage, the Bureau should balance the need to ensure adequate funding for as many locations as possible, while also taking into account the cost of serving extremely high-cost locations, and also fitting within the budget support for locations that are currently served, as discussed below.

73. *Support for Locations Served with 100/20 Mbps by the Incumbent Local Exchange Carrier (ILEC).*²⁰⁷ We limit support for locations that are currently served with 100/20 Mbps by the ILEC. In light of the budget that we adopt above, we find that targeting new support primarily to unserved locations would achieve the Commission's goal of widespread 100/20 Mbps deployment better than providing additional Enhanced A-CAM support to locations that already are capable of that level of service. In concluding that a full measure of support is not necessary for ILEC-served locations, we find that a carrier's deployment of 100/20 Mbps service with existing A-CAM support demonstrates that existing A-CAM support was sufficient to promote deployment, and that it is not necessary to further incentivize deployment for carriers that elect to participate in the Enhanced A-CAM program.

74. We recognize that consumers at locations served with 100/20 Mbps or faster service by the ILEC only and not by an unsubsidized competitor will remain dependent on the Enhanced A-CAM carrier to maintain at least their current level of service. Those carriers will therefore continue to experience ongoing operational and depreciation costs associated with these already-constructed locations.²⁰⁸ We therefore conclude that such locations should receive at least 50% of their current support A-CAM support amount for the duration of the Enhanced A-CAM term.²⁰⁹ Furthermore, in

²⁰⁵ In cases where a study area crosses a state boundary, we will calculate support at the study area level.

²⁰⁶ If feasible within the budget adopted herein, we direct the Bureau to set a non-Tribal funding cap not higher than \$350 per location per month.

²⁰⁷ All carriers eligible for Enhanced A-CAM are the ILEC in the study areas.

²⁰⁸ Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al. (filed June 14, 2023) (ACAM Broadband Coalition June 14, 2023 Letter); ACAM Broadband Coalition June 26, 2023 Letter; Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al. (filed July 3, 2023) (ACAM Broadband Coalition July 3, 2023 Letter). In the attached Notice of Inquiry, we seek comment on how the Commission ought to support the ongoing provision of service in areas where 100/20 Mbps or faster service has been fully deployed to all locations. See *infra* section V.

²⁰⁹ We direct the Bureau to identify the appropriate ILEC-only served locations and estimate the support amounts that they would have received. While we expect that the National Broadband Map and the HUBB will be

(continued....)

consideration of the available budget adopted herein, additional support for operating expenses and depreciation may be reasonable. Therefore, we delegate to the Bureau the authority to determine whether support for these locations should be increased above the 50% rate, within the overall budget set by the Commission, up to 75% of the support that they would have received under A-CAM I or A-CAM II. While this range is somewhat less than \$200 cap for served locations proposed by the A-CAM Broadband Coalition,²¹⁰ given the capital recovery that has already occurred for these locations, we conclude a slight reduction from the prior A-CAM I or A-CAM II support levels is justified. Furthermore, because a primary purpose of this ongoing support is to ensure the maintenance (or improvement) of service to locations that would otherwise be unserved, we further extend the support for ILEC-only served locations to locations that were ineligible for prior A-CAM offers but which are not served with 100/20 Mbps or faster service by a competitor.²¹¹ In making this determination, the Bureau will take into consideration whether there is sufficient funding available to provide additional funds for already-constructed locations, once the Bureau has set a reasonable cap and alternative funding percentage for unserved locations.

75. While we decline to adopt the A-CAM Broadband Coalition's proposal to provide additional support for Enhanced A-CAM for locations served with 100/20 Mbps by unsubsidized competitors,²¹² we find that limited support is warranted to address costs incurred by Enhanced A-CAM recipients as a result of their expanded network obligations. Unlike with prior A-CAM offers, the Enhanced A-CAM program requires providers to deploy service to all eligible Enhanced A-CAM locations in their study areas. This expanded obligation to build such a network comes with certain costs associated, which additional support will help to defray. As a proxy to calculate support toward such costs, we adopt limited support for locations served by the ILEC with service of at least 100/20 Mbps or greater and either (1) are served by an unsubsidized competitor with 100/20 Mbps or greater or (2) will be served by another provider subject to an enforceable commitment for deployment pursuant to another federal or state program at the time the Enhanced A-CAM offer is extended. Dedicating additional funding to provide service to locations that are or will be served, without support from high-cost universal service mechanisms or other federal programs, would not be a judicious use of the budget we adopt above. However, in order to provide support to offset costs associated with their expanded networks, we limit the Enhanced A-CAM offer to the total amount of support that those locations would have received pursuant to the A-CAM through the end of the existing A-CAM term, or 33% per month of their current

(Continued from previous page) _____

reconcilable in the future, as carriers are obligated to report deployment similarly, we recognize that there may be inconsistencies between the two data sources currently. To ensure that carriers receive support for all served locations, we instruct the Bureau to determine support for ILEC-served locations using each data set, and make offers using the greater support amount. Due to the difficulty in matching National Broadband Map data to previous A-CAM results, the Bureau should estimate support amounts for ILEC-only served locations by applying the appropriate A-CAM I or A-CAM II support parameters, but use cost estimates from A-CAM version 2.6.0. For the HUBB served location data, A-CAM I and A-CAM II support amounts can be calculated directly from the models used to calculate A-CAM I and A-CAM II support. For legacy support recipients, the Bureau will estimate, using information from the prior A-CAM II offers, the amount of support that ILEC-only served locations would have received pursuant to A-CAM II.

²¹⁰ See ACAM Broadband Coalition June 14, 2023 Letter; ACAM Broadband Coalition June 26, 2023 Letter; ACAM Broadband Coalition July 3, 2023 Letter.

²¹¹ We note that this addresses concerns raised by carriers regarding perceived inequities in the treatment of A-CAM I carriers as compared to A-CAM II carriers. ACAM Broadband Coalition July 3, 2023 Letter; Letter from John Kuykendall, Regulatory Advisor to Pineland Telephone Cooperative *et al.*, JSI, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (filed June 29, 2023); Letter from Derrick B. Owens, Senior Vice President, WTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 30, 2023). Because A-CAM carriers could not report ineligible locations in the HUBB, carriers with many such locations will likely receive greater support based on the estimate utilizing locations shown as served by the National Broadband Map, rather than the estimates using HUBB locations.

²¹² See ACAM Broadband Coalition June 14, 2023 Letter.

A-CAM rate but these payments will continue for an additional 10 years beyond the original A-CAM term.²¹³ This support will be paid over the Enhanced A-CAM term in order to minimize the burden on payers into the USF.²¹⁴

76. *Tribal Broadband Factor.* We next adopt a Tribal Broadband Factor for Enhanced A-CAM, as we did for A-CAM II, to address the unique challenges of deploying high-speed broadband in rural Tribal communities.²¹⁵ The Commission found then that the assumptions underlying the \$52.50 funding threshold, which is based on nationwide assumptions about take rates and potential average revenues per subscriber, may be unrealistic in rural, Tribal areas, given the concentration of low-income individuals and few business subscribers.²¹⁶ We agree with the National Tribal Telecommunications Association that the Tribal Broadband Factor continues to be necessary and should be included in Enhanced A-CAM offers.²¹⁷ We will use a funding threshold reduced by 25 percent in Tribal areas, as we did for A-CAM II. Because we raise the funding threshold to \$63.69, above, the funding threshold for Tribal locations will therefore be set at \$47.76. We also instruct the Bureau to use a funding cap for Tribal lands that is \$15.93 higher than the funding cap for non-Tribal lands to effectuate the Tribal Broadband Factor. We also will use the same definition of “Tribal lands” that we adopted for A-CAM II.²¹⁸ We expect that Enhanced A-CAM providers serving Tribal areas will immediately engage the relevant Tribal governments regarding deployment to Tribal locations and continue to participate in Tribal engagement throughout the support term, as required under our rules.²¹⁹

77. *Support Adjustments due to Updated Deployment Obligations.* Above, we direct the Bureau to establish a process for updating the deployment obligations for carriers electing Enhanced A-CAM due to improvements in information related to locations, broadband coverage, and federal and state funding.²²⁰ Further, as discussed below, there may be instances in which Enhanced A-CAM carriers and Tribal governments mutually agree to forego the Enhanced A-CAM deployment obligations for Tribal

²¹³ We recognize that A-CAM I and A-CAM II providers made existing 100/20 Mbps deployment, in most cases, in reliance on the receipt of A-CAM support through the end of the current terms. Because five years (2024-2028) remain on the A-CAM I and A-CAM II terms for most carriers, and the Enhanced A-CAM offer extends support for an additional 10 years, ILEC-only served locations will receive 33% per month of their current A-CAM rate but these payments will continue for an additional 10 years beyond the original A-CAM term. This 33% support will be determined in the same manner as the support for ILEC-served locations explained above. *See n. []*.

²¹⁴ If the ILEC-served locations were supported at their current A-CAM I or A-CAM II rates only through the end of the current term, then the Commission could not also offer levelized support for the unserved locations through the terms without an increase to support during the remaining A-CAM I and A-CAM II terms. Both segments must be levelized over the entire Enhanced A-CAM term.

²¹⁵ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11910-11, paras. 55-56.

²¹⁶ *Id.* at 11910, para. 55.

²¹⁷ Comments of the National Tribal Telecommunications Association, RM-11868, WC Docket No. 10-90 et al., at 5-6 (rec. July 18, 2022) (NTTA Comments). *See also* Comments of WTA – Advocates of Rural Broadband, RM-11868, WC Docket No. 10-90 et al., at 14 (rec. July 18, 2022) (WTA Comments).

²¹⁸ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11911, para. 55 n.122. The A-CAM II program used a definition that had previously been used in other high-cost and low-income programs. *Id.* (defining Tribal Lands to “include any federally recognized Indian tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian Allotments, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Act July 9, 1921, 42 Stat. 108, *et seq.*, as amended.”)

²¹⁹ *See infra* section III.B.3. 47 CFR § 54.313(a)(5) (annual high-cost recipient ETC Tribal engagement obligation).

²²⁰ *See supra* section III.B.1.

locations that are awarded BEAD funds.²²¹ In most cases, we expect the change will be *de minimis* and therefore will not require an amendment to the amount of Enhanced A-CAM authorized by the Commission. Consistent with prior A-CAM offers, we set the *de minimis* threshold at 5% of the obligation, so that if the number of locations to which a carrier is obligated to deploy service are at least 95% of the obligated locations reflected in the authorization, no further adjustment to support will be required.²²² To be clear, we do not provide the same 5% flexibility that we previously provided to A-CAM carriers, which afforded carriers the unilateral flexibility to meet only 95% of their deployment obligations. For Enhanced A-CAM, the only basis for a reduction in obligations would be improved information associated with locations, broadband coverage, or enforceable commitments to deploy 100/20 Mbps as of the date the Enhanced A-CAM offer is made, or a mutual agreement with a Tribal government to forgo deployment obligations to Tribal locations.²²³ We direct the Bureau to provide, in the Order setting forth the funding caps and alternative funding percentages, a methodology to gradually reduce support where the number of locations to which a carrier is obligated to deploy is less than 95% but greater than 85% of the obligated locations in the authorization. The methodology should balance the need to avoid wasteful spending on locations to which it is no longer necessary to obligate deployment with the need to avoid creating inappropriate disincentives for carriers to accurately report location data in a timely fashion. If the number of locations to which the Enhanced A-CAM carrier is required to deploy is less than 85% of the obligated locations in the authorization, the carrier's support will be recalculated consistent with the support parameters set forth above. This re-authorization will prevent a windfall to carriers electing Enhanced A-CAM in cases where they are likely to be aware that material errors or deficiencies in their favor in the Fabric, the National Broadband Map, or the National Broadband Funding Map.

78. In the alternative case, in which deployment obligations are increased as the data improves because additional broadband serviceable locations are identified, additional funding will be provided only to the extent that it would not cause the Enhanced A-CAM program to exceed the budget set forth above.²²⁴ Allowing unlimited post-authorization increases to support could cause Enhanced A-CAM to exceed the budget, but it is likely that at least some of the budgeted funds will not be allocated, either because not all eligible carriers will elect Enhanced A-CAM or because of reductions in support due to decreased deployment obligations in accordance with the procedures we set above.²²⁵ In addition, it is within the Bureau's delegated authority to reserve some or all of the extra \$1 billion provided in the budget, above, to address increased deployment obligations.²²⁶ While this creates an asymmetrical risk for carriers electing offers—their support will decrease if their deployment obligations are later reduced, but their support may not increase if their deployment obligations are later increased and there are insufficient funds available under the budget—we find that the carriers are well-placed to assess this risk when they accept the offer. We emphasize that the adjustments to deployment obligations and, if appropriate, a reduction in support will only be made based on circumstances that in fact existed at the

²²¹ See *infra* section III.B.3.

²²² See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3101, para. 33.

²²³ As discussed above, the Bureau will make a final determination regarding the requirement to serve specific locations prior to the end of 2025, using the data that best reflects location and broadband deployment at the time of the offer. Enforceable commitments will be determined consistent with interagency coordination efforts. See *supra* section III.B.1.

²²⁴ If, following adjustments to deployment obligations, the recalculated support for all Enhanced A-CAM carriers (except those transitioning from legacy support) exceeds the budget, the available budget will be allocated pro rata among carriers with increased deployment obligations, based on the difference between their originally authorized Enhanced A-CAM support and the recalculated amount.

²²⁵ See *supra* section III.B.1.

²²⁶ See *supra* section III.B.2.a.

time of the offer. We believe that the carriers typically understand where in their service areas there are, in fact, broadband serviceable locations, deployment by unsubsidized competitors, and enforceable commitments to deploy broadband. They should not accept the Enhanced A-CAM offer if they believe the amount of support offered is insufficient, nor should they expect a windfall if they recognize the support offered is excessive, based on facts known to them but not reflected in the publicly available data used to calculate offers.

79. *Transitional Support for Legacy Carriers.* The Commission has a “longstanding objective of transitioning away from legacy rate-of-return support mechanisms” based on embedded costs to programs based on forward-looking costs designed to incentivize operational efficiencies by providers.²²⁷ For this reason, in addition to current A-CAM I and A-CAM II carriers, we extend Enhanced A-CAM offers to carriers eligible to receive legacy support.²²⁸ To encourage participation, we will provide electing legacy carriers with a fixed support transition, or “glide path,” from legacy support to their Enhanced A-CAM support amounts.²²⁹ The path will depend on whether or not the legacy carrier’s 2022 support, based on CAF BLS and HCLS, exceeds the annual amount of the Enhanced A-CAM offer.

80. For legacy carriers whose 2022 support claims are equal to or greater than the Enhanced A-CAM offer, we adapt a glide path from proposals by NTCA and the Southeastern Rural Broadband Alliance for a voluntary pathway to incentive regulation.²³⁰ Specifically, legacy carriers eligible for and electing Enhanced A-CAM will receive frozen support equal to their year 2022 support claims for six years, beginning January 1, 2024.²³¹ Over the next five years, beginning January 1, 2030, their support will step down to 80% of their 2022 support amount, in 4% increments. Finally, beginning January 1, 2035, electing carriers will then transition to model-based Enhanced A-CAM support, following the three-tiered transition schedule set forth in section 54.311 of the Commission’s rules.²³² Legacy carriers

²²⁷ See *Enhanced A-CAM NPRM* at 21, para. 54; *USF/ICC Transformation Order*, 26 FCC Rcd at 17686 n. 72; see also *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3096, para. 20 (“We also are taking additional steps to fulfill the Commission’s longstanding objective of providing support based on forward-looking efficient costs.”).

²²⁸ See *Enhanced A-CAM NPRM* at 20, para. 52 (seeking comment regarding whether eligibility for Enhanced A-CAM should be extended to include rate-of-return carriers that currently receive legacy support).

²²⁹ We separately, as an interim measure, recalibrate the high-cost budget for those carriers remaining on legacy regulation based on current demand to mitigate the effects of the Commission’s budget control mechanism going forward as the Commission considers updates to the budget in the Notice of Proposed Rulemaking concurrently adopted herein. See *infra* sections III, IV.

²³⁰ See NTCA Comments at 33; NTCA Oct. 14, 2022 Letter at 2; Letter from Trey Judy, Director—Regulatory, Hargray Communications, on behalf of the Southeastern Rural Broadband Alliance, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No 10-90 et al., at 2 (filed Apr. 28, 2023) (Southeastern Rural Broadband Alliance April 28, 2023 Letter); (NTCA May 26, 2023 Letter at 2; Letter from Trey Judy, Director—Regulatory, Hargray Communications, on behalf of the Southeastern Rural Broadband Alliance, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90, at 1-3 (rec. May 30, 2023) (Southeastern Rural Broadband Alliance May 30, 2023 Letter). Several parties have expressed support for an incentive regulation path. See, e.g., Southeastern Rural Broadband Alliance Reply at 5-10 (encouraging the Commission to adopt companion CAF BLS and HCLS reforms and the creation of an incentive regulation pathway for legacy rate-of-return carriers); TCA Reply at 2-5 (supporting 5-step plan put forward by NTCA); Minnesota Telecom Alliance et al. Reply at 3, 7 (supporting NTCA’s proposal); Letter from Diana Eisner, VP, Policy and Advocacy, USTelecom – The Broadband Assoc., to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 1-2 (filed June 9, 2023).

²³¹ 2022 is the most recent year for which complete data will be available when the Enhanced A-CAM offers are released. We note the budget control mechanism was waived for the entirety of 2022. See *Connect America Fund*, WC Docket No. 10-90, Order, FCC 22-32, at 1, para. 1 (2022) (*2022 Waiver Order*); *Connect America Fund*, WC Docket No. 10-90, Order, 36 FCC Rcd 9766, 9766, para. 1 (2021) (*2021 Waiver Order*).

²³² 47 CFR § 54.311.

electing Enhanced A-CAM would be required to deploy 100/20 Mbps or faster broadband service and voice service to 100% of the serviceable locations in their study areas, subject to the same interim milestones and deployment obligations as other Enhanced A-CAM participants.

81. As the Commission has previously found, “a tiered transition is preferable because it recognizes the magnitude of the difference in support for particular carriers.”²³³ Further, “[b]y specifying in advance how this transition will occur, carriers will have all the information necessary to evaluate the possibility of electing model support.”²³⁴ Pursuant to section 54.311(e) of the Commission’s rules, which addresses a carrier’s transition from receiving higher amounts to lower amounts of support, the transition payments are based on the percentage difference between model support and legacy support: if the difference between legacy and model-based support is 10% or less, the carrier will have a one-year transition; if greater than 10% but not more than 25%, then the transition period will be four years; and if the difference is greater than 25%, then the transition will occur over the full-term of the plan, with no extra transition support only in the final year of the term.²³⁵ For the purpose of calculating transitional support pursuant to this final stage, we adopt a base year support amount equal to 80% of 2022 claims. We recognize this final transition schedule may extend past the end of the support term we adopt for Enhanced A-CAM.²³⁶

82. For an electing legacy carrier whose 2022 claims are less than its Enhanced A-CAM support offer, we provide a transition to the carrier’s full Enhanced A-CAM support, after the initial freeze, over a five-year period.²³⁷ Under this transition, support will be stepped up in five annual increments until the Enhanced A-CAM support level is reached by the electing carrier in 2034.²³⁸ This approach minimizes the impact to the Fund caused by demand increases on the legacy high-cost budget resulting from the transition payments in years 2030-2034. That is, electing carriers that are transitioning downward will incur 4% reductions in 2022 baseline support annually during years 2030-2034, which will work to offset the demand increases caused by electing carriers transitioning upwards.

83. We find having an extended transition glide path to Enhanced A-CAM for legacy carriers is warranted. Moving legacy return carriers to model-based support furthers the Commission’s core reform principles of: (1) “Control[ling] the size of USF as it transitions to support broadband, including by reducing waste and inefficiency;” (2) “Requir[ing] accountability from companies receiving support to ensure that public investments are used wisely to deliver intended results;” and (3) “Transition[ing] to incentive-based policies that encourage technologies and services that maximize the value of scarce

²³³ 2016 Rate-of-Return Reform Order, 31 FCC Rcd at 3115, para. 72; see also December 2018 Rate-of-Return Reform Order, 33 FCC Rcd at 11912-13, para. 60 (extending same three-tiered transition process to ACAM II).

²³⁴ 2016 Rate-of-Return Reform Order, 31 FCC Rcd at 3116, para. 76.

²³⁵ 47 CFR § 54.311(e).

²³⁶ Section 54.311(e) of the Commission’s rules contemplates a three-tiered transition over a term as long as 10 years if the difference between base and model-based support is greater than 25 percent. *Id.* Accordingly, if the tiered transition commences in 2035, the transition to Enhanced A-CAM support levels for some electing carriers would extend until year 2045, well past the end of the support term of Enhanced A-CAM. In those cases, the carriers’ support would begin to approach the amount of the Enhanced A-CAM offer, but would not reach that level before the end of the term of support. We do not intend for such carriers to have a longer term of support than we adopt for Enhanced A-CAM generally.

²³⁷ The three-tiered transition process provided for in section 54.311(e) of the Commission’s rules would not apply in this instance as that rule provision is applicable when carriers are transitioning to lower levels of support. 47 CFR § 54.311(e).

²³⁸ In other words, after receiving frozen support from 2024 to 2029, each carrier will receive its baseline support plus 20% of the difference between the baseline and Enhanced A-CAM in 2030, its baseline plus 40% of the difference in 2031, its baseline plus 60% of the difference in 2032, its baseline plus 80% of the difference in 2033, and its full Enhanced A-CAM support in 2034.

program resources and the benefits to all consumers.”²³⁹ The Commission has also emphasized the need “to phase in reform with measured but certain transitions, so companies affected by reform have time to adapt to changing circumstances.”²⁴⁰

84. The Commission is embarking on its third offering of model-based A-CAM support. Many legacy carriers have already committed to A-CAM I and A-CAM II offerings, and the Commission provided a glide path with each offering to ease and encourage carriers to accept a predictable, fixed support amount in exchange for broadband deployment obligations.²⁴¹ A number of legacy carriers, however, continue to find the business case for moving to model-based support uneconomical. Accordingly, for these remaining legacy carriers, we find a more generous glide path is needed to encourage the transition as compared to earlier A-CAM offerings.

85. The proposal suggested by NTCA and the Southeastern Rural Broadband Alliance envisions an incentive regulation option that would serve as an alternative to Enhanced A-CAM for legacy carriers. We reject this proposal to offer a separate incentive regulation option, but we find the proposal can also serve as an important building block to further encourage the transition of legacy carriers to Enhanced A-CAM support. This approach also provides several administrative efficiencies. For example, the Commission by using a frozen, fixed support path to Enhanced A-CAM can thus leverage earlier A-CAM efforts to address ancillary issues such as matters related to tariffing and rate regulation. Adopting the new incentive regulation plan as proposed by NTCA and the Southeastern Rural Broadband Alliance, at this time, would in contrast require the Commission to address such issues anew for which there is limited advance time before carriers will need to complete the election process this fall. Further, by building on the proposal for an Enhanced A-CAM transition path, instead of having a completely new incentive-based option, we eliminate the need to administer an additional support program and can better ensure the alignment of support terms and timelines. That said, NTCA and the Southeastern Rural Broadband Alliance can propose additional incentive-based options for legacy carriers in the associated NPRM proceeding if they find additional options are necessary.

86. We predict the overall impact of these glide paths on the high-cost support budget will result in a decrease in support demand as the Commission endeavors to constrain demand to decrease the USF contribution factor. As the Commission has acknowledged, “American consumers and businesses ultimately pay for USF, and that if it grows too large this contribution burden may undermine the benefits of the program by discouraging adoption of communications services.”²⁴² By capping support at the 2022 level for electing carriers for six years, we prevent future demand increases on the legacy high-cost support budget. While those electing carriers whose Enhanced A-CAM offer exceeds their 2022 support levels will receive an increase in support, increasing over years 7-11 to the Enhanced A-CAM offer of support. We estimate that such increases will be more than offset by those carriers phasing down and then transitioning from higher legacy support levels to the level of their Enhanced A-CAM support offer.

87. We decline to apply different deployment obligations to legacy carriers electing Enhanced A-CAM than will be applied Enhanced A-CAM carriers generally. The Southeastern Rural Broadband Alliance, as part of its incentive regulation path option, proposed to exclude serviceable locations in an area where “a provider submits cost data indicating the extreme cost to provide 100/20 Mbps service (e.g., when capital expenditures are estimated to be greater than \$25,000 per location).”²⁴³ And that for such locations, “there could be a process by which companies could provide service via

²³⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, para. 11.

²⁴⁰ *Id.* at 17671, para. 12.

²⁴¹ See *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11912-13, paras. 60-63; *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3115-16, paras. 72-75.

²⁴² *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, para. 11.

²⁴³ Southeastern Rural Broadband Alliance May 30, 2023 Letter at 2 n.9.

alternative technologies.”²⁴⁴ While we are sympathetic of the effort required to offer service to the hardest-to-reach areas of the country, we decline to adopt such an exclusion for the Enhanced A-CAM glide path. The Commission is committed to extending 100/20 Mbps or faster broadband and voice service to all Americans, including those living in high-cost areas. Further, to ensure locations funded with high-cost support do not become eligible for BEAD, and thus receive duplicative funding, we must create a path to an enforceable commitment to serve all locations.²⁴⁵ If we permit an exception allowing electing legacy carriers to escape the obligation to serve not-yet-identified locations subject to some future process, states applying the BEAD eligibility rules will not be able to determine whether an enforceable commitment has been made and may therefore be required to determine that there is no enforceable commitment for any locations. We therefore cannot permit such an exclusion. Further, states, unlike this Commission, will have the ability to conclude that locations are extremely high-cost and therefore find a carrier’s commitment to serve using a technology other than reliable broadband would still satisfy BEAD’s requirements.²⁴⁶

3. Carrier Eligibility, Elections, and Other Enhanced A-CAM Processes

88. *Eligibility.* We adopt our proposal to permit each current A-CAM I or A-CAM II participant to elect, on a state-by-state basis, whether to participate in the Enhanced A-CAM program.²⁴⁷ We will also extend eligibility (on a state-by-state basis) to rate-of-return carriers that are eligible to receive legacy support.²⁴⁸ Rate-of-return carriers that choose not to accept Enhanced A-CAM support offers will continue to receive support under the terms of their existing A-CAM authorizations or legacy rate-of-return plans.²⁴⁹

89. Consistent with our decision to provide capped support to locations where an A-CAM I or A-CAM II participant has already deployed broadband at speeds at 100/20 Mbps or greater, we will permit all A-CAM I and A-CAM-II participants to elect to participate in the Enhanced A-CAM program even if a service provider has already deployed broadband at speeds of 100/20 Mbps or faster throughout its service area.²⁵⁰ We are persuaded that it would be an effective use of Enhanced A-CAM funds to support the ongoing provision of 100/20 Mbps or faster service for the support term of Enhanced A-CAM and to provide service providers with the resources they need to repay loans and offer affordable rates.²⁵¹

²⁴⁴ *Id.*

²⁴⁵ See BEAD Program NOFO at 36-37 n.52

²⁴⁶ See *id.* at 36-37.

²⁴⁷ *Enhanced A-CAM NPRM* at 20-21, paras. 52-53.

²⁴⁸ *Id.* at 21, para. 54. Legacy support refers to mechanisms based on historical costs, and includes CAF BLS and HCLS.

²⁴⁹ *Id.* at 20, para. 52. See also Comments of Home Telecom, RM-11868, WC Docket No. 10-90 et al., at 7 (rec. July 18, 2022) (stating that “the Commission should ensure that companies that elected to participate in previous support options can continue to abide by these prior decisions”); ACAM Broadband Coalition Comments at 42 (supporting the Commission’s proposal).

²⁵⁰ *Enhanced A-CAM NPRM* at 20-21, para. 53.

²⁵¹ See, e.g., GTBA Comments at 4 (explaining “there will be a need to offer support . . . to offset necessary operational expenses needed to keep the rural network working”); NTTA Comments at 2-3 (emphasizing the importance of supporting “ongoing operations, maintenance, and upgrades”); WTA Comments at 6 (stating that excluding providers that have already widely deployed 100/20 Mbps or faster speeds “will deprive” such carriers of “the Enhanced ACAM support they need to repay their loans, recover their investments, sustain their networks and service quality, and keep their broadband service rates affordable”); Minnesota Telecom Alliance et al. Reply at 6 (explaining that precluding carriers with widespread deployment from participating in Enhanced A-CAM “will deprive the affected [carriers] of the Enhanced ACAM support they need to repay their loans, recover their investments, sustain their networks and service quality, and keep their broadband service rates affordable”).

We expect our decision to cap monthly support for these locations at an amount lower than that awarded to unserved locations will help balance our objectives of using support efficiently and ensuring that consumers remain served at these high speeds.

90. Moreover, consistent with the Commission's longstanding objective of transitioning away from legacy rate-of-return support mechanisms and providing high-cost support based on a carrier's forward-looking, efficient costs, we will permit rate-of-return carriers eligible to receive legacy support to elect to participate in the Enhanced A-CAM program instead.²⁵² Commenters generally supported extending an offer to all rate-of-return carriers that are eligible to receive legacy support to maximize options for carriers and to maximize participation in the Enhanced A-CAM program.²⁵³ However, we balance this objective with the Commission's longstanding goal of minimizing the overall burden of universal service contributions on American consumers and businesses.²⁵⁴ Specifically, above we take measures to lessen the impact on the budget by freezing Enhanced A-CAM support for legacy carriers for six years at 2022 levels if their Enhanced A-CAM offer is more than their total 2022 legacy support (i.e., CAF BLS and HCLS) in the relevant state, and then gradually increasing their support to Enhanced A-CAM levels.²⁵⁵

91. We note that legacy rate-of-return carriers authorized to receive Enhanced A-CAM support will have requirements related to tariffs. Enhanced A-CAM recipients must exit the NECA Common Line pool, although they have the option of continuing to use NECA to tariff their Common Line and CBOL charges.²⁵⁶ Such carriers must coordinate with NECA on making any required tariff filings in order to ease the administrative burden associated with implementation of any changes. Once USAC confirms that an authorized carrier has notified NECA of its intention to exit the Common Line pool, USAC may disburse A-CAM support. Pursuant to the *Rate-of-Return BDS Order*, Enhanced A-CAM recipients that have not already done so will also be eligible to move their business data services offerings to incentive regulation.²⁵⁷

²⁵² *Enhanced A-CAM NPRM* at 21, para. 54; *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11903, para. 31; *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3090-91, paras. 4-5. See also ACAM Broadband Coalition Comments at 6; WTA Comments at 8.

²⁵³ See, e.g., GBTA Comments at 8 ("The foundational principles of equity and fairness strongly favor the availability of the Enhanced A-CAM mechanism for all rural ETCs."); Home Comments at 2-3, 7 (encouraging "the Commission to ensure each area is treated fairly and that as funding mechanisms evolve, all carriers can equally choose from the options the Commission makes available"); Minnesota Telecom Alliance et al. Reply at 6 (urging the Commission "to maximize participation in Enhanced ACAM by expanding eligibility as broadly as feasible"); WTA Comments at 4-8 (explaining that "broad eligibility will enable the Commission to employ an established and effective model-based approach to encourage and enable [rate-of-return carriers] to further upgrade, extend and maintain their broadband networks and services to meet pressing current customer bandwidth needs"); Reply Comments of Hamilton County Telephone Co-Op, RM-11868, WC Docket No. 10-90 et al., at 5-6 (rec. Aug. 1, 2022) ("This policy will promote equity and fairness and encourage ETCs to participate in the Enhanced A-CAM offer."). See also ACAM Broadband Coalition Comments at 42; State and Regional Telecommunications Associations Comments at 7; Comments of Red River Rural Telephone Association and Polar Communications Mutual Aid Corp., RM-11868, WC Docket No. 10-90 et al., at 3-4 (rec. July 18, 2022). Future support for non-A-CAM rate-of-return carriers that serve Alaska will be part of a separate rulemaking. See Alaska Telecom Petition for Expedited Rulemaking, WC Docket Nos. 10-90, 16-271 (rec. Jan. 4, 2023).

²⁵⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17682-83, para. 57; *Enhanced A-CAM NPRM* at 20, para. 52 (seeking comment on whether extending the offer to legacy rate-of-return carriers would otherwise be consistent with the Commission's goals and whether there were other eligibility considerations that should be applied).

²⁵⁵ See *supra* section III.B.2.b.

²⁵⁶ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3159-60, paras. 194-96.

²⁵⁷ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers, et al.*, WC Docket No. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking and Further Notice of Proposed

(continued....)

92. We will permit otherwise eligible existing A-CAM and legacy rate-of-return carriers that are currently not in compliance with the deployment obligations associated with their current support programs to participate in the Enhanced A-CAM program. However, to protect the public's funds, we will take certain steps to reduce the Enhanced A-CAM support they receive until they come into compliance with their existing obligations.²⁵⁸ These steps will ensure that carriers cannot avoid compliance with existing obligations by accepting new obligations.

93. Specifically, an existing A-CAM support recipient that has missed its December 31, 2022 service milestone and that is currently having its support withheld pursuant to one of the section 54.320(d)(1) non-compliance tiers, will continue to remain subject to the support withholding associated with that non-compliance tier once its Enhanced A-CAM support term begins.²⁵⁹ The existing A-CAM support recipient will continue to receive its existing level of support that it received pursuant to its previous A-CAM program, excluding the support withholding associated with the applicable non-compliance tier, until it comes into compliance. At the time that the support recipient reports that it is eligible for Tier 1 status for the December 31, 2022 service milestone pursuant to its original obligation (i.e., at the previous A-CAM program performance requirements and for the number of locations required by the December 31, 2022 service milestone), the support recipient will have its support fully restored to the level of support it is eligible to receive pursuant to the Enhanced A-CAM program, and USAC will repay any funds that were recovered or withheld.²⁶⁰

94. An existing A-CAM support recipient that misses the December 31, 2023 service milestone for its previous A-CAM program will receive its ongoing Enhanced A-CAM support once its Enhanced A-CAM support term begins, but if its compliance gap with the December 31, 2023 service milestone makes it eligible for a section 54.320(d)(1) non-compliance tier that requires support withholding, we will withhold a percentage of the support recipient's ongoing Enhanced A-CAM support as required by the relevant non-compliance tier.²⁶¹ At the time that the support recipient reports that it is eligible for Tier 1 status for the December 31, 2023 service milestone pursuant to its original obligation (i.e., at the previous A-CAM program performance requirements and for the number of locations required by the December 31, 2023 service milestone), it will have its support fully restored and USAC will repay any funds that were recovered or withheld.²⁶²

95. If we determine that a legacy rate-of-return carrier receiving Enhanced A-CAM support has not met its legacy obligation to offer 25/3 Mbps to a required number of locations in its service area as required by December 31, 2023,²⁶³ we will treat the 25/3 Mbps deployment obligation as a continuing obligation and subject the rate-of-return carrier to the section 54.320(d)(1) non-compliance tiers depending on the size of its compliance gap.²⁶⁴ Accordingly, we will withhold a portion of the rate-of-

(Continued from previous page) _____

Rulemaking, 33 FCC Rcd 10403, 10421-22, para. 44 (2018) (*Rate-of-Return BDS Order*) ("Business data services rates for carriers accepting future offers of A-CAM support or otherwise transition away from legacy support mechanisms will be effective on July 1 in the year following their election.").

²⁵⁸ See *Enhanced A-CAM NPRM* at 14, para. 35 (seeking comment on the applicability of 47 CFR § 54.320(d)(1) to the Enhanced A-CAM program).

²⁵⁹ See 47 CFR § 54.320(d)(1). Depending on the size of the non-compliance gap, WCB will withhold a minimum of 15% and up to 100% of a support recipient's support. *Id.*

²⁶⁰ See *id.* § 54.320(d)(1)(v).

²⁶¹ See *id.* § 54.320(d)(1).

²⁶² See *id.* § 54.320(d)(1)(v). Although the non-compliance tiers apply to interim service milestones for other programs, here we will apply the non-compliance tiers to the legacy rate-of-return carrier's final deployment milestone given our decision to treat the 25/3 Mbps deployment obligation as an ongoing obligation.

²⁶³ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11927, para. 112.

²⁶⁴ See 47 CFR § 54.320(d)(1).

return carrier's ongoing Enhanced A-CAM support as required by the applicable non-compliance tier.²⁶⁵ If it is verified that the rate-of-return carrier has come into compliance within the one-year cure period, the carrier will have its support fully restored and USAC will repay any funds that were recovered or withheld.²⁶⁶ If the rate-of-return carrier does not come into compliance within the one-year cure period, we will recover support associated with the original five-year support term pursuant to section 54.320(d)(2) for the locations to which it did not commercially offer 25/3 Mbps service.²⁶⁷ However, that carrier will be permitted to remain in the Enhanced A-CAM program and will continue to receive any remaining Enhanced A-CAM support. Like all high-cost recipients, Enhanced A-CAM participants will also remain subject to the Commission's other sanctions for non-compliance with the terms and conditions of high-cost funding, 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.²⁶⁸

96. We decline to expand eligibility to include competitive service providers as part of this Enhanced A-CAM offer.²⁶⁹ We are not persuaded that it would be an efficient use of funds at this time.²⁷⁰ While the Commission has increasingly relied on competitive processes for delivery of high-cost funding, areas funded by A-CAM carriers present distinct challenges to competitive entry.²⁷¹ In areas served by price cap carriers, the Commission provided a limited term of model-based support to incumbents with the goal of moving towards allocating support on a competitive basis in the relevant areas.²⁷² In contrast, the Commission adopted A-CAM as a longer-term support program with the goal of providing certainty and stability to permit the incumbent service providers to invest for the future.²⁷³ While we acknowledge our approach precludes other service providers from participating that may also be qualified to offer service in these areas,²⁷⁴ it would be inefficient now to fund competitive carriers in A-CAM areas where incumbent service providers have existing long-term funding commitments. Moreover, the record lacks suggestions for how to efficiently implement a competitive process. Instead, we conclude that it is better to address this issue on a longer term basis in the context of our proceeding regarding the future of high-cost support. In the NOI below, we seek to build a record on how to reform our high-cost programs in the

²⁶⁵ *See id.*

²⁶⁶ *See id.* § 54.320(d)(2).

²⁶⁷ *Id.* § 54.320(d)(2). USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received in the support area for that carrier over the original five year term of support for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total relevant high-cost support over the support term for that support area. *Id.*

²⁶⁸ *Id.* § 54.320(c).

²⁶⁹ *See, e.g.,* INCOMPAS Comments at 7; NCTA Comments at 6-7.

²⁷⁰ *Contra* INCOMPAS Comments at 7 (claiming that "such an approach may help alleviate the impact on the [universal service] contribution factor"); NCTA Comments at 6 (claiming "any proposal limiting universal service support to only a small subset of providers based solely on their status as incumbents would be an inefficient means of funding deployment").

²⁷¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17674, para. 26 (explaining that "smaller rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve").

²⁷² *Id.* at 17727-28, para. 163 (explaining that at the end of the incumbents' support term, "the Commission expects to be distributing all" support "in price cap areas pursuant to market-based mechanism, such as competitive bidding.").

²⁷³ *2016 Rate of Return Reform Order*, 31 FCC Rcd at 3089, para. 1.

²⁷⁴ NCTA Comments at 6-7 (suggesting that a competitive process "would give all qualified broadband providers an equal opportunity to compete for high-cost support").

face of the changing broadband landscape and specifically ask about alternatives to using a cost model, including using competitive processes.²⁷⁵

97. At the same time, we recognize the benefits of competitive processes to allocate government funding for broadband deployment.²⁷⁶ Thus, if the incumbent declines the Enhanced A-CAM offer, we expect the unserved locations will become eligible for support through a competitive process (the BEAD Program).²⁷⁷

98. *Elections.* We delegate to the Bureau the authority to implement the process for carriers to elect to receive Enhanced A-CAM support, consistent with the same procedures the Commission adopted for carriers electing to receive A-CAM II support.²⁷⁸ Commenters supported adopting the same procedures.²⁷⁹ Like with A-CAM II, elections will be voluntary, irrevocable, and made on a state-by-state basis.²⁸⁰

99. We require that carriers make their elections by no later than October 1, 2023.²⁸¹ We believe this timing should ensure that elections are made in time for states and grantees to be made aware of which areas will be subject to an enforceable commitment for the deployment of qualifying broadband, and thus ineligible for BEAD funding.²⁸² If any of the dependent deadlines or timeframes are extended, we grant the Bureau the flexibility to similarly extend the deadline for elections as long as the elections take place in time for the acceptances to qualify as an enforceable commitment for the deployment of qualifying broadband as defined by the BEAD Program NOFO.²⁸³

100. We also require carriers that accept an Enhanced A-CAM offer to identify in their election letters the technologies they plan to use to meet their Enhanced A-CAM deployment

²⁷⁵ See *infra* section V.

²⁷⁶ INCOMPAS Comments at 7; NCTA Comments at 6-7.

²⁷⁷ BEAD Program NOFO at 36-37 & n.52 (explaining that any location that is already subject to an enforceable commitment for the deployment of qualifying broadband cannot be treated as unserved or underserved).

²⁷⁸ *Enhanced A-CAM NPRM* at 21, para. 55; *2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11915, para. 69 (directing “the Bureau to release a public notice announcing the new model-based support amounts and corresponding deployment obligations and providing carriers with 45 days to confirm that they will accept the revised offer”); *Wireline Competition Bureau Announces Alternative Connect America Cost Model II Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2868 (WCB 2019).

²⁷⁹ See, e.g., ACAM Broadband Coalition Comments at 42; NTCA Comments at 27 (“Nothing from past experience suggests the need to tinker with that process.”).

²⁸⁰ Carriers considering this voluntary path will need to evaluate on a state-level basis whether the support received for multiple study areas, on balance, is sufficient to meet the state-level number of locations that must be served.

²⁸¹ The election process delegated to the Bureau includes the authority to set a deadline for acceptance of Enhanced A-CAM offers on or before October 1, 2023 and shorten the timelines for acceptances used in prior A-CAM offers.

²⁸² BEAD Program NOFO at 9, 36-37 n.52 (requiring that grantees submit an initial proposal no later than 180 days after receiving a notice of available BEAD funding and requiring grantees to conduct a challenge process after submitting the initial proposal and prior to allocating funds to subgrantees, and defining an enforceable commitment for the deployment of qualifying broadband). NTIA announced BEAD allocations “to all 50 states, the District of Columbia, and five territories” on June 26, 2023. Press Release, US Department of Commerce, National Telecommunications and Information Administration, Biden-Harris Administration Announces State Allocations for \$42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda (June 26, 2023), <https://www.ntia.doc.gov/press-release/2023/biden-harris-administration-announces-state-allocations-4245-billion-high-speed>.

²⁸³ BEAD Program NOFO at 36-37 n.52.

obligations.²⁸⁴ The Enhanced A-CAM deployment obligations are technologically neutral.²⁸⁵ We expect that A-CAM participants will disclose in good faith the technologies they intend to use to facilitate coordination with other funding programs. We find that requiring such disclosures will further our goal to maximize the deployment of high-quality broadband service by helping states and other eligible entities set allocations for the BEAD Program and further the efficient use of federal broadband funding, including additional programs funded by other federal agencies. We direct the Bureau to make the acceptances public to inform, among other processes, the BEAD Program challenges conducted by states or other eligible entities and prevent any duplication of support to a location where it is determined that the Enhanced A-CAM service provider plans to deploy a technology that would satisfy the requirements for being deemed an enforceable commitment for the deployment of qualifying broadband to a location.²⁸⁶ Because acceptances will be made public, a carrier accepting an Enhanced A-CAM offer should not include any confidential trade secrets or commercial information in its acceptance.

101. *Participation Threshold.* We also adopt a minimum carrier participation threshold for implementing the Enhanced A-CAM program.²⁸⁷ Specifically, we conclude that it may not serve the public interest to proceed if existing A-CAM participants collectively choose to accept Enhanced A-CAM offers that in total cover less than 50% of the unserved locations that are eligible for support across all the offers to current A-CAM recipients. We will exclude from this formula any locations covered by offers received by legacy rate-of-return carriers eligible to receive legacy support. While we encourage legacy rate-of-return carriers to elect Enhanced A-CAM and expect that many will do so, we will not forecast a reasonable participation rate for those carriers. If the 50% participation threshold is not reached, we will not proceed with the Enhanced A-CAM program.

102. We believe that a minimum level of participation in Enhanced A-CAM will prevent the proliferation of high-cost mechanisms, each with its own rules and administrative requirements, and each self-selected by carriers to maximize universal service support. NTCA opposes the imposition of a participation threshold because it claims the Enhanced A-CAM program will most efficiently and effectively serve these areas.²⁸⁸ However, our goal for the Enhanced A-CAM program is to maximize the efficient use of universal service funds—both by leveraging existing A-CAM-supported networks to support the widespread deployment of 100/20 Mbps or faster broadband throughout rate-of-return carriers' service areas, and by preventing the duplication of funds across support programs in these areas.²⁸⁹ If fewer than half of the unserved locations included in offers to current A-CAM recipients are supported through Enhanced A-CAM, it seems unlikely that this goal will be met.²⁹⁰ We also are not

²⁸⁴ The Commission similarly required entities participating in the Connect America Fund Phase II auction and the Rural Digital Opportunity Fund to identify the technologies they intended to use to meet the support mechanisms' deployment obligations in both their short-form and long-form applications. 47 CFR §§ 54.315(a)(4), (b)(2)(iv), 54.804(a)(4), (b)(2)(iv).

²⁸⁵ See WISPA June 26, 2023 Letter at 2.

²⁸⁶ See, e.g., BEAD Program NOFO at 15-17, 28, 36 n.52, 37 (defining a reliable broadband service, for purposes of identifying a location as unserved or underserved and whether a carrier has an enforceable commitment for the deployment of qualifying broadband to a location, as "broadband service that the Broadband DATA Maps show is accessible to a location via: (i) fiber-optic technology; (ii) Cable Modem/ Hybrid fiber-coaxial technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum").

²⁸⁷ *Enhanced A-CAM NPRM* at 21-22, para. 56.

²⁸⁸ NTCA Comments at 27.

²⁸⁹ *Enhanced A-CAM NPRM* at 11, para. 23.

²⁹⁰ *Contra* NTCA Comments at 27 ("[T]he more efficient, effective, and direct method would be to enhance and modernize an existing and successful mechanism to address service demands and consumer needs in as many rural areas as possible – and moving forward on updating the A-CAM without regard to the number of carriers that elect it is the best way to do that"). No commenters provided a specific proposal for how we should set a threshold.

persuaded that we should decline to adopt a participation threshold simply because some commenters assume that “a very substantial number” of carriers will accept offers.²⁹¹ Instead, we find that adopting a minimum participation threshold is a prudent approach that will enable us to safeguard the public funds by reassessing the program in the event that elections are too low to achieve our goals.

103. *Tribal Government Engagement.* The Commission has long recognized the deep digital divide that persists between Tribal lands and the rest of the country and emphasized that engagement between Tribal governments and communications providers, either currently providing service or contemplating the provision of service on Tribal lands, is vitally important to the successful deployment and provision of service.²⁹² All recipients of high-cost support that serve Tribal lands must, pursuant to section 54.313(a)(5) of the Commission’s rules, demonstrate that it has engaged with Tribal governments on a range of issues, including compliance with local rights of way, land use permitting facilities siting, and environmental and cultural preservation review processes, as well as Tribal business and licensing requirements, that are necessary for a carrier to obtain before fulfilling its deployment and service obligations.²⁹³ Through these obligatory Tribal engagements, and as demonstrated through successfully satisfying deployment obligations through previous high-cost programs, carriers receiving high-cost support through previous universal service programs should have received consent from the local Tribal government to satisfy the requisite permissions to deploy to certain locations. Further, because carriers that accept an Enhanced A-CAM offer already have an annual obligation to demonstrate they meaningfully engaged with the Tribal governments in their supported areas as existing high-cost support recipients, we expect that they will be able to leverage any preexisting coordination and collaboration to immediately engage the relevant Tribal governments with respect to the steps necessary to complete the deployment required by Enhanced A-CAM.²⁹⁴ As such, and to continue the necessary consultation between carriers and the Tribal governments that oversee the lands which may contain eligible Enhanced A-CAM locations, Enhanced A-CAM carriers will also remain subject to the ongoing annual Tribal engagement obligations. Any carrier accepting an Enhanced A-CAM offer should be prepared to serve all locations in its study area, including those on Tribal lands.²⁹⁵

104. In addition to an annual obligation to demonstrate they meaningfully engaged with the Tribal governments in their supported areas, we require carriers receiving Enhanced A-CAM support to initiate engagement with any relevant Tribal governments within 90 days of the Bureau extending an Enhanced A-CAM offer.²⁹⁶ In engaging with Tribal governments, Enhanced A-CAM carriers must be aware that the BEAD Program will not recognize the acceptance of an Enhanced A-CAM offer as an

²⁹¹ See, e.g., Minnesota Telecom Alliance et al. Reply at 6-7; WTA Comments at 8.

²⁹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, paras. 636-37. See also NTTA Comments at 7 (“[T]ribal governments should have significant input into how federal [universal service support] is utilized on Tribal lands to increase broadband deployment and sustain the affordable provision of broadband internet access service.”).

²⁹³ 47 CFR § 54.313(a)(5).

²⁹⁴ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17868-69, paras. 636-37. See also *Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund*, WC Docket No. 10-90 et al., Public Notice, 27 FCC Rcd 8176 (ONAP/WTB/WCB 2012); *Consumer and Governmental Affairs Bureau Seeks Comment on Effectiveness of its Tribal Engagement Guidance and to Refresh the Record on Related Petitions for Consideration*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 9508 (CGB 2019).

²⁹⁵ We note that locations in Tribal areas may already be subject to an enforceable commitment for broadband through other federal and state broadband funding programs.

²⁹⁶ In making their July 1, 2024, filings pursuant to section 54.313, Enhanced A-CAM recipients should demonstrate that they engaged in Tribal consultations in 2023 specifically associated with deployment pursuant to Enhanced A-CAM.

enforceable commitment for the deployment of qualifying broadband, “unless it includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location.”²⁹⁷ We expect carriers that intend to accept Enhanced A-CAM offers will act in good faith to provide the relevant Tribe(s) with an opportunity to consent to the Enhanced A-CAM carrier’s deployment of broadband in the Tribal area.²⁹⁸ To further the objectives of encouraging deployment on Tribal lands by facilitating communications between service providers and the Tribal governments, and avoiding duplicative support across federal programs, we expect that carriers that intend to accept Enhanced A-CAM offers will take reasonable steps necessary to obtain Tribal consent meeting the BEAD Program requirements in time for states and other eligible entities to conduct their challenge processes to identify locations that are eligible for BEAD Program funding.²⁹⁹ If the state concludes that there is no Tribal Government Resolution or legally binding agreement expressing consent as required by the BEAD Program NOFO, the Tribal locations eligible for Enhanced A-CAM support may, according to the BEAD NOFO, nonetheless become eligible for BEAD support.³⁰⁰

105. To balance our goals of avoiding duplicative spending across federal programs against the important and necessary engagement with Tribal governments over the deployment and provision of services over Tribal lands, if a state awards BEAD funds to another service provider to serve locations subject to an Enhanced A-CAM authorization, we permit the Enhanced A-CAM carrier and the Tribal government to notify the Bureau that they mutually agree to forego the A-CAM deployment obligation, and the Bureau is directed to adjust the Enhanced A-CAM recipient’s support and deployment obligations.³⁰¹ The BEAD awards, unlike the other bases for adjustments to deployment obligations and support we adopt above, would necessarily occur after the Enhanced A-CAM offers are made. We find, however, that carriers considering their Enhanced A-CAM offers will have adequate notice that Tribal locations may be de-authorized at a later date. We find that performing these adjustments is necessary to avoid duplication of funding across federal programs.

106. *Adjusting the High-Cost Budget for Carriers Remaining on Legacy Support.* As we have in previous A-CAM elections, we re-set the legacy support budget for CAF BLS and HCLS to reflect the exit from the budget control mechanism of newly electing A-CAM carriers.³⁰² To effectuate this reset, we set the legacy budget for 2024-25 at a level equal to 2023-24 legacy support claims less any frozen

²⁹⁷ BEAD Program NOFO at 37 n.52. The Tribal government may include a Tribal Council or some other governing body, or the Tribal government’s authorized agent. For the BEAD program, if the locations are on a Tribal consortium’s Tribal land, the service provider cannot be authorized to receive support for Tribal locations unless and until each relevant Tribal government adopts a resolution of consent. To ensure proper consent is obtained in Alaska and in alignment with the BEAD Program, carriers accepting Enhanced A-CAM support on Tribal lands in Alaska must follow the requirements described in the BEAD Program NOFO for obtaining consent from Tribes located in Alaska. See BEAD Program NOFO at 48 n.70. This includes “gain[ing] consent (by Tribal resolution) of 51 percent or more of the federally recognized [T]ribal governments in the Alaska Native Region in which the infrastructure will be deployed,” except for deployments within the Metlakatla Reservation which “will require only the consent (via Tribal resolution) of the Metlakatla Reservation’s Tribal Government.” *Id.*

²⁹⁸ Since these efforts would constitute Tribal engagement, carriers will report on them in their FCC Form 481 due July 1, 2024.

²⁹⁹ BEAD Program NOFO at 9, 37 n.52. See also BEAD Challenge Process Policy Notice.

³⁰⁰ See, e.g., BEAD Program NOFO at 37 n.52.

³⁰¹ We expect that such notice will take the form of a letter filed in this docket. We direct the Bureau to specify the form, substance, and timing of such letters. We also clarify that any such adjustment will not be considered a default of the carrier’s deployment obligations under the Enhanced A-CAM program.

³⁰² See *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11916-22, paras. 72-92; *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3119-20, para. 86.

support received by carriers transitioning from legacy support to Enhanced A-CAM.³⁰³ The Commission will consider additional budget updates for legacy carriers proposed by NTCA and the Southeastern Rural Broadband Alliance in the NPRM concurrently adopted herein as such proposals would benefit from additional comment by interested parties.³⁰⁴

107. Recalibrating the budget now provides the added benefit of mitigating the uncertainty to the remaining legacy carriers caused by application of the Commission's budget control mechanism as the Commission considers additional budget updates. Support demand has outpaced the Commission's predictive judgments made in the *December 2018 Rate-of-Return Reform Order*.³⁰⁵ The growth in projected support by carriers is due, in part, to an increased conversion of voice lines to broadband-only lines,³⁰⁶ which receive a higher support amount, and an increase in the number of new customers subscribing to broadband-only lines.³⁰⁷ This has ultimately resulted in projected estimated support demand substantially exceeding the annual high-cost budget in recent years³⁰⁸ and thus triggering the Commission's budget control mechanism.³⁰⁹ Absent recalibration, carriers would be under annual threat of increasing budget constraints going forward and the uncertainty of obtaining waiver relief while the Commission considers important and necessary budget updates.

108. *HCLS Cap*. As we have done previously with respect to A-CAM elections, we direct NECA to rebase the cap on HCLS to reflect the election of model-based support by HCLS-eligible rate-of-return carriers.³¹⁰ In the first annual HCLS filing following the election of model-based support, NECA shall calculate the amount of HCLS that those carriers would have received in the absence of their election, subtract that amount from the HCLS cap, then recalculate HCLS for the remaining carriers using the rebased amount.

³⁰³ This is consistent with the request for recalibration of the overall annual budget as suggested by NTCA and the Southeastern Rural Broadband Alliance. See NTCA May 26, 2023 Letter at 2; Southeastern Rural Broadband Alliance May 30, 2023 Letter at 1-2.

³⁰⁴ See Letter from Michael Romano, Exec. Vice Pres., NTCA, to Marlene H. Dortch, Secretary, FCC, RM-11868, WC Docket No. 10-90 et al., at 2 (filed Apr. 3, 2023) (NTCA Apr. 3, 2023 Letter).

³⁰⁵ The budget, based on 2018 unconstrained claims, including an inflationary factor to increase the budget annually, assumed that 4 percent of non-broadband only lines would be converted to broadband only over the 2019-2023 period. See *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 12017, Appx. D. However, as NTCA generally estimates "rural providers' . . . standalone broadband connections grew by nearly 20%" over the last two years. NTCA Apr. 3, 2023 Letter at 4.

³⁰⁶ See 47 CFR § 54.901(g) ("[A] consumer broadband-only loop is a line provided by a rate-of-return incumbent local exchange carrier to a customer without regulated local exchange voice service, for use in connection with fixed Broadband Internet access service . . .").

³⁰⁷ See NTCA Apr. 3, 2023 Letter at 2, 4 (discussing increases in broadband subscriptions in recent years among its members and estimating that over the past two years "standalone broadband connections grew by nearly 20% . . . with 7% coming from new customers").

³⁰⁸ The budget for 2023-2024 for the CAF BLS and HCLS support mechanisms is approximately \$1.25 billion with forecasted demand exceeding \$1.53 billion. See USAC, 2023-2024 Budget Analysis.

³⁰⁹ For example, absent the Commission recently waiving the budget control mechanism for the July 2023 to June 2024 tariff year, legacy carriers would have been subject to support reductions of 18.35%, which would have impaired the ability of carriers to deploy and maintain broadband operations in rural areas as they emerge from the pandemic. See *Connect America Fund*, WC Docket No. 10-90, Order, FCC 23-40, at 1, 3, paras. 1, 8 (May 23, 2023). In 2022, the Commission waived the budget control mechanism to remove a potential 14% reduction in high-cost support for carriers. See *Connect America Fund*, WC Docket No. 10-90, Order, FCC 22-32, at 2, 4, paras. 5, 10 (May 10, 2022) (2022 BCM Order).

³¹⁰ See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3145, para. 154 (rebasings the HCLS cap to reflect the election of model-based support by existing recipients of HCLS).

109. *Cybersecurity and Supply Chain Risk Requirements.* We require Enhanced A-CAM carriers to implement operational cybersecurity and supply chain risk management plans by January 1, 2024—the start of the Enhanced A-CAM support term.³¹¹ We also require carriers to submit such plans to USAC, and certify that they have done so, by January 2, 2024 or within 30 days of approval under the Paperwork Reduction Act, whichever is later. Failure to submit the plans and make the certification shall result in 25% of monthly support being withheld until the carrier comes into compliance.³¹² Our actions emphasize the critical importance of cybersecurity and supply chain risk management in modern broadband networks, consistent with broader initiatives across the federal government,³¹³ while striking an appropriate balance to ensure compliance with this important requirement that avoids disproportionate disruption to carriers' support.

110. Adopting this risk management requirement is necessary to ensure that the Enhanced A-CAM program does not deprive rural consumers in high-cost areas of broadband service that is as secure as the service deployed pursuant to other federal funding initiatives, including through the BEAD Program.³¹⁴ The BEAD Program will not fund areas where there is an enforceable commitment by an entity to build broadband.³¹⁵ Therefore, if receipt of Enhanced A-CAM funding were not conditioned upon comparable cybersecurity and supply chain risk management requirements, the receipt of Enhanced A-CAM funding would likely leave those rural consumers served by Enhanced A-CAM carriers without comparable protection.

111. Consistent with the BEAD Program, carriers' cybersecurity risk management plans must reflect the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity,³¹⁶ and must reflect an established set of cybersecurity best practices, such as the standards and controls set

³¹¹ *Enhanced A-CAM NPRM* at 22, para. 57 (seeking comment on whether we should require similar cybersecurity and supply chain risk management practices and certifications for Enhanced A-CAM carriers as the BEAD Program or, alternatively, for all carriers receiving high-cost support). Because the record gave sparse treatment to this issue of whether to extend these cybersecurity and supply chain risk management requirements to other high-cost programs, we limit our action today to Enhanced A-CAM carriers. We will address this as appropriate in a future proceeding.

³¹² A 25% withholding of support is equivalent of Tier 3 of non-compliance under 47 CFR § 54.320(d)(1). A carrier may consider its "plans" for addressing cybersecurity and supply chain risks to be separate because they entail different kinds of actions. Nonetheless, carriers may satisfy this requirement by submitting to USAC a single document that contains both their cybersecurity risk management and supply chain risk management plans. This will likely be the case for most, if not all, carriers because implementing the NIST Framework for Improving Critical Infrastructure Cybersecurity, as we require carriers to do, includes an examination and treatment of supply chain risks.

³¹³ See The White House, Executive Order 14028 (2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>; NIST, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry (2021), <https://csrc.nist.gov/publications/detail/nistir/8276/final>; Infrastructure Act § 60102(g)(1)(B) (mandating compliance with "prudent cybersecurity and supply chain risk management practice").

³¹⁴ See BEAD Program NOFO at 36-37 & n.52 (encouraging the Commission to "replicate" the BEAD Program's cybersecurity and supply chain risk management requirements); see also CTIA Comments at 5 ("If the Commission seeks to align the high-cost program with the BEAD Program, then it should require high-cost recipients to commit to use the NIST CSF to manage cybersecurity and supply chain security risks."). BEAD Program recipients must ensure that (1) the cybersecurity risk management plan reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1); and (2) the standards and controls set forth in Executive Order 14028. See BEAD Program NOFO at 70-71.

³¹⁵ BEAD Program NOFO at 36-37 & n.52.

³¹⁶ NIST, Framework for Improving Critical Infrastructure Cybersecurity, v.1.1 (2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>.

forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives³¹⁷ or the Center for Internet Security Critical Security Controls.³¹⁸ Carriers' supply chain risk management plans must incorporate the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry,³¹⁹ and related supply chain risk management guidance from NIST 800-161.³²⁰

112. If an Enhanced A-CAM carrier makes a substantive modification to its cybersecurity or supply chain risk management plan, we require that carrier to submit its updated plan to USAC within 30 days of making that modification.³²¹ A modification to a cybersecurity or supply chain risk management plan will be considered as substantive if at least one of the following conditions apply:

- There is a change in the plan's scope, including any addition, removal, or significant alternation to the types of risks covered by the plan (e.g., expanding a plan to cover new areas such as supply chain risks to Internet of Things devices or cloud security could be a substantive change);
- There is a change in the plan's risk mitigation strategies (e.g., implementing a new encryption protocol or deploying a different firewall architecture);
- There is a shift in organizational structure (e.g., creating a new information technology department or hiring a Chief Information Security Officer);

³¹⁷ See Cybersecurity and Infrastructure Security Agency, *Cross-Sector Cybersecurity Performance Goals and Objectives*, <https://www.cisa.gov/cpgs> (last visited July 23, 2023).

³¹⁸ See Center for Internet Security, *Critical Security Controls Version 8*, <https://www.cisecurity.org/controls> (last visited July 23, 2023) (providing security controls grouped by priority and feasibility for different sizes and resources of businesses in Implementation Groups). The *Enhanced A-CAM NPRM* noted the possibility that a cybersecurity risk management plan could reflect the standards and controls set forth in Executive Order 14028. *Enhanced A-CAM NPRM* at 22, n.141. We observe that the development of measures and controls pursuant to Executive Order 14028 are still ongoing. Efforts to amend the Federal Acquisition Regulation to standardize common cybersecurity contractual requirements across all Executive agencies for unclassified information systems, to increase the sharing of information about cyber threats and incident information between the Federal government and certain providers, and to require certain contractors to report cyber incidents to the Federal government to facilitate effective cyber incident response and remediation are not yet final. See, e.g., Open FAR Cases as of 6/30/2023, <https://www.acq.osd.mil/DPAP/dars/opencases/farcasenum/far.pdf> (stating that the Civilian Agency Acquisition Council sent a proposed rule in case number 2021-019, which implements sections 2(i) and 8(b) of Executive Order 14028, to OIRA for review on May 11, 2023 and that a proposed rule in case number 2023-002, implementing section 4(n) of Executive Order 14028, is due August 2, 2023). While we recognize the ongoing work in this regard, for the purposes of the requirements we establish today, we rely instead upon the established standards set forth in the main text above.

³¹⁹ See The White House, Executive Order 14028 (2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>; NIST, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry (2021), <https://csrc.nist.gov/publications/detail/nistir/8276/final> (presenting the following as key practices: 1) integrating cyber supply chain risk management across the organization; 2) establishing a formal cybersecurity supply chain risk management program; 3) knowing and managing critical components and suppliers; 4) understanding the organization's supply chain; 5) collaborating closely with key suppliers; 6) including key suppliers in resilience and improvement activities; 7) assessing and monitoring throughout the supplier relationship; and 8) planning for the full life cycle).

³²⁰ NIST, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations (2022), <https://csrc.nist.gov/publications/detail/sp/800-161/rev-1/final> (identifying critical success factors for cyber supply chain risk management).

³²¹ BEAD Program NOFO at 70-71.

- There is a shift in the threat landscape prompting the organization to recognize that emergence of new threats or vulnerabilities that weren't previously accounted for in the plan;
- Updates are made to comply with new cybersecurity regulations, standards, or laws;
- Significant changes are made in the supply chain, including offboarding major suppliers or vendors, or shifts in procurement strategies that may impact the security of the supply chain; or
- A large-scale technological change is made, including the adoption of new systems or technologies, migrating to a new information technology infrastructure, or significantly changing the information technology architecture.

Further, in their FCC Form 481 filings following each subsequent support year, carriers shall certify that they have maintained their plans, whether they have submitted modifications in the prior year, and the date any modifications were submitted.³²² At any point during the support term, if an Enhanced A-CAM carrier does not have in place operational cybersecurity and supply chain risk management plans meeting the Commission's requirements, we direct the Bureau to withhold 25% of the Enhanced A-CAM carrier's support until the Enhanced A-CAM carrier is able to come into compliance.³²³ The requirements we adopt here will improve the cybersecurity of the nation's broadband networks and protect consumers from online risks such as fraud, theft, and ransomware that can be mitigated or eliminated through the implementation of accepted security measures.³²⁴

113. We also take steps to mitigate concerns that development and implementation of cybersecurity plans are expensive and time consuming particularly for eligible carriers.³²⁵ We afford carriers flexibility to include standards and controls in their cybersecurity management plans that are reasonably tailored to their business needs. We believe that implementation of these approaches would facilitate the nation's cybersecurity goals.

114. Our approach will also likely reduce compliance costs by allowing carriers that have already implemented the NIST Framework for Improving Critical Infrastructure Cybersecurity to comply with this requirement without redoing their plan so long as they implement an established set of cybersecurity best practices. To further mitigate costs for small providers, as suggested by NTCA, we encourage Enhanced A-CAM providers to take advantage of existing federal government resources designed to share supply chain security risk information with trusted communications providers and suppliers and facilitate the creation of cybersecurity and supply-chain risk management plans.³²⁶

³²² 47 CFR § 54.313.

³²³ 47 CFR § 54.320(c) ("Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action . . .").

³²⁴ See CTIA Comments at 5; NTIA Comments at 7-9; NCTA Comments at 29-30; WTA Comments at 12-13.

³²⁵ See, e.g., WTA Comments at 12-13 ("[C]ybersecurity is becoming a more and more expensive operating cost and will increase further if the Commission imposes additional cybersecurity risk management obligations."); NTCA Reply at 19-20 ("The public resources currently available are not tailored to the Commission's funding programs and may be overwhelming to small businesses, and the consultants who specialize in cyber and supply chain risk management may be out of financial reach."); see also ACAM Broadband Coalition Comments at 41.

³²⁶ See NTCA Reply at 19-20; NTIA Comments at 8; see also *See FCC Small Business Cyber Planner 2.0*, <https://www.isao.org/resource-library/government-programs/fcc-small-business-cyber-planner-2-0/> (last visited July 23, 2023); see also Federal Communications Commission, *Cybersecurity for Small Businesses*, <https://www.fcc.gov/communications-business-opportunities/cybersecurity-small-businesses> (last visited July 23, 2023); see also Cybersecurity and Infrastructure Security Agency, *CISA Cybersecurity Awareness Program Small Business Resources*, <https://www.cisa.gov/publication/stopthinkconnect-small-business-resources> (last visited July 23, 2023); ISAO Standards, National Institute of Standards and Technology (NIST), *Planning Tools & Workbooks*, <https://www.nist.gov/itl/smallbusinesscyber/planning-guides/planning-tools-workbooks> (last visited July 23, 2023).

(continued....)

IV. NOTICE OF PROPOSED RULEMAKING

115. In this NPRM, we seek comment on how to amend legacy rate-of-return mechanisms to align them with the current broadband deployment and support environment. The broadband landscape has changed significantly in recent years. Rural consumers expect to receive higher quality and faster broadband service, which they need for work, school, healthcare, and more. To expedite the deployment of broadband, for example, Congress passed the Infrastructure Act and appropriated funds for the BEAD Program and other federal programs to provide grants to pay for deployment. Many states have also instituted broadband deployment funding programs. In other areas, unsubsidized providers have deployed high-speed broadband alternatives. The Commission, meanwhile, maintains its commitment to promote deployment of broadband at evolving levels of service, while seeking to avoid unnecessary duplication of services that would be provided in the absence of high-cost universal service, whether by unsubsidized competitors or through awards made by other programs. Although reforms for legacy mechanisms are needed now, we also explore in the NOI ways that different support mechanisms can continue to provide meaningful support over the longer term once broadband networks have been ubiquitously deployed.

116. To address immediate needs, we seek comment on three key areas. First, we seek comment on a variety of reforms to legacy support mechanisms and appropriate funding, so that rate-of-return carriers are subject to a smaller reduction when the budget control mechanism applies. We then seek comment regarding appropriate deployment obligations for carriers receiving CAF BLS when the current deployment term ends this year. Finally, we seek comment regarding methodologies for preventing duplication of support between legacy high-cost universal service support mechanisms and funding provided by other federal and state agencies for the deployment of broadband.

A. Background

117. The Commission's high-cost universal service program provides support to deploy and maintain modern telecommunications networks in rural, insular, and other high-cost areas.³²⁷ Rate-of-return local exchange carriers historically set their rates and received high-cost universal service support based on their revenue requirements, i.e., costs, including an authorized rate of return on their investments. Rate-of-return carriers that did not elect A-CAM support or Alaska Plan support, and that are not affiliates of price cap carriers, receive cost-based support pursuant to two "legacy" support mechanisms, high-cost loop support (HCLS) and CAF BLS.³²⁸ Under these mechanisms, the legacy rate-of-return carriers perform cost studies consistent with the Commission's rules contained in part 32 (Uniform System of Accounts), part 64 (allocation of regulated and non-regulated costs), part 36 (Jurisdictional Separations), and part 69 (Access Charges), and receive support based on revenue requirements derived from those cost studies.³²⁹

118. HCLS provides support for voice lines, including voice lines bundled with broadband service, in study areas with an average common line cost per loop in excess of a specified threshold.³³⁰ Because the operation of HCLS shifts cost recovery for the amount of support provided from the intrastate jurisdiction to the interstate jurisdiction, HCLS effectively subsidizes local voice service rates.³³¹ HCLS is subject to a funding cap, indexed to line growth or loss and inflation.³³²

(Continued from previous page)

See also CISA, *ICT Supply Chain Risk Management Task Force Resources*, <https://www.cisa.gov/ict-scrm-task-force-resources> (last visited July 23, 2023).

³²⁷ See 47 U.S.C. § 254.

³²⁸ See 47 CFR §§ 54.901-903 (CAF BLS), 54.1301-1310 (HCLS). Some carriers may receive additional HCLS pursuant to the Safety Valve Support mechanism. See 47 CFR § 54.305(I)(e).

³²⁹ 47 CFR Parts 32, 36, 64 and 69.

³³⁰ See 47 CFR §§ 54.1301-1310.

³³¹ See *id.* § 54.1301(a).

119. CAF BLS subsidizes carriers with high local loop costs in the interstate jurisdiction for both voice and consumer broadband-only loops (CBOLs).³³³ Initially, CAF BLS (then called Interstate Common Line Support, or ICLS) supported high local loop (i.e., voice) costs by providing rate-of-return carriers with the difference between their interstate common line revenue requirement (i.e., the portion of the local loop costs assigned to the interstate jurisdiction) and their interstate common line end-user revenues, which are limited due to the cap on subscriber line charges (SLCs).³³⁴ In 2016, the Commission expanded ICLS to support CBOLs by including the difference between each carrier's CBOL revenue requirement and an imputed amount of CBOL revenue in the support calculation.³³⁵

120. In addition to HCLS and CAF BLS, rate-of-return carriers are eligible to receive Connect America Fund Inter-carrier Compensation (CAF ICC) support.³³⁶ The Commission adopted CAF ICC in 2011 as part of a transitional recovery mechanism to facilitate carriers' gradual transition away from inter-carrier compensation revenues, by ensuring that end user rate increases were incremental but also limiting support consistent with the Commission's goal of keeping the federal universal service program on a budget.³³⁷ While the Commission established a 2020 sunset date for CAF ICC for price cap carriers, there is no sunset date for rate-of-return carriers.³³⁸ The transitional recovery mechanism allows rate-of-return carriers to recover inter-carrier compensation revenues reduced due to the inter-carrier compensation reforms, up to an amount defined for each year of the transition, which is referred to as "Eligible Recovery."³³⁹ A rate-of-return carrier may collect its Eligible Recovery each year from its end users through an Access Recovery Charge (ARC), subject to a number of different per line caps.³⁴⁰ If the projected ARC revenues do not recover the entire Eligible Recovery amount, the carrier may elect to collect the remainder in CAF ICC support.³⁴¹ The Commission adopted several protections to ensure that end user rates did not become unaffordable, including a \$.50 annual limit on increases to the monthly ARC rate, a \$3.00 maximum monthly ARC for rate-of-return carriers, and a Residential Rate Ceiling that limited regulated residential end-user rates (including state rates, the SLC, and the ARC) to \$30 a

(Continued from previous page)

³³² See *id.* § 54.1302(a).

³³³ See *id.* § 54.901.

³³⁴ See *id.* §§ 54.901, 69.104.

³³⁵ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3119-24, paras. 86-94, 3154-57, paras. 181-87.

³³⁶ See 47 CFR § 51.917.

³³⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17956, para. 847.

³³⁸ *Id.* In the Further Notice of Proposed Rulemaking attached to that Order, the Commission sought comment regarding sunset provisions for CAF ICC received by rate-of-return carriers. *Id.* at 18120, para. 1328.

³³⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17956-57, paras. 847, 850. The calculation of a rate-of-return carrier's Eligible Recovery begins with its Base Period Revenue. See 47 CFR § 51.917(b)(7). A rate-of-return carrier's Base Period Revenue is the sum of certain intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during Fiscal Year (FY) 2011, and the projected revenue requirement for interstate switched access services that the carrier provided during the 2011-2012 tariff period. See 47 CFR § 51.917(b)(7). The Base Period Revenue for rate-of-return is reduced by five percent in each year of the transition. See 47 CFR § 51.917(b)(3). A rate-of-return LEC's Eligible Recovery is equal to the adjusted Base Period Revenue for the year in question less, for each relevant year of the transition, the sum of (1) projected terminating intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue. See 47 CFR § 51.917(d).

³⁴⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17958, para. 852; 47 CFR § 51.917(e); 47 CFR § 51.917(d). Consistent with the principle of bill-and-keep, the Commission concluded that carriers should first look to recovery from their own end users, while adopting safeguards to protect end users from unreasonable or excessive rate increases. *USF/ICC Transformation Order*, 17957, para. 849.

³⁴¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918; 47 CFR § 51.917(f).

month.³⁴² The Commission adopted CAF ICC to provide support to incumbent carriers to the extent that their Eligible Recovery exceeded their permitted ARCs.³⁴³

121. In the *USF/ICC Transformation Order*, the Commission adopted a \$2 billion annual budget for the high-cost program for rate-of-return carriers, as part of an overall budget for all high-cost mechanisms of \$4.5 billion.³⁴⁴ The Commission found that establishing a budget would “best ensure that [the Commission has] in place ‘specific, predictable, and sufficient’ funding mechanism to achieve [its] universal service objectives.”³⁴⁵ The Commission in 2016 adopted a “self-effectuating mechanism for controlling total support distributed pursuant to HCLS and CAF BLS to stay within the budget for rate-of-return carriers.”³⁴⁶ The Commission further defined the annual budget for CAF BLS and HCLS at \$2 billion less any CAF ICC received by rate-of-return carriers (excluding rate-of-return affiliates of price cap carriers) and any model-based support for carriers electing A-CAM.³⁴⁷ The budget control mechanism set a process for reducing HCLS and CAF BLS to target amounts necessary to meet the budget.³⁴⁸ In the *2018 Rate-of-Return Reform Order*, the Commission re-set the budget for CAF BLS and HCLS based on the 2018 unconstrained claims on support, plus an additional 7% to accommodate the increased support associated with conversion of lines to broadband-only service (consumer broadband only or CBOL) conversions, and indexed that amount to inflation, removing CAF ICC and A-CAM support from the annual calculation.³⁴⁹ The Commission further modified the budget control mechanism to simplify the process for reducing the targeted amount for HCLS and CAF BLS.³⁵⁰ To apply the budget control mechanism, USAC publishes an analysis of the budget annually on May 1.³⁵¹ The analysis applies the budget control to set the rate by which HCLS and CAF BLS must be reduced to meet the target budget amount. Further, the analysis attributes CAF BLS to various elements (true-ups for prior periods, current period support for common line costs, current period support for CBOL costs).³⁵² Carriers may recover the reductions to CAF BLS through increased CBOL rates.³⁵³ Since the Commission last set the budget amount, the Commission on several occasions has waived or otherwise modified the budget control mechanism to negate the mechanism’s impact.³⁵⁴

³⁴² *USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852. For price cap carriers, the ARC was capped at \$2.50.

³⁴³ *Id.* at 17961, para. 853.

³⁴⁴ *Id.* at 17674, 17710-12, 17768, paras. 26, 121-26, 286.

³⁴⁵ *Id.* at 17710, para. 123.

³⁴⁶ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3143, para. 146.

³⁴⁷ *Id.* at 3143-44, para. 149.

³⁴⁸ *Id.* at 3144-46, paras. 150-53.

³⁴⁹ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11916-24, paras. 72-100.

³⁵⁰ *Id.* at 11929-30, paras. 118-24.

³⁵¹ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3157, para. 187. See also USAC, *Budget Control Mechanism*, <https://www.usac.org/high-cost/resources/rules-orders/budget-control-mechanism/> (last visited July 23, 2023).

³⁵² See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3145, para. 155.

³⁵³ See 47 CFR § 69.132(c).

³⁵⁴ See *Connect America Fund*, WC Docket No. 10-90, Order, FCC 23-40 (May 23, 2023) (waiving budget control for July 2023 to June 2024 to avoid 18.4% reduction in support) (*2023 Budget Control Waiver Order*); *Connect America Fund*, WC Docket No. 10-90, Order, FCC 22-32 (May 10, 2022) (waiving budget control to avoid 14% reduction in July 2022); *2021 Waiver Order*, 36 FCC Rcd 9766 (waiving budget control mechanism to avoid a 8.6% reduction in July 2021).

122. In the *2016 Rate-of-Return Reform Order*, the Commission first adopted defined deployment obligations for carriers receiving CAF BLS, except those that had already deployed 10/1 Mbps or faster service to 80% or more of the locations in their study areas, to deploy 10/1 Mbps or faster service to a specified number of previously unserved locations over a five-year term.³⁵⁵ These obligations were determined by dividing a defined percentage of each carrier's forecasted five-year CAF BLS, to be dedicated to serving unserved locations, by a cost-per-location amount.³⁵⁶ Later, in the *December 2018 Rate-of-Return Reform Order*, the Commission significantly revised the deployment obligations, making them applicable to all CAF BLS carriers, increasing the speed obligation to at least 25/3 Mbps, and restarting the five-year term for deployment.³⁵⁷

B. Discussion

123. We seek comment on needed reforms to legacy support mechanisms, including the budget control mechanism, deployment obligations, and the effect of funding awards for broadband deployment from other federal and state agencies. Considering these issues in a holistic manner will provide the best opportunity for the Commission to achieve its universal service goals. Accordingly, we seek comment on modifications to the budget control mechanism and measures to better target funding to mechanisms that support modern broadband. In doing so, we note that the Commission has, through the Enhanced A-CAM offer above, provided a pathway for legacy carriers to make an enforceable commitment to provide 100/20 Mbps or faster service to all locations in their service areas, and re-set the budget for legacy support to reflect the exit of electing carriers from the pool to which the budget control mechanism applies.³⁵⁸ We seek comment regarding additional reforms to guide support for carriers that remain subject to legacy mechanisms during this next phase of broadband deployment.

1. Updates to CAF BLS and Other Legacy Support Mechanisms and to the Budget

124. We first seek comment on adjustments to the budget, and measures that would mitigate the impact of the budget control mechanism when applied. In considering such measures, we seek to balance the requirement to provide support that is sufficient to achieve the Commission's universal service goals, but also provides appropriate incentives for prudent and efficient expenditures. As the Commission has previously recognized, the cost of universal service is ultimately borne by American consumers and businesses.³⁵⁹ Support that is greater than necessary therefore violates the Commission's obligation to be a good steward of the universal service fund.³⁶⁰

125. For rate-of-return carriers that receive legacy support, the Commission has attempted to achieve the necessary balance in part through the budget control mechanism, which operates to reduce CAF BLS and HCLS to the budgeted amount. The Commission, however, has repeatedly acted to waive the budget control mechanism, even after the 2018 reforms, to avoid potentially calamitous consequences. Specifically, the Commission waived the budget control mechanism for the 2021-22, 2022-23, and 2023-24 July 1 to June 30 tariff years, in which, to meet the budget, legacy support was forecasted to be reduced by 8.6%, 14%, and 18.4% respectively. While carriers have the ability to make up most

³⁵⁵ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3145-3154, paras. 156-80 & Appx. E.

³⁵⁶ *Id.* at 3149-50, paras. 167-68. Carriers were given an option to elect a methodology for determining the cost-per-location – either an estimate based on the weighted average cost per loop for carriers within a similar group, as sorted by density or based on A-CAM cost estimates. *Id.* at 3150-52, paras. 169-71.

³⁵⁷ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11924-27, paras. 101-12.

³⁵⁸ An electing carrier would be obligated to provide at least 100/20 Mbps service to all locations in its study area without such service.

³⁵⁹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17682-83, para. 57.

³⁶⁰ See *id.*

reductions to CAF BLS through higher CBOL rates, the progressively larger support reductions would have resulted in unduly excessive CBOL rates.³⁶¹ For example, in the *2023 Budget Control Waiver Order*, the Commission estimated that applying the budget control would require carriers to impute CBOL revenues equivalent to an average monthly CBOL rate of \$73.³⁶² We seek comment below on mitigating the effect of the budget control mechanism through increases to the budget, but also reducing demand for legacy support through other reforms and offsetting increases to the budget through reductions to CAF ICC, which is outside the budget.

126. *Budget Control Mechanism.* We seek comment on the budget for legacy support and methods for reducing support when appropriate in light of the reforms adopted for the Enhanced A-CAM program. Above, as part of the adjustments we make to remove support received by carriers electing Enhanced A-CAM from the legacy budget, we re-set the budget to the level of 2023-24 demand.³⁶³ This reset is consistent with NTCA's proposal to "recalibrate" the budget.³⁶⁴

127. We seek comment regarding whether other adjustments should be made to the budget control mechanism to better account for ongoing trends. NTCA has further proposed that future savings associated with the election of fixed support by legacy support recipients should accrue to the budget applied to the remaining, non-electing legacy support recipients.³⁶⁵ Under NTCA's proposal, transitional support for Enhanced A-CAM electing carriers begins to phase down after six years and the savings associated with the phasedown would be applied to the legacy support budget. We seek comment on NTCA's proposal for future budget increases.³⁶⁶ Should the budget control mechanism reflect ongoing trends to CBOL conversions? In 2018, the Commission noted that the conversion of voice lines to CBOLs was a driver of increasing support because, for most carriers, CBOLs provided a higher per-line support amount than voice lines.³⁶⁷ Further, the number of CBOLs continues to grow rapidly: in their 2023-24 forecasts for CAF BLS, carriers forecasted that CBOLs would increase by 18% over 2022-23, even as voice and voice-broadband bundled lines declined by 9%.³⁶⁸ Because CBOLs provide higher per-line support than voice lines, the increasing number of CBOL lines remains a significant driver of increases to uncapped CAF BLS. Should the Commission adjust the budget control mechanism to address the high rates of CBOL adoption? Are there other trends the Commission should consider if it modifies the budget control mechanism? How can the budget control mechanism accommodate these trends while also maintaining the budget control mechanism's fundamental purpose of constraining growth in legacy support? Below, we seek comment regarding deployment obligations for locations that

³⁶¹ Under section 69.132(c), legacy support recipients set their monthly CBOL rate at one-twelfth of the annual projected CBOL revenue requirement, "net of the projected [CAF BLS] attributable to consumer broadband-only loops." 47 CFR § 69.132(c). The *2016 Rate-of-Return Reform Order* instructs USAC to attribute all CAF BLS reductions first to the projected CBOL category, rather than CAF BLS for prior period true-ups or projected CAF BLS for the common line category. *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3145, para. 155.

³⁶² *2023 Budget Control Waiver Order* at 3, para. 8.

³⁶³ See *supra* section III.B.3.

³⁶⁴ NTCA October 14, 2022 Letter, at 3; NTCA May 26, 2023 Letter.

³⁶⁵ NTCA May 26, 2023 Letter.

³⁶⁶ Our re-set of the legacy budget, above, partially effectuates NTCA's proposal by setting the budget at 2023-24 legacy support levels, but basing the Enhanced A-CAM transition for electing carriers on 2022 claims. The difference between electing carriers' 2023-24 legacy support, uncapped due to the Commission's recent waiver of the budget control mechanism, and their 2022 claims creates additional room, under the budget, for non-electing carriers.

³⁶⁷ *2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11921, paras. 90-91.

³⁶⁸ Staff Analysis of Form 508 data. Total lines, including both CBOLs and voice lines, increased by 2%. *Id.*

remain unserved after the BEAD Program process.³⁶⁹ If the Commission concludes that additional deployment obligations should be required, how, if at all, should the Commission assess the impact on the budget control mechanism? Broadband funding from programs established by the Infrastructure Act and other federal programs may have a significant impact on the need for legacy support. Should the Commission revisit the budget or the budget control mechanism after the completion of the BEAD Program process, or after a certain period of deployment commitments have been realized?

128. *Increased CBOL Revenue Imputation.* We seek comment regarding whether the Commission should undertake reforms that would reduce the amount of pre-budget control support. Reducing the amount of CAF BLS and HCLS before the application of the budget control would have a similar effect on total support as applying the budget control, but may result in a more stable and predictable reduction factor when the budget control is applied. For example, we seek comment regarding whether the Commission should increase the amount of end-user revenue imputed to CBOL lines in the CAF BLS calculation. While the CAF BLS calculations initially assume CBOL revenues of \$42 per line per month, the Commission's rules have always anticipated that the application of the budget control mechanism would result in increased CBOL rates.³⁷⁰ Increasing the imputed CBOL revenue amount from \$42 per line per month in the initial CAF BLS calculation would mathematically decrease the demand for CAF BLS as reflected in the budget control analysis. This would result in a lower budget reduction factor, even if the budget were held constant.

129. Should the Commission increase the CBOL revenue imputation to reflect inflation? For instance, the Commission set the imputed CBOL rate at \$42 in 2016.³⁷¹ If the rate had grown with inflation (as measured by the same rate used to index the budget amount) since that time, it would now be more than \$48.21. Similarly, the Commission partially justified the \$42 per line per month revenue imputation based on the 10/1 Mbps urban rate benchmark, which has increased 17.3% since 2016.³⁷² If the CBOL revenue imputation had grown similarly, it would be \$49.28 per line per month. Many CBOLs provide 25/3 Mbps or faster service. Should we impute the urban rate benchmark for 25/3 Mbps for some fraction of CBOL rates, and similarly the urban rate benchmark for higher speeds? If so, how should the CBOL rate be weighted to reflect the proportions of CBOLs providing different speeds?

130. What would be the impact of raising the CBOL revenue imputation on end-user broadband rates? The Commission recognized in 2016 that, because the CBOL encompassed only the local line portion of providing broadband, end-user rates would likely be higher than just the CBOL rate.³⁷³ That said, many carriers do not charge the maximum allowable CBOL rate. We seek comment on the effect raising the CBOL imputation would have on affordability and reasonable comparability of rates. Are there other concerns that the Commission should consider or address with respect to raising the CBOL imputation? Section 69.132(d) of the Commission's rules caps the monthly CBOL charge for A-

³⁶⁹ See *infra* section IV.B.2.

³⁷⁰ Section 54.901(a)(2)(i) imputes annual CBOL revenues equal to the lesser of \$42 per line per month or the carrier's CBOL revenue requirement. 47 CFR § 54.901(a)(2)(i). Section 69.132(c) sets the allowable CBOL rate at the CBOL revenue requirement, less any projected CAF BLS attributable to CBOLs. 47 CFR § 69.132(c). As a result, when the projected CAF BLS attributable to CBOLs is reduced by the budget control mechanism, the allowable rate is increased. Moreover, when CAF BLS is re-calculated based on actual cost and revenue data for true-up purposes, section 54.901(a)(2)(ii) imputes annual revenue equal to the higher allowable CBOL rate pursuant to section 69.132 per line per month, if it is greater than the amount determined pursuant to paragraph (i), even if the carrier does not charge that rate. 47 CFR § 54.901(a)(2)(ii).

³⁷¹ 2016 *Rate-of-Return Reform Order*, 31 FCC Rcd at 3122-23, para. 92.

³⁷² *Id.* (citing 2015 Urban Rate Survey for 10/1 Mbps of \$77.81); 2023 *Urban Rate Survey* at 3 (10/1 Mbps urban rate benchmark of \$91.30).

³⁷³ 2016 *Rate-of-Return Reform Order*, 31 FCC Rcd at 3123-24, para. 92.

CAM and Alaska Plan support recipients at \$42.³⁷⁴ If the Commission increases the CBOL revenue imputation for CAF BLS, should the Commission also raise the cap on CBOLs for A-CAM and Alaska Plan carriers? Are there considerations the Commission should take in account for related to the imputation of CBOLs for carriers serving Tribal lands? For example, we note that the Commission included a Tribal Broadband Factor for the Enhanced A-CAM mechanism we adopt today, as we did for A-CAM II and RDOF.³⁷⁵ Would it be in the public interest to include a similar factor for imputed CBOL revenue?

131. *HCLS*. Currently both CAF BLS and HCLS are subject to the budget control mechanism, but only CAF BLS is associated with broadband deployment obligations. Because HCLS is indexed to growth or loss of voice lines (as well as inflation), it is declining as voice lines are converted to CBOLs.³⁷⁶ Even with those declines, however, HCLS is likely to continue for many years as a financial benefit. Should the Commission take steps to reduce HCLS and target a larger share of the legacy support to CAF BLS, with its associated broadband deployment obligations? We seek comment on how HCLS should be phased down, if it concluded it would be appropriate to do so. One possibility would be for the HCLS indexed cap to decline in 10 regular annual increments until it reaches \$0. Would a period longer or shorter than 10 years be better? Are there alternative methods of phasing down HCLS that the Commission should consider?

132. *CAF ICC*. Another avenue for increasing the legacy budget amount without further straining the contribution factor would be to shift support from other mechanisms. We seek comment on whether we should increase the budget for legacy carriers to account for reductions in CAF ICC support. At its inception, the budget control mechanism was set by first subtracting the amount of CAF ICC received by rate-of-return carriers (as well as any A-CAM support) from an overall \$2 billion budget.³⁷⁷ In 2018, when the Commission re-set the budget and indexed it to inflation, however, it delinked CAF ICC from the budget for CAF BLS and HCLS.³⁷⁸ What benefits has unlinking CAF ICC from the budget provided? A-CAM and Alaska Plan carriers also receive CAF ICC. Would it be appropriate to link reductions to CAF ICC for those carriers to an increase in the legacy support budget? Is there another appropriate purpose for which reductions in CAF ICC for A-CAM and Alaska Plan carriers should be allocated?

133. We also seek comment regarding whether the Commission should adopt measures to accelerate the phase out of CAF ICC for rate-of-return carriers. Unlike CAF BLS, CAF ICC does not have defined broadband deployment obligations.³⁷⁹ If the reductions to CAF ICC were linked to the budget for legacy universal service support, as discussed above, then an accelerated phase out would

³⁷⁴ 47 CFR § 69.132(d).

³⁷⁵ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11910-12, paras. 55-57; *RDOF Order*, 35 FCC Rcd at 694, para. 16. In the *December 2018 Rate-of-Return Reform Order*, the Commission declined to extend the Tribal Broadband Factor to legacy support, finding that it would not be an effective use of universal service resources: “Hypothetically, a carrier receiving high (but permissible) universal service support could receive enough additional support from this proposed factor that it could meet its revenue requirement without any subscribers and could receive more than an additional dollar of support for each additional dollar it spent.” *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11911-12, para. 57.

³⁷⁶ 47 CFR §§ 54.1302(a), 54.1303.

³⁷⁷ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3143-44, para. 149.

³⁷⁸ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11919, para. 85 (“[W]e see no reason going forward why the support amounts for A-CAM, Alaska Plan, and CAF ICC should affect total legacy support.”).

³⁷⁹ While there were no defined broadband deployment obligations imposed on CAF ICC recipients, they were required to “extend broadband upon reasonable request.” *USF/ICC Transformation Order*, 26 FCC Rcd at 17995, para. 918; *see also id.* at 17740, para. 206 (discussing reasonable request requirements).

increase the portion of universal service support tied to enforceable deployment of modern broadband networks.

134. Further, while the Commission recognized, at the time of adoption, that CAF ICC would phase out over a longer period for rate-of-return carriers than for price cap carriers (who have received no CAF ICC since 2020),³⁸⁰ it did not intend the transition to be interminable. Rate-of-return carriers (including A-CAM I and II recipients and carriers subject to the Alaska Plan) received \$351 million in 2022, which is only 11% less than the \$395 million those carriers received at CAF ICC's peak in 2016.³⁸¹

135. In the *USF/ICC Transformation FNPRM*, the Commission sought comment regarding whether CAF ICC for rate-of-return carriers should be subjected to a phase-out on a defined schedule.³⁸² It also sought comment on accelerating the phasedown of support the initial five years by decreasing the Eligible Recovery amount at a faster rate than originally adopted by the Commission, which would also have the effect of accelerating CAF ICC reductions.³⁸³ We seek comment regarding whether either of these methods of accelerating CAF ICC reductions, or another method, would be appropriate.

136. Finally, we seek comment on whether adjustments should be made to CAF ICC to reflect the growth of CBOLs. In order to avoid an unintentional increase in CAF ICC due to the migration of voice customers to broadband-only service that would “upset the careful balancing of burdens as between end-user ARC charges and [CAF ICC],” the Commission required rate-of-return carriers to impute an amount equal to the ARC charge they assess on voice lines to their CBOLs.³⁸⁴ While the residential ARC—the portion of the Eligible Recovery amount that a carrier may collect from its residential voice subscribers—is capped at \$3.00 per line per month for affordability reasons, it is also subject to the \$30 per month Residential Rate Ceiling, and some carriers therefore charge less than \$3.00 per line per month.³⁸⁵ Broadband-only customers who do not pay an ARC (or most of the other rates included in the Residential Rate Ceiling) because they do not receive voice service, therefore have imputed to them an ARC which, for affordability reasons, in many cases is less than \$3.00, and can be as low as \$0.³⁸⁶ Given that affordability considerations associated with the ARC do not directly apply to broadband-only customers (who do not pay an ARC because they do not receive voice service), would it be reasonable to impute a higher ARC for CBOLs, independent of the ARC charged for voice customers? Should there be any cap on the ARC imputed to broadband-only customers? In 2018, the Commission sought comment on the relationship between CAF ICC and conversions of voice-broadband lines to CBOLs and asked, among other questions, whether there are circumstances in which some portion of revenues from interconnected voice over Internet protocol (VoIP) service should be imputed against CAF ICC support.³⁸⁷ We ask commenters to refresh the record regarding whether interconnected VoIP revenue should be imputed to reduce CAF ICC support. We note that carriers already have the opportunity to

³⁸⁰ *Id.* at 18120, para. 1328.

³⁸¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report 2021 at 41, Table 3.2 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf> (showing 2016 CAF ICC for rate-of-return carriers); Federal-State Joint Board on Universal Service, Universal Service Monitoring Report 2022, Updated 2022 High-Cost Claims (showing 2022 CAF ICC for rate-of-return carriers), <https://docs.fcc.gov/public/attachments/DOC-392121A1.xlsx>.

³⁸² *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18120-21, para. 1328.

³⁸³ *Id.* at 18120-21, paras. 1328-29.

³⁸⁴ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3160-61, para. 203.

³⁸⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17991-94, paras. 913-16; 51.917(e)(6).

³⁸⁶ For example, carriers participating in the NECA tariff charge an ARC less than \$3 in 70% of their exchanges, and \$0 in 45% of their exchanges. National Exchange Carrier Association, Inc. Tariff F.C.C. No. 5, Transmittal No. 1665, Attach., CAF ICC TRP (filed June 16, 2022).

³⁸⁷ *2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11949, para. 204.

recover the full cost of serving their broadband-only customers through end-user rates and CAF BLS. Should the Commission impute any portion of such revenue to reduce CAF ICC?

137. We seek comment regarding whether the Commission should, alternatively, reduce Eligible Recovery or base period revenue amounts to reflect the conversion of voice lines to broadband-only lines. We note that consumer broadband-only loops were not an established category of service at the time the Commission adopted CAF ICC, and the Commission therefore did not consider the implications of consumers substituting broadband-only service for voice and voice-broadband service. Are carriers able to avoid the switched access service costs the ARC and CAF ICC are intended to recover as their customers convert their voice service to broadband-only lines? For example, among the rate-of-return carriers that reported costs for HCLS purposes in all years from 2007 through 2021, the net plant-in-service for Central Office Switching Equipment (Account 2210) has declined from \$963.4 million in 2011, when CAF ICC was adopted, to \$507.1 million in 2016, when CBOs were adopted, to \$280.1 million in 2021.³⁸⁸ Is the amount of switched access net plant-in-service declining because demand for switched access service is declining and carriers are not replacing depreciated or retired switching plant as quickly as the plant is being depreciated or retired? Is there switched access plant that should be retired because it is no longer used and useful, which would suggest that switching costs should be even lower than reported? Are carriers able to replace switched access plant with cheaper plant in a modern network?

2. Deployment Obligations for CAF BLS Recipients

138. We next seek comment regarding the deployment obligations for rate-of-return carriers receiving CAF BLS. Above, we adopt a voluntary pathway to model-based support for current CAF BLS recipients, pursuant to which the electing carriers would be required to deploy service of at least 100/20 Mbps to all required locations in their study areas.³⁸⁹ In addition, programs administered by other federal agencies, as well as state programs, have made or will be awarding funding to broadband providers. Notably, the BEAD Program, created by the Infrastructure Act, is expected to begin awarding grants to carriers to provide 100/20 Mbps or faster in unserved or underserved areas (or an enforceable commitment to deploy 100/20 Mbps or faster service).³⁹⁰ In considering whether to modify the deployment obligations for CAF BLS recipients, we are mindful that, in order to minimize wasteful duplicative funding of broadband deployment, the deployment obligations should take into account the funding being provided by other government agencies, and the associated deployment obligations. In this section, we seek comment regarding updates to our rules to reflect the expected award of funding pursuant to BEAD and other federal programs for areas within the service territories of legacy rate-of-return support recipients.³⁹¹

139. CAF BLS recipients currently have defined obligations to deploy broadband with a minimum speed of 25/3 Mbps to a specified number of locations over a five-year term that runs through

³⁸⁸ See NECA Study Results, 2012 Report; NECA Study Results, 2017 Report; NECA Study Results, 2022 Report, <https://www.fcc.gov/universal-service-fund-data-neca-study-results> (last visited July 23, 2023).

³⁸⁹ See *supra* section III.

³⁹⁰ See BEAD Program NOFO.

³⁹¹ We note that the Office of Economics and Analytics, in conjunction with the Bureau, recently released the National Broadband Funding Map, which allows users to “identify, search, and filter federal funding programs by the Internet Service Provider receiving funding, the duration timeline, the number of locations included in the project, and the download and upload speeds.” *Broadband Funding Map Public Notice*. This funding map will be an essential tool for identifying other sources of federal funding that otherwise may be duplicated by high-cost universal service funds.

2023.³⁹² Under the Commission's rules, a second five-year term, with obligations determined to deploy additional 25/3 Mbps or faster service, as determined by a pre-set formula, will begin January 1, 2024.³⁹³

140. We first ask whether we should continue to require deployment obligations for CAF BLS recipients. If we do require deployment obligations, should we increase the obligations to 100/20 Mbps, consistent with the Infrastructure Act and Enhanced A-CAM? Alternatively, should the Commission retain the existing 25/3 Mbps deployment obligations and methodology? If the Commission adopts an obligation to deploy 100/20 Mbps, how should the Commission determine the number of locations to which the carrier must deploy? Now that the Commission has a comprehensive list of locations and served areas from the Fabric and the Broadband Data Collection, should a carrier's buildout obligation correspond with unserved Fabric locations in its study area? Can the existing methodology be updated to determine the amount of 100/20 Mbps deployment that should be required? Currently, the Commission's rules use various statistics to calculate obligations, such as five-year CAF BLS forecasts, density groupings, and average cost per loop for carriers with 95% deployment. We propose to update those inputs to the formula and seek comment on this proposal. We note that CAF BLS carriers are currently prohibited from deploying wireline technology to provide broadband if doing so would cause their high-cost support to exceed the monthly per-line cap on support.³⁹⁴ How should the Commission reflect that prohibition in setting the deployment obligations?

141. Next, we note that many locations served by CAF BLS recipients are likely to be eligible for BEAD and other programs. Should the Commission require deployment obligations for CAF BLS carriers that includes areas where they or competitors are subject to deployment obligations pursuant to awards from agencies? Alternatively, should the Commission limit deployment obligations to locations without enforceable commitments to deploy broadband? Under the alternative, what criteria should the Commission use to identify qualifying enforceable commitments? We seek comment on whether we should re-assess or adjust deployment obligations. For example, if the new term for CAF BLS deployment obligations commences in 2025, but another agency makes a qualifying award with enforceable deployment obligations in 2026, how should the Commission adjust the CAF BLS carrier's obligations to reflect that new qualifying award? Should the CAF BLS deployment obligations be revisited mid-term? Alternatively, should obligations set at the beginning of the term continue, unadjusted, even if that results in some obligations that may be duplicative of deployment that results from funding awarded after the initial determination?

142. We seek comment on deferring the commencement of the next five-year term, should we find it necessary, by one year, to January 1, 2025. This would enable the Commission to make an initial determination, prior to the commencement of the term, regarding areas for which new CAF BLS deployment obligations would be appropriate. On the other hand, deferring the commencement of the next term until 2025 may further delay deployment of broadband in areas that currently lack high-quality broadband. Are there other benefits or disadvantages to deferring the commencement of the next term of deployment obligations? Deferring the next term of deployment obligations would not, in itself, affect support for legacy support recipients.

3. Adjustments to Support to Reflect Funding from Other Federal and State Programs

143. We seek comment regarding measures to prevent duplication of support where a service provider other than the legacy rate-of-return carrier is awarded funding for broadband deployment. We note that section 54.319 of the Commission's rules already eliminates CAF BLS in areas served by an unsubsidized competitor. We seek comment regarding whether we should similarly eliminate CAF BLS

³⁹² *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11925-27, paras. 104-12; 47 CFR § 54.308.

³⁹³ See 47 CFR § 54.308(a)(2)(iv).

³⁹⁴ *Id.* § 54.308(a)(2)(iii).

support in areas for which competitors have been awarded funding to provide broadband service.³⁹⁵ Under section 54.319, a rate-of-return carrier loses CAF BLS for any census blocks in which an unsubsidized competitor, or a combination of unsubsidized competitors, provides qualifying service to at least 85 percent of the residential locations.³⁹⁶ Would it be appropriate to simply extend that standard to include locations served by competitors subject to awards made by federal or state agencies? Is competitive service to “at least 85 percent of residential locations in a census block” still the appropriate standard for disallowing legacy support for the incumbent carrier? Is there a different geographic area, including sets of locations below the census block level, that should be considered? Or is the census block the smallest unit for which the removal of support due to competition should be applied?

144. We seek comment regarding what criteria should be used to determine a qualifying service. Section 54.319(d) defines qualifying service as “voice and broadband service meeting the public interest obligations in section 54.308(a)(2).”³⁹⁷ If an award by another agency does not require voice service to be provided, should it nonetheless be treated as qualifying service? Section 54.308(a)(2) prescribes the broadband deployment requirements for CAF BLS recipients, and currently requires 25/3 Mbps service.³⁹⁸ If the Commission does not modify the speed associated with the deployment obligation, should section 54.319 instead require a competitor’s provision of or commitment to provide 100/20 Mbps or faster service as a condition of applying section 54.319?

145. We seek comment regarding how to reduce legacy support for areas that are served by an unsubsidized competitor or subject to a qualifying enforceable commitment to deploy broadband. Given the shared nature of the costs incurred by rate-of-return carriers and the long-established methods of recording costs pursuant to Part 32, we do not believe it is feasible to calculate CAF BLS only for specific areas within a study area, while excluding other parts of the study area. Instead, we tentatively conclude that support should be calculated for the entire study area, then “disaggregated” to various areas using some allocation method. We seek comment regarding this tentative conclusion. Under section 54.319, when census blocks have been determined to be served by an unsubsidized competitor, the CAF BLS recipient is permitted to elect a disaggregation methodology from among three methods identified in the *2016 Rate-of-Return Reform Order*: (1) based on the relative density of competitive and non-competitive areas; (2) based on the ratio of competitive to non-competitive square miles in a study area; or (3) based on the ratio of calculated A-CAM support for competitive areas to total study area support.³⁹⁹ We seek comment regarding whether these methods are appropriate for continued use in general, and specifically for the purpose of disallowing support where a competitor has an obligation to deploy pursuant to a funding award. Should any of these methodologies be discontinued or revised? Even under this disaggregation process, a rate-of-return carrier might have an incentive to continue incurring deployment expenses to serve the competitive areas because those costs could not be excluded from its cost study and therefore would still be incorporated in the CAF BLS calculation. Indeed, the disaggregation methods assume that the costs of service are distributed across both competitive and non-competitive areas. Are there alternative methods for disaggregating CAF BLS between competitor-served or -obligated areas and non-competitive areas?

146. We seek comment regarding the timing of any support reductions associated with qualifying funding to competitors. Section 54.319 sets forth schedules for phased reductions where unsubsidized competitors provide service.⁴⁰⁰ Are phased reductions in support also appropriate where a

³⁹⁵ *Id.* § 54.319.

³⁹⁶ *Id.* § 54.319(d).

³⁹⁷ *Id.*

³⁹⁸ *Id.* § 54.308(a)(2).

³⁹⁹ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3139-42, paras. 138-45.

⁴⁰⁰ 47 CFR § 54.319(f), (g).

competitor has received a qualifying award? When should the reductions, whether a graduated phase-down or flash-cut elimination of support, occur? When a qualifying award is identified by Bureau review? We note that there may be cases where, due to default or other unforeseen issues, the required deployment is never made by the competitor. Would it therefore be better to eliminate support for the rate-of-return carrier only when the required competitive deployment is made?

147. We seek comment regarding the process for making the determinations that a qualifying award has been made to a competitor. Pursuant to section 54.319(h), the Bureau is instructed to update its analysis of competitive overlap by unsubsidized competitors every seven years.⁴⁰¹ In the *2016 Rate-of-Return Reform Order*, the Commission adopted a challenge process to be conducted for determining which census blocks are competitively served.⁴⁰² We seek comment regarding updating this process generally and regarding changes necessary to address areas being served by competitors receiving qualifying awards. We note that the process as adopted relies on deployment data provided on FCC Form 477.⁴⁰³ Deployment data is now collected pursuant to the Broadband Data Collection (and depicted on the National Broadband Map) process, and federal funding data is collected pursuant the National Broadband Funding Map process. Can the challenge process described in the *2016 Rate-of-Return Reform Order* be improved or simplified as a result of these recent data initiatives? Because the National Broadband Map and the National Broadband Funding Map will provide location-specific service data, would the Bureau be able to determine whether the 85 percent threshold has been met without first publishing a preliminary list of competitors serving census blocks and collecting certifications from unsubsidized competitors? While we expect the National Broadband Funding Map data to include information regarding some awards, it may not be complete and may not, for example, include all awards made by state agencies. Should the Bureau adopt a process for collecting such data, permitting competitors that received awards and awarding agencies to identify census blocks for which qualifying awards have been made? Alternatively, if reductions to support are triggered only by actual deployment by the competitor receiving a qualifying award, should we rely on the National Broadband Map to determine the areas in which legacy support should be discontinued?

148. We seek comment regarding how often a review should be conducted. The current rule requires a review every seven years.⁴⁰⁴ Is this an appropriate schedule for review? Alternatively, should the Bureau conduct its review every five years, prior to the development of new deployment obligations for CAF BLS recipients? Or should a review be conducted each time a new versions of the National Broadband Map or the National Broadband Funding Map are released? Is there some other period the Commission should consider?

149. Finally, we note that section 54.319 only reduces the amount of CAF BLS received by rate-of-return carriers.⁴⁰⁵ Should it be extended to reduce HCLS or CAF ICC?

150. *Support Where the Rate-of-Return Carrier Receives Grants for Deployment.* We next seek comment regarding the treatment of legacy support in areas where the incumbent rate-of-return carrier receives a grant for deployment from another federal or state agency.

⁴⁰¹ *Id.* § 54.319(h). Because the Commission's fixed broadband deployment data was until recently only collected at the census block level, the Commission had difficulties implementing this process without inadvertently eliminating support for unserved locations. See FCC, *Fixed Broadband Deployment Data from FCC Form 477*, at <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477> (last visited July 23, 2023). As noted, deployment data is now collected pursuant to the Broadband Data Collection process on a location basis.

⁴⁰² *2016 Rate-of-Return Order*, 31 FCC Rcd at 3133-34, paras. 121-24.

⁴⁰³ *Id.* at 3134, para. 123.

⁴⁰⁴ 47 CFR § 54.319(h).

⁴⁰⁵ *Id.* § 54.319(e).

151. Under the Commission’s rules, rate-of-return carriers treat grants as capital contributions, which must be excluded from their Part 32 property accounts.⁴⁰⁶ The grants are therefore excluded from the capital costs on which CAF BLS and HCLS are based, preventing double-recovery of investment paid for with grants.⁴⁰⁷ We seek comment regarding whether further safeguards are necessary to ensure compliance with our existing rules. For example, should USAC be required to collect information regarding grants received by legacy support recipient on CAF BLS-related forms, or in annual compliance filings?

152. We also seek comment regarding whether further measures should be adopted to address receipt of grants by recipients of legacy support. We note that many operating expenses are allocated among services based on relative amounts of capital (or, “plant-in-service”) in various cost categories.⁴⁰⁸ Might the exclusion of large amounts of plant associated with grants result in distortions in the allocation of expenses? For example, if a carrier receives a grant to deploy middle mile facilities and excludes that property from its cost study in accordance with Part 32, relatively more operating expenses would be allocated to local loop, and therefore recoverable through CAF BLS and HCLS, than would be recoverable if the carrier had financed the facilities through debt or equity. Conversely, a carrier receiving grants to deploy broadband-capable end-user lines may receive less support because the operating expenses that would otherwise be associated with the common line or CBOs would be allocated to other cost categories. Is this issue likely to be significant, requiring further attention? If the Commission should address this issue, how would it do so?

4. Digital Equity

153. The Commission, as part of its continuing effort to advance digital equity for all,⁴⁰⁹ 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 considerations⁴¹⁰ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

V. NOTICE OF INQUIRY

154. This Notice of Inquiry (NOI) seeks to build a record to help the Commission explore methods to ensure universally affordable and available fixed broadband services into the future, in light of section 254(c)(1)’s definition of universal service as an “evolving level of . . . service, taking into account

⁴⁰⁶ *Id.* § 32.2000(a)(2).

⁴⁰⁷ *See* 47 CFR Parts 36, 54, and 69.

⁴⁰⁸ *See* 47 CFR § 36.310(b).

⁴⁰⁹ 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.

⁴¹⁰ 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).

advances in telecommunications and information technologies and services.”⁴¹¹ We seek comment on whether and how the Commission should modify its USF high-cost support program considering the anticipated deployment in most high-cost areas of robust, scalable, next-generation broadband networks offering a minimum of 100/20 Mbps service made possible through Commission programs, programs created by the Infrastructure Act, and other state and federal subsidy programs. In the past, the high-cost support program largely sought to incrementally upgrade deployed broadband network speeds in high-cost areas. In areas where robust scalable networks such as fiber are deployed, however, future speed upgrades may be relatively low cost. Our traditional approach, therefore, may no longer be well-suited to a changed broadband landscape. In the *Future of USF Report*, the Commission stated in such landscape, it “could consider the creation of a process to support operating costs that are not recoverable from revenues earned when prices are set at just, reasonable, and affordable levels and from other sources of income, e.g., governmental grants.”⁴¹² This NOI explores several options for how this could be accomplished, including through cost modeling, business case analysis, and competitive mechanisms. In addition, given that broadband adoption rates in rural areas still lag considerably behind those in urban areas, we explore whether the high-cost program’s focus should be redirected towards a goal of universal broadband adoption and affordability.⁴¹³ We seek comment on these approaches and invite comment on other approaches for how best to further the Commission’s universal service goals.

A. Background

155. As discussed above, the Infrastructure Act included a federal investment of approximately \$65 billion for broadband deployment and affordability.⁴¹⁴ Of this \$65 billion, \$42.45

⁴¹¹ At this time, we decline to consider whether planned high-cost programs designed to provide additional support for deployment, such as the Rural Digital Opportunity Fund (RDOF) Phase II program, will remain necessary after all deployment commitments under BEAD and/or other Infrastructure Act programs are made. See *Future of USF Report* at 691, para. 9 (explaining that the RDOF Phase II Auction would target census blocks that are only partially served, as determined “through the Digital Opportunity Data Collection, or suitable alternative data source” and census blocks not awarded support in the RDOF Phase I Auction) (quoting *RDOF Order*, 35 FCC Rcd at 691, para. 9). Rather than focusing this NOI on the needs of areas that may still lack broadband service meeting minimum speed and latency standards after Infrastructure Act resources are allocated, this NOI explores issues relating to the sustainability of such service in high-cost areas over the longer term. As indicated in the *Future of USF Report*, however, we will initiate further inquiry or a rulemaking if we determine that USF support is still needed to efficiently bring broadband service to unserved or underserved areas. See *Future of USF Report* at 28, para. 52.

⁴¹² See *Future of USF Report* at 22, para. 42.

⁴¹³ See Industry Analysis Division, Office of Economics & Analytics, Internet Access Services: Status as of June 30, 2019 at Figure 49 (2022), <https://www.fcc.gov/document/oea-releases-data-internet-access-services-june-30-2019> (last visited July 23, 2023) (Internet Access Services Report); Emily A. Vogels, Some Digital Divides Persist Between Rural, Urban, Suburban America (2021), <https://www.pewresearch.org/short-reads/2021/08/19/some-digital-divides-persist-between-rural-urban-and-suburban-america/> (last visited July 23, 2023) (explaining that the results of a Pew Research Center study in 2021 indicates that approximately 72% of consumers in rural areas have a broadband internet connection at home but continue to have adoption rates that lag behind those in suburban areas). But cf. Mike Conlow, Substack, Comparing broadband access to adoption in urban, suburban, and rural America (2023), <https://www.benton.org/headlines/comparing-broadband-access-adoption-urban-suburban-and-rural-america> (last visited July 23, 2023) (based on new FCC maps that measure broadband access and new American Community Survey data that measure adoption, “the high adoption rate [in rural areas] relative to access, 59% adoption against 64% access, suggests that the currently unserved and underserved are eager for access and will have a high take rate,” in comparison to that in urban areas, where the adoption rate relative to access is 73% adoption against 98.5% access).

⁴¹⁴ The Infrastructure Act allocates \$42.45 billion to the Broadband Equity, Access, and Deployment (BEAD) Program, Infrastructure Act §§ 60101-105; \$14.2 billion for an Affordable Connectivity Program, *id.* §§ 60501-506, which replaces the Commission’s existing Emergency Broadband Benefit Program; \$2.75 billion for the Digital (continued....)

billion is allocated to the BEAD Program.⁴¹⁵ BEAD funding, which nearly equals the Commission's universal service high-cost support disbursements from 2011 to 2020,⁴¹⁶ is intended to kick-start⁴¹⁷ the deployment of networks capable of offering reliable service at 100/20 Mbps or more at a latency of 100 milliseconds or less to locations that do not already receive such service.⁴¹⁸ In addition to BEAD, there are several other federal and state programs supporting broadband deployment.⁴¹⁹

156. In the Infrastructure Act, Congress directed the Commission to submit to Congress “a report on the options of the Commission for improving its effectiveness in achieving the universal service goals for broadband in light of this Act and the amendments made by this Act, and other legislation that addresses those goals.”⁴²⁰ In the *Future of USF Report*, adopted on August 12, 2022, and with respect to fixed broadband services, we recommended that the Commission “consider the future support needs of networks serving high-cost and other hard to serve areas,” and “explore and develop strategies to ensure that consumers have continuing access to advanced telecommunications services in high-cost areas that are reasonably comparable to that offered in urban areas at reasonably comparable prices.”⁴²¹ The *Future*

(Continued from previous page)

Equity Act of 2021, *id.* §§ 60301-306; \$2 billion for the Tribal Broadband Connectivity Program, *id.* § 60201; \$2 billion for the Rural Utilities Service Distance Learning, Telemedicine and Broadband Program, and \$1 billion for the Enabling Middle Mile Broadband Infrastructure program, *id.* § 60401. See Infrastructure Act, div. J, Tit. IV — Financial Services and General Government (listing appropriations for Infrastructure Act programs). The Tribal Broadband Connectivity Program received an appropriation of \$1 billion in the Consolidated Appropriations Act, 2021 and \$2 billion in the Infrastructure Act. Consolidated Appropriations Act, 2021 § 905(c), 134 Stat. at 2138-39.

⁴¹⁵ Infrastructure Act § 60102(b)(2).

⁴¹⁶ The high-cost program disbursed \$49.9 billion from 2011 to 2021. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, WC Docket Nos. 02-6 et al., Universal Service Monitoring Report, at 23, Table 1.10, Universal Service Disbursements 2001-2022, <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴¹⁷ “Kick-start” capital funding refers to upfront funding for the deployment of long-lived capital investments.

⁴¹⁸ See BEAD Program NOFO at 5 (explaining that the BEAD program's principle focus is supporting the deployment of service to unserved and underserved locations).

⁴¹⁹ Federal broadband grants available through the American Rescue Plan Act of 2021 and the Infrastructure Act, among others, will invest billions more in support of broadband development and services. American Rescue Plan Act § 9901(a); Infrastructure Act § 60102(b)(2); Capital Projects Fund, U.S. Dept. of Treasury at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/capital-projects-fund> (last visited July 23, 2023); *Fact Sheet: Biden-Harris Administration Announces Over \$25 Billion in American Rescue Plan Funding to Help Ensure Every American Has Access to High Speed, Affordable Internet*, June 7, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/07/fact-sheet-biden-harris-administration-announces-over-25-billion-in-american-rescue-plan-funding-to-help-ensure-every-american-has-access-to-high-speed-affordable-internet/>. For a summary of certain federal programs supporting broadband services, see Broadband USA, Federal Funding, <https://broadbandusa.ntia.doc.gov/resources/federal/federal-funding> (last visited July 23, 2023). For information about state programs supporting broadband deployment and services, see The Pew Charitable Trusts, *Issue Brief: How State Grants Support Broadband Deployment* (Dec. 14, 2021, as updated Dec. 23, 2021), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/12/how-state-grants-support-broadband-deployment> (last visited July 23, 2023); The Pew Charitable Trusts, *How States are Expanding Broadband Access Report* at 22-27 (2020), https://www.pewtrusts.org/-/media/assets/2020/03/broadband_report0320_final.pdf (describing grant programs provided in Colorado, Minnesota Tennessee, Virginia, and Wisconsin supporting broadband deployment and services); see generally A. Read and L. Gong, *Which States Have Dedicated Broadband Offices, Task Forces, Agencies, or Funds?* (2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/06/28/which-states-have-dedicated-broadband-offices-task-forces-agencies-or-funds> (last visited July 23, 2023).

⁴²⁰ Infrastructure Act § 60104(c).

⁴²¹ *Future of USF Report* at 22, para. 8.

of *USF Report* also recommended initiating a proceeding to “evaluate the funding needs of existing and future providers that have already deployed high-speed broadband networks and consider the creation of new support processes.”⁴²² Initiating such a proceeding allows us to further assess the “role of universal service in a post-Infrastructure Act national broadband landscape, consistent with the goals,” universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States, adopted in the report.⁴²³

157. Section 254(b) directs the Commission to base policies for the preservation and advancement of universal service on several principles, including that “[q]uality services shall be available at just, reasonable, and affordable rates;” that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation,” and that there “should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”⁴²⁴ Section 254(e) provides that any funding provided to ETCs shall be “explicit and sufficient to achieve the purposes of this section,” and limits ETC use of such funds to “the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁴²⁵ Within this framework, the Commission must devise universal service support mechanisms that carefully weigh the enumerated principles in section 254 and that “strike an appropriate balance between the interests of consumers and industry.”⁴²⁶ Since 2011, the Commission has created mechanisms that are designed to ensure that providers deploying networks receive “no more support than is necessary” and that “rate-of-return carriers have sufficient incentives to be prudent and efficient in their expenditures, and in particular their operating expenses.”⁴²⁷

158. The Commission’s current model-based and auction-based high-cost programs provide incentives to invest in broadband deployment in high-cost areas by providing fixed annual support that,

⁴²² *Id.* We limit considerations in this NOI to fixed services. We note that the *Future of USF Report* recognized the importance of the new mobile broadband deployment maps “that will provide the most granular and standardized mobile deployment maps ever developed,” and recommended that the “Commission proceed with providing additional support for mobile broadband through a competitive process but only after the completion of these maps that will provide a better understanding of mobile coverage.” *Id.* at 29, para. 53; see Broadband DATA Act, 47 U.S.C. § 642 (requiring the Commission to, inter alia, develop and adopt the technical requirements to implement the mobile challenge, verification, and crowdsourcing processes for mobile broadband service); *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Public Notice, DA 22-241 (WTB/OEA/OET Mar. 9, 2022). The *Future of USF Report* also recommended that the Commission “include as part of its long-term plans, an evaluation of the impact of the BEAD Program and other federal and state broadband infrastructure investments discussed in this report on future mobile deployments.” See *Future of USF Report* at 29, para. 54. Accordingly, we intend to evaluate the continuing support needs of mobile wireless carriers at a future point in time, once the Commission can more fully assess the availability and types of service offerings in high-cost areas.

⁴²³ *Future of USF Report*, at 6, 13, paras. 12, 27.

⁴²⁴ See 47 U.S.C. § 254(b).

⁴²⁵ *Id.* § 254(e).

⁴²⁶ See *AT&T v. FCC*, 886 F.3d 1236, 1251 (D.C. Cir. 2018) (citations omitted).

⁴²⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17741-47, paras. 210-26 (adopting “a framework for ensuring that companies do not receive more support than necessary to serve their communities” consisting of “benchmarks for prudent levels of capital and operating costs”); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3091, para. 6 (“One of the core principles of reform since 2011 has been to ensure that support is provided in the most efficient manner possible, recognizing that ultimately American consumers and businesses pay for the universal service fund (USF). We continue to move forward with our efforts to ensure that companies do not receive more support than is necessary and that rate of return carriers have sufficient incentive to be prudent and efficient in their expenditures, and in particular operating expenses.”); see also *Alenco Comm’ns, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) (“The agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.”).

when added to expected revenues, is intended to allow for the recovery of costs associated with efficient network operations and replacement of depreciated equipment.⁴²⁸ To provide certainty and sufficient investment incentives to subsidy recipients, the Commission provides this support over a set term.⁴²⁹ The Commission conditions the receipt of high-cost support on the recipient's satisfaction of certain deployment and public interest requirements.⁴³⁰ The Commission's longstanding objective has been to base high-cost support on a carrier's forward-looking, efficient costs.⁴³¹

B. Discussion

159. The Commission's focus since the *USF/ICC Transformation Order* in 2011 has been on supporting the deployment of new, robust networks and their associated operational costs for a limited term.⁴³² However, providers in high-cost areas that already operate such fully deployed networks might not have a business case for continuing to operate those networks and provide services absent ongoing programmatic support that will augment existing revenues.⁴³³ Similarly, providers that receive support under programs such as BEAD that are designed to kick-start network deployment without providing

⁴²⁸ *CAM Platform Order*, 28 FCC Rcd at 5307, para. 11 (explaining that the CAM platform will allow the Bureau to estimate the full average monthly cost of operating and maintaining an efficient, modern network, including all capital and operating expenses associated with a modern network); *Wireline Competition Bureau Seeks Comment on Model Design and Data Inputs for Phase II of the Connect America Fund*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 6147, 6157, para. 31 n.36 (WCB 2012) (stating that an "efficient provider" for purposes of modeling forward-looking costs "means one that deploys a network that provides speed and capacity that scale easily and which provides the greatest potential for end-user revenue, including data, voice and video over the long-run"). The CAF-BLS support program is more complex, allowing support recipients to recover certain embedded costs calculated on an annual basis. See generally 47 CFR Part 32.

⁴²⁹ See, e.g., 47 CFR § 54.804(b) (indicating the RDOF support term); *id.* § 54.310(b) (indicating CAF Phase II auction support term); *id.* § 54.311(a)(1),(c) (indicating start and end date of support terms are equal for A-CAM I, Revised A-CAM, and A-CAM II).

⁴³⁰ See, e.g., *id.* § 54.308(a) (describing A-CAM I and Revised A-CAM recipients' defined deployment obligations and public interest requirements); *id.* § 54.308(c) (stating that the Alaska Plan recipients' specific broadband deployment and speed obligations shall be governed by the terms of their approved performance plans); *id.* at § 54.1506 (describing PR/USVI Stage 2 support recipients' deployment obligations); *id.* § 54.802(c) (describing RDOF support recipients' defined deployment obligations). See *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67 (requiring carriers subject to public interest service requirements to annually test and report the speed and latency of a random sample of locations).

⁴³¹ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11903, para. 31 ("Expanding the number of carriers receiving model-based support will advance the Commission's longstanding objective to provide high-cost support based on a carrier's forward-looking, efficient costs and will help spur additional broadband deployment in rural areas."); *USF/ICC Transformation Order*, 26 FCC Rcd at 17768, para. 286 (indicating that while the Commission would extend parts of the cost-based legacy system as reformed, it was also "giving notice that we intend to transition to more incentive-based regulation in the near future"); *id.* at 17673, para. 20 (indicating that the CAF, which relies on "incentive-based, market-driven policies," is intended to ultimately replace all existing high-cost support mechanisms); *Universal Service First Report and Order*, 12 FCC Rcd at 8899, para. 224 (explaining that "the proper measure of cost for determining the level of universal service support is the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services").

⁴³² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17727, para. 166 ("Specifically, we adopt the following methodology for providing CAF support in price cap areas. First, the Commission will model forward-looking costs to estimate the cost of deploying broadband-capable networks in high-cost areas and identify at a granular level the areas where support will be available.").

⁴³³ Several commenters in the *Future of USF* proceeding asserted providers will need this support but did not provide evidence of such need. See *Future of USF Report* at 23-24, para. 44 & n.168.

support for sustained operations may face similar circumstances.⁴³⁴ Depending on the scope of this problem, lack of funding could threaten the sustainability of these full-service networks in high-cost areas. Accordingly, with this NOI, we will assess the scope of this problem and explore whether we should adopt a mechanism or process to address, including soliciting information about the best methods for determining the support needed by carriers to efficiently maintain these full-service networks. We seek comment on appropriate methods of measuring and evaluating the future support needs of carriers with full-service networks, particularly where providers have received significant upfront federal and/or state funding.⁴³⁵ We seek comment on whether differences in how providers were previously subsidized should be considered to avoid paying for the same costs twice, and if so, how.

160. We expect this effort will require, at a minimum, determining which networks should be considered full service and thus, potentially eligible for sustainability support, and which full-service networks should be deemed ineligible because their operations are economically viable independent of such support. Further, to assess economic viability of continued operations, we will need to determine capital costs (including the cost of debt and equity), operating costs, and the estimated revenues from network over time, which in turn requires estimates of penetration rates. In estimating expected costs and revenues, we should consider any current or expected support and may need to consider expected inflation rates. In developing a methodology for determining the need for ongoing support for operating expenses, we must also consider how often to recalculate the need for support and how we can ensure that other past, current, and future support are properly considered. We seek comment on this approach and these considerations against the backdrop of the universal service goals adopted in the *Future of USF Report*.⁴³⁶

1. Definition of a “Full-Service Network”

161. Within its high-cost programs, the Commission has measured successful deployment based on meeting and sustaining certain public interest obligations, including specific service speeds and latency.⁴³⁷ We expect a support program designed to sustain operations would meet consumers’ service and pricing needs. We seek comment on what those needs should be. How should we define a full-service network, meaning a network potentially eligible for sustainability support? Should we factor in network performance standards, if any, that the provider was required to meet pursuant to the terms and conditions of other federal or state funding, and if so, how? Are there other requirements that we should adopt as part of its definition of a full-service network?

162. In addition, to what extent must a full-service network deploy service to residential and business locations within an area? Do we need to factor in businesses that would take mass market service versus ones expected to subscribe to an enterprise service? For example, should we require, as a prerequisite to any funding, that the network can turn on service in a set number of days, e.g., 7-10 days, to each broadband serviceable location identified in the Fabric, which serves as the foundation for availability data in the National Broadband Map? Should the Commission factor in the deployment obligations under other federal or state programs, and if so, how? Should the Commission require a

⁴³⁴ NTIA explains that while BEAD will subsidize capital expenses, one of the “key cost considerations for providers are their remaining [capital costs] (match amount) and ongoing [operating expenses] once the network is operational.” NTIA, *Economics of Broadband Networks: an Overview*, at 3 (2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/202203/Economics%20of%20Broadband%20Networks%20PDF.pdf>. In addition, NTIA notes that when reviewing BEAD applications, one consideration should be whether planned revenues are sufficient to ensure economic viability. *See id.* at 4.

⁴³⁵ *See, e.g.,* Paul de Sa, *Broadband Financials: A Practical Primer* (May 3, 2022), <https://www.benton.org/headlines/broadband-financials-practical-primer> (*Broadband Primer*).

⁴³⁶ *See Future of USF Report* at 6, para. 12.

⁴³⁷ For example, RDOF offers funding for service at one Gigabit per second (Gbps) download and 500 Megabit per second (Mbps) upload. *RDOF Order*, 35 FCC Rcd at 702-703, para. 31.

provider claiming to operate a full-service network to show that it can extend service to any new locations within a defined period? What kinds of information would we ask such providers to submit to make these showings?

163. We also seek comment on whether the definition of a full-service network should differ for areas outside the contiguous United States or for Tribal lands, and if so, how? How should we define Tribal lands when considering the definition of a full-service network? What unique characteristics of such areas should we consider? Should we evaluate whether, and if so, to what extent, those factors impact the carrier through individualized reporting, or should we presume that these factors generally exist for all carriers serving these areas? For example, the Commission has permitted carriers to use Alaska Plan support to maintain service to existing locations without upgrade if they can demonstrate that they were not able to deploy additional service or upgrade their facilities (usually due to limited access to middle mile facilities).⁴³⁸ Should we define a full-service network in Alaska or other remote and isolated areas with reference to existing service in those areas? Should there be some minimum deployment requirement or public interest standards?

2. Developing a Support Methodology

164. We seek comment on whether we can or should leverage the Commission's existing cost models, or develop a new model, to estimate the monthly costs necessary to sustain a full-service network.⁴³⁹ If so, what would be the key assumptions about the design of the network and network engineering? For example, the Connect America Cost Model (CAM) assumes a green-field, Internet protocol (IP)-based fiber-to-the-premises (FTTP) network capable of providing both voice-grade access and broadband services.⁴⁴⁰ It estimates the terminal value of the network at the end of a five-year term determined by the book value of the assets.⁴⁴¹ Should the Commission use the same assumptions, standards, and attributes when referring to a full-service efficient network? What would be the appropriate topology of this network?⁴⁴² What other assumptions, standards, and attributes should the Commission use? For example, what is the appropriate geographic unit for evaluating costs and revenue, e.g., census blocks or individual locations?⁴⁴³

165. We also seek comment on how we address costs in areas in which locations are served by multiple carriers, but not all locations are served by all carriers. For example, do we need to disaggregate the costs of serving such areas and if so how should we do so? Are there common costs for all locations for a carrier serving an area that must be taken into account even if the carrier is the sole provider for some but not all of the locations in the area?

166. Currently, the Commission models the forward-looking operating costs of an efficient network using a range of data sources organized and aligned with relevant cost drivers, i.e., demand and associated capital investments.⁴⁴⁴ The model estimates the annualized total cost (including operating costs) of deploying a network using today's technology to all locations within a specified geographic area

⁴³⁸ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10146, para. 18 (2016).

⁴³⁹ See *CAM Platform Order*, 28 FCC Rcd at 5308-5316, paras. 16-33.

⁴⁴⁰ See *id.* at 5309, para. 18.

⁴⁴¹ See *id.*

⁴⁴² See Connect America Cost Model, Model Methodology, Version 4.2, at 15, <https://transition.fcc.gov/web/CAM%20v.4.2%20Methodology.pdf> (CAM Methodology Summary).

⁴⁴³ CAM estimates the costs at a census block level, measures the costs associated with a complete network (i.e., including both eligible and ineligible census blocks), and then assigns shared costs between the eligible and ineligible census blocks. See *CAM Platform Order*, 28 FCC Rcd at 5317-18, 5318, paras. 37, 40.

⁴⁴⁴ See *CAM Inputs Order*, 29 FCC Rcd at 4009, para. 99.

less an assumed per-location expected revenue.⁴⁴⁵ When adopting this approach, the Commission specifically rejected a proposed model that would limit support to brownfield development because, while a brownfield model accounts for the cost of initial upgrades to the extent that the existing network is not up to standard, a brownfield model does not account for replacement capital after an initial capital investment is made.⁴⁴⁶ Should the Commission use the same approach here, a modified version of this approach, or a new approach?

167. *Inputs.* What inputs should we use to quantify certain operating and capital costs, and what should those costs be, e.g., costs associated with making networks scalable to consumer demands and needs? In developing the CAM, the Commission took steps to account for a range of operating costs by considering, among other things, network operations expenses (both plant specific and plant non-specific, factoring company size and by density), general and administrative costs (including property tax indices by state), selling and marketing costs, and bad debt.⁴⁴⁷ Can this approach be readily adapted to estimate the support necessary to sustain networks that have been full-service? Are there other factors that should be considered when estimating operating costs? Should we adjust the model on a routine basis to account for changes to costs and if so, how often should this be done?

168. The CAM uses Annual Charge Factors (ACFs) to capture the cost of capital investments that are used over time, accounting for depreciation, income taxes, and cost of money.⁴⁴⁸ The cost of capital is the cost a firm will incur in raising funds in a competitive capital market based on a firm's overall systematic risk,⁴⁴⁹ and is generally estimated as a weighted average of the cost of equity and the cost of debt. In order to adopt final values for ACFs, the Commission must make certain assumptions regarding asset depreciation, income taxes, and the cost of money. For example, CAM determines the terminal value of the network based on "book value" calculated as the difference between investment and economic depreciation, which takes into account the economic life of the equipment and infrastructure.⁴⁵⁰ To determine a CAM input to capture the cost of money, the Commission used an analytical approach to establish a "zone of reasonableness," and selected an input at the midpoint of that range.⁴⁵¹ What assumptions about each input are relevant here?

169. How should a model supporting full-service networks reflect the carrier's composition of capital? Prior models have not recognized carrier-specific mixes of debt and equity financing, instead

⁴⁴⁵ See *CAM Platform Order*, 28 FCC Rcd at 5320, para. 44.

⁴⁴⁶ See *id.* at 5313-14, para. 30 & n.56 (rejecting proposed brownfield calculations that excluded certain capital costs and analogizing the exclusion to "paying only for home maintenance and repairs but not a mortgage would not capture the full cost of home ownership").

⁴⁴⁷ *CAM Inputs Order*, 29 FCC Rcd at 4009-4016, paras. 111-18; CAM Methodology Summary at 26-31.

⁴⁴⁸ *CAM Inputs Order*, 29 FCC Rcd at 4009-12, paras. 99-109. The CAM captures the cost of capital investment used over time by utilizing Annual Charge Factors (ACFs) to determine the capital related to the monthly cost of depreciation, cost of money, and income taxes. See *id.* at 4022, para. 78.

⁴⁴⁹ *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, WC Docket No. 03-173, Notice of Proposed Rulemaking, 18 FCC Rcd 18945, 18951, para. 13 (2003) (citing Alfred Kahn, *The Economics of Regulation, Principles and Institutions*, Vol. 1 at 45 (1970)).

⁴⁵⁰ *CAM Platform Order*, 28 FCC Rcd at 5313, para. 33.

⁴⁵¹ *CAM Inputs Order*, 29 FCC Rcd at 4011-12, para. 107; *Prescribing the Authorized Rate of Return: Analysis of Methods for Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 10-90, Staff Report, 28 FCC Rcd 7123 (WCB 2013); *Wireline Competition Bureau Seeks Comment on Rate of Return Represcription Staff Report*, WC Docket No. 10-90 et al., Public Notice, 28 FCC Rcd 7120, 7121 n.10 (WCB 2013).

reflecting a uniform cost of capital for all carriers subject to a particular model.⁴⁵² If we were to adopt a uniform cost of capital, how would we identify that cost and how often should it be reevaluated? Should that evaluation differ, as it does now, between carriers operating in price-cap areas receiving support through the CAM and rate-of-return carriers receiving support through A-CAM?⁴⁵³ How should we evaluate the impact of other sources of capital (such as federal and state grants)? In determining the cost of capital, does it matter whether different carriers have different debt-equity ratios? If a carrier has chosen a relatively expensive form of financing, should we provide support that validates that choice? Would this approach be consistent with treating carriers equally? Are there circumstances in which using a uniform cost of capital would create problems? Are such circumstances common? Could the waiver process resolve such instances?

170. Should capital inputs differ for carriers operating in areas outside the contiguous United States, and if so, how?⁴⁵⁴ For *the CAM*, the Commission incorporated specific factors to generate unique inputs for carriers operating in non-contiguous states and territories (such as the United States Virgin Islands, Puerto Rico, Alaska, and other areas), including those relating to the plant mix, undersea and submarine cable,⁴⁵⁵ terrain methodology,⁴⁵⁶ state-specific inputs,⁴⁵⁷ and company size.⁴⁵⁸ Should these same factors be taken into consideration when developing a model for sustaining full-service networks? Should other factors be taken into consideration?

171. *Data sources.* What objective, up-to-date, and available data sources can we use in the development of this cost model? Alternatively, or in addition to such sources, should we require the submission of accounting and financial information to model costs, revenues, past one-off grants, and similar? Should we require submission of information on specific and approved network plans, to the extent there are any, and associated funding? What other kinds of information should we collect to ensure realistic cost model and revenue estimates? And how often should this information be collected? For example, should it be collected periodically (annually or biennially, etc.) or only as current support arrangements come to their end, or some other way? What are the benefits and costs of different information collection timing choices? What would be the benefits of collecting and consolidating such information to supplement or replace other general industry research? What would be the administrative costs and resources required for completing this process? How could we make use of this information while avoiding the pitfalls of rate-of-return regulation?

172. *Revenues.* How would we model the present value of expected revenues of an efficient full-service network? How should we account for the fact that providers receiving current support must

⁴⁵² CAM Methodology Summary at 29 (stating that the CAM estimates the operational costs and the capital related monthly cost of depreciation, cost of money and income taxes, as developed through the application of levelized annual charge factors applied to the capex that is developed by the model).

⁴⁵³ See *CAM Inputs Order*, 29 FCC Rcd at 4011-12, para. 107 (setting a uniform cost of money at 8%); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3107, para. 51 (setting a uniform cost of money at 9.7% using the same methodology used for the CAM); see *id.* at 3209-10, paras. 319-20 (adjusting cost of capital for policy considerations unique to rate-of-return carriers).

⁴⁵⁴ When delegating to the Bureau the task of developing a forward-looking cost model, the Commission “direct[ed] the [Bureau] to consider the unique circumstances of [Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands and Northern Marianas Islands]” *USF/ICC Transformation Order*, 26 FCC Rcd at 17737, para. 193.

⁴⁵⁵ *CAM Inputs Order*, 29 FCC Rcd at 4020-23, paras. 129-35.

⁴⁵⁶ *Id.* at 4023-24, paras. 136-39.

⁴⁵⁷ *Id.* at 4024-27, paras. 140-47.

⁴⁵⁸ *Id.* at 4027-28, paras. 148-49.

set prices to mass market customers that are reasonably comparable to urban rates?⁴⁵⁹ For the CAM model, the Commission adopted a funding benchmark that takes into account both assumed expected revenues per subscriber and an assumed subscription rate,⁴⁶⁰ and the model calculates support for areas where such assumed revenues do not cover costs up to an extremely high cost threshold consistent with the budget.⁴⁶¹ For full-service networks, should we similarly take into consideration the actual take rate (subscriberhip) of these networks, particularly in and to areas where subscriberhip is influenced by regional factors such as limited income, mobile populations, and other factors? How would we measure and account for variable investments, and effectiveness, in marketing? Should expected take rates differ when measuring revenue and costs?

173. How should we account for revenue received from other federal and state grants that provide support on a one-time basis for deployment or provide continuing support to sustain operations?⁴⁶² Where urban broadband providers are unsubsidized and not subject to meeting a rate benchmarks, urban rates can adjust upwards when costs rise.⁴⁶³ Since rural rates can be set to the urban rate benchmark, could we assume any future rural cost increases could be recovered by accompanying rural price increases? Is there a reason to think that rural costs could rise at rates materially above the rate of increase in urban costs? If so, would the requirement to provide services that are reasonably comparable to urban services in quality and price not allow USF supported providers to fully recover their costs?

174. *Updates.* How often should we consider updates to an ongoing support model? Several commenters in the *Future of USF* proceeding asserted that funding should be made available for network improvements responsive to changes in consumer demands.⁴⁶⁴ Such changes could require adjustments to the model and/or model inputs. How would the Commission determine when such changes should or must be made? Could this be achieved, consistent with our past practice, by setting service standards and subsidy amounts for a set period, in order to grant providers a degree of certainty while allowing periodic adjustment? What would an appropriate support term be to offer certainty to providers while limiting inefficient payments? Should a support term consider the pace of technological development, changing

⁴⁵⁹ The Commission is required to recognize that “[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 113. Likewise, recipients of high-cost support that are subject to broadband performance obligations must offer broadband service at rates that are at or below the relevant reasonable comparability benchmark. *See id.* at 17695, para. 86; 47 CFR § 54.313(a)(3); *RDOF Order*, 35 FCC Rcd at 707, para. 42 (“All Rural Digital Opportunity Fund support recipients, like all other high-cost ETCs, will be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas”). Support recipients must certify that the pricing of the broadband offering they are relying upon to meet their broadband performance obligation is no more than the applicable benchmark as specified in a public notice annually issued by the Wireline Competition Bureau. *Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*; WC Docket Nos. 10-90, 14-58, 14-192, Report and Order, 29 FCC Rcd 15645, 15686-87, para. 120 (2014).

⁴⁶⁰ *See CAM Inputs Order*, 29 FCC Rcd at 4030-31, para. 157.

⁴⁶¹ *See id.* at 4035, para. 170.

⁴⁶² *See, e.g., Department of Agriculture Community Connect Grant Program*, 7 U.S.C. § 903 *et seq.*; 7 CFR § 1.739 *et seq.*; Hawaii Revised Statutes § 206r-1 *et seq.* (establishing Broadband Infrastructure Grant Initiative); N.H. Rev. Stat. §§ 12-O:61- 12-O:63 (establishing Broadband Matching Grant Initiative and Fund).

⁴⁶³ A provider operating without subsidization will exit if it cannot recover operating costs and the costs of capital renewal necessary to continue production.

⁴⁶⁴ *See Future of USF Report* at 24, para. 44 & n.171.

geographic and demographic conditions, or other factors? Should updates to the model similarly consider such changing circumstances?

175. *Alternatives to a model.* We next ask about other alternatives to a model. There may be certain disadvantages to the model-based approach. For example and based on previous experience, it may take some time, several years, to develop and update the model.⁴⁶⁵ In addition, a model makes certain assumptions of uniformity among potential support recipients, including uniform assumptions about cost, particularly given terrain and population characteristics,⁴⁶⁶ and uniform penetration and expected revenues.⁴⁶⁷ The CAM, as currently designed does not take into consideration other sources of support, such as those from the states or federal agencies. In light of these complications, are there any alternatives to a model that we should consider?

176. Given that the adaption of existing models is likely to require significant time and investment, should we prioritize other approaches? Should we adopt an interim plan for providing support while the cost model is developed? For example, as suggested in one publication, the Commission could measure the need for universal service support by requiring applicants for support to answer certain standard financially-oriented questions, the answers to which would then be fed into a standard financial model.⁴⁶⁸ This model would take into account potential sources of finance (including the cost of equity and debt and other possible sources of support), the cost of the initial build-out (or initial network capex), the relative amounts of fixed and success-based capex, the penetration rate and changes in the penetration rate over time, and projected revenues.⁴⁶⁹ One advantage of this approach is that it can permit us to take into account the individual characteristics of the applicants for support. We seek comment on this approach.

177. Since the *USF/ICC Transformation Order*, the Commission has sought to use competitive processes to determine support levels.⁴⁷⁰ We seek comment on whether we should use such competitive mechanisms going forward to assign universal service support obligations and determine support levels, either in the context of determining ongoing operating support or more generally to achieve our universal service goals. Would it be possible to competitively determine support levels following the BEAD Program, and are there areas where competitive mechanisms could not be used? What obligations should apply to winners of support? One approach for using a competitive mechanism would be to change the focus of the high-cost program from the deployment of networks towards the long-standing universal service goals of universal affordability and adoption.⁴⁷¹ The most recent Internet

⁴⁶⁵ In 2011, the Commission directed the Bureau to undertake a public process for the model. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17673, para. 24. The *CAM Inputs Order* was adopted in 2014.

⁴⁶⁶ See *CAM Inputs Order*, 29 FCC Rcd at 4000-4001, paras. 75-77 (adopting approach where capex input values take into account other factors that affect costs, such as size or type of material, terrain and soil conditions, density of the area, or region of the country); *CAM Platform Order*, 28 FCC Rcd at 5327-28, paras. 67-68 (adopting regional cost adjustment factors to capture regional cost differences in labor and material costs by three-digit ZIP codes.).

⁴⁶⁷ See *CAM Inputs Order*, 29 FCC Rcd at 4017-18, 4035-36, paras. 121-23, 170-71 (adopting a funding benchmark that estimates the likely revenues available through reasonable end user rates, taking into account the assumed subscription rate); *CAM Platform Order*, 28 FCC Rcd at 5327-28, paras. 67-68 (describing CAM's use of uniform input values for various capital costs, with adjustments for regional variations in labor and material costs).

⁴⁶⁸ See generally *Broadband Primer*.

⁴⁶⁹ *Id.* at 7-23.

⁴⁷⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17725, para. 156 (adopting an approach to providing universal service support in price cap areas through a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and a competitive bidding process (Phase II support)); see generally *CAF Phase II Auction Order and/or FNPRM*, 31 FCC Rcd 5949; *RDOF Order*, 35 FCC Rcd 686.

⁴⁷¹ One of the enumerated principles in section 254(b) of the Communication Act that the Commission should take into consideration when adopting support mechanisms is that “[q]uality services should be available at just,

(continued....)

Access Services Report shows that broadband adoption rates in the wealthiest and most dense areas of the country are well above 90 percent, but below 40 percent in some of the least dense and poorest areas of the country.⁴⁷² We seek comment on whether and how the USF high-cost program could be reoriented towards closing these substantial digital equity and affordability gaps.⁴⁷³ Should the Commission consider reorienting its high-cost programs towards closing the adoption and affordability gaps in high-cost areas?

178. We also ask about *force majeure* events and whether and how a high-cost program focused on providing ongoing operating support should account for these events. Are there events that providers cannot reasonably anticipate, or insure against, that will materially affect the need for universal service support going forward? Are these location-specific events, or is it possible to accommodate support needed in responses to these events equally across the United States and territories? If the USF were to cover certain unforeseeable costs that a carrier could not reasonably anticipate, such as generally rare weather-related events (e.g., hurricanes, volcanic eruptions, tornados, floods), should we establish and administer a separate funding mechanism? Or would it be simpler to incorporate such costs in the broader universal service program? We also seek information about the role private, commercial or government insurance can play in helping to offset the financial harm caused by these events.

179. *Area eligibility.* We next seek comment on areas and locations eligible to receive support. When would a full service network be deemed or become economically viable without continuing support, and thus become ineligible for support? Consistent with past Commission policy, we expect to preclude support to any overbuilt locations, i.e., locations where an unsubsidized network provider offers broadband services comparable to those in urban areas at comparable prices and seek comment on maintaining this policy going forward.⁴⁷⁴ What parameters should we place around such a restriction? Should we also preclude support to locations or areas where future overbuild is likely to occur? How would we identify these areas? How would we ensure the overbuild rates would remain comparable to urban rates if the subsidized provider were to exit the market? If we do not provide support in areas with an unsubsidized competitor, how would we ensure the overbuild rates would remain comparable to urban rates if the subsidized provider were to exit the market?

3. Setting a Budget and Support Term

180. The Commission has an obligation to limit support to carriers to no more than necessary and to encourage carriers to be prudent and efficient in their expenditures, including operating as well as capital expenses.⁴⁷⁵ First and foremost, the Commission must ensure that its support mechanisms remain

(Continued from previous page) _____
reasonable, and affordable rates.” 47 U.S.C. § 254(b). We note that questions regarding how to promote affordability and adoption have been raised by the Commission in other contexts, such as in its considerations of how best to implement anti-discrimination measures. *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Proposed Rulemaking, FCC 22-98, at 25, para. 45 (2022).

⁴⁷² See Internet Access Services Report at Figure 49.

⁴⁷³ See *Future of USF Report*, at 6, para. 12 (adopting the goals of affordability and equitable access to broadband).

⁴⁷⁴ See, e.g., *CAF Phase II Auction Order*, 31 FCC Rcd at 5968-74, 5974-79, paras. 51-73, 82-90 (excluding from eligibility, areas served by unsubsidized providers offering at least 10/1 Mbps with a minimum usage allowance of 150 GBs at a rate meeting the Commission’s reasonable comparability benchmark, with latency not exceeding 100 milliseconds and establishing a challenge process for determining these areas); see also *Wireline Competition Bureau Releases List and Map of Eligible Census Blocks for the Connect America Fund Phase II Auction (Auction 903)*, AU Docket No. 17-182 et al., Public Notice, 32 FCC Rcd 10381 (WCB 2017) (explaining that “[a]s a general matter, census blocks eligible for the Phase II auction include those in price cap study areas where the price cap carriers declined the statewide offers of model-based support”).

⁴⁷⁵ See *Qwest Comm’ns Int’l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) (stating that “excessive subsidization arguably may affect the affordability of telecommunications, thus violating the principle in [section] (continued....)

responsive to consumer needs by balancing the need for affordable broadband service against the burden on contributors to the USF.⁴⁷⁶ How should we determine a budget for ongoing support to sustain operations of a full-service network operating in high-cost areas while protecting the interests of ratepayers? Can we use a cost model to set a budget or should it use some other means, and if so, what should those means be?

181. Further, to ensure that support does not continue for a longer time period than carriers will need such support, we expect that a fixed term for support is necessary to permit the Commission to revisit carriers' support eligibility. A set support term has the advantage of providing firms with good incentives to reduce costs from the start and adds predictability to revenue estimates. Incentives for cost reduction arise because, for the duration of the promised payments, any cost reductions directly increase the provider's profit.⁴⁷⁷ We seek comment on this position.

182. How long should the support term be and what data or assumptions should we use to evaluate term length? Should it be based on predictions regarding how quickly consumer demand will change or on routine evaluations of factors that define high-cost areas, such as population density? How should we coordinate the support term and the schedule for updating the model? Should support terms differ based on the probability of unsubsidized competition developing? Should there be automatic triggers for cutting off funding, perhaps with a glide path, if, for example, population reaches a certain density? Should we reserve the right to revisit ongoing commitments in the light of radical technological change? How should we account for the pace of technological development and how that may end up affecting service demand/expectations, while also balancing the effect that would have potentially on support amounts and contributions?⁴⁷⁸

4. Service Obligations and Accountability

183. The Commission's current high-cost programs include specific, defined service obligations for deployment and specific reporting requirements.⁴⁷⁹ In addition, the Commission requires recipients of high-cost support to participate in performance testing to monitor compliance with speed and latency requirements, which includes conducting, at a minimum, one download test and one upload test per testing hour at each subscriber test location over a week time frame each quarter and to provide that information to the Commission.⁴⁸⁰ Performance testing has protected ratepayers' investment and ensured

(Continued from previous page) _____

254(b)(1)"); 47 U.S.C. § 254(b)(1) ("Quality services should be available at just, reasonable, and affordable rates."); *Alenco*, 201 F.3d at 620-21 ("The agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service.").

⁴⁷⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17745, para. 221 (citing *Rural Cellular Assoc. v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) ("Section 254 does not mandate the receipt of support by any particular carrier. Rather, as the Commission has indicated and the courts have agreed, the 'purpose of universal service is to benefit the customer, not the carrier.'") (quoting *Alenco*, 201 F.3d at 621)).

⁴⁷⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17744-48, paras. 219-25 (updating reasonable limits on the recovery of capital and operating costs then available through High Cost Loop Support (HCLS) and extending such limits to ICLS because without such limits, carriers had no incentive to lower costs and might have incentives to inflate costs to maximize support recovery).

⁴⁷⁸ See *Future of USF Report* at 8, para. 17 ("[O]ur universal service goals for broadband should evolve over time as technology advances.").

⁴⁷⁹ See 47 CFR §§ 54.313, 54.314, 54.316.

⁴⁸⁰ *First Performance Measures Order*, 33 FCC Rcd at 6519, para. 28; see *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10110, para. 4 (2019) (expanding performance measure testing requirements); see generally *Connect America Fund*, WC Docket No. 10-90, Order, WC Docket No. 10-90, Order, 35 FCC Rcd 14658 (WCB 2020) (clarifying certain requirements); *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, 6083, para. 15 (2020) (stating that RDOF support

(continued....)

that carriers receiving universal service high-cost support deploy networks that meet the performance standards they promised to deliver. To ensure accountability in the use of support to sustain operation of full-service networks, should we consider adopting similar rules for a future funding mechanism or should we require annual reporting regarding the state of facilities, business operations, and other factors? Should we require annual or quarterly performance testing and if so, what would be the parameters of such testing? If performance testing shows that a provider has failed to meet the requirements imposed for continuing support receipt, should the support be placed on hold until the problems are remediated? What kind of time limit should we impose to remediate? Should we implement any mechanisms similar to those used for other high-cost programs, such as receipt of a letter of credit, that would enable recovery of disbursed support in the event of default?⁴⁸¹ Should we limit these requirements to service providers that are currently receiving support?⁴⁸²

VI. PROCEDURAL MATTERS

184. *Effective Date.* We conclude that good cause exists to make the Report and Order effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act,⁴⁸³ except for those portions containing information collection requirements that have not been approved by the Office of Management and Budget (OMB).⁴⁸⁴ Agencies determining whether there is good cause to make an order take effect less than 30 days after Federal Register publication must balance the necessity for immediate implementation against principles of fundamental fairness that require that all affected persons be afforded reasonable time to prepare for the effective date.⁴⁸⁵

185. Here, we find that implementing the rules for the Enhanced A-CAM program as expeditiously as possible is necessary for aligning Enhanced A-CAM offers with the allocation of support through the BEAD program to avoid the duplication of funds across programs and promote the efficient use of federal funds in supporting broadband deployment. We conclude that furthering this objective outweighs any potential impact on affected parties. The Order does not require affected parties to take any specific action until the Bureau extends Enhanced A-CAM offers, and the Order delegates to the Bureau the task of implementing the process for carriers to accept offers, consistent with the same

(Continued from previous page) _____

recipients must also test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on the performance of high-cost support recipients' service); 47 CFR § 54.313(a)(6). See *Wireline Competition Bureau Announces the Start Date for Performance Measures Testing for the Rural Digital Opportunity Fund, Bringing Puerto Rico Together Fund, and the Connect USVI Fund*, WC Docket Nos. 10-90, 18-143, 19-126, Public Notice, DA 23-472 (WCB 2023).

⁴⁸¹ See 47 CFR §§ 54.315(b)(6)(v), 54.315(c), 54.804(b)(6)(v), 54.804(c), 54.1005(b)(3)(v), 54.1007(a)-(b).

⁴⁸² We note that the Commission has long held that in the absence of a forbearance order, ETCs must provide supported services throughout their service areas regardless of funding status and regardless of whether an unsubsidized competitor competes for customers in the same area. *In re: FCC 11-161*, 753 F.3d 1015, 1088 (10th Cir. 2014); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next Generation Networks*, WC Docket Nos. 14-192, 11-42, 10-90, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6228-229, paras.138-43 (2015) (holding that the obligation to provide voice service arises from an ETC's eligibility for support, not its receipt of support).

⁴⁸³ 5 U.S.C. § 553(d)(3). The Notice of Proposed Rulemaking and Notice of Inquiry will become effective 30 days after publication in the Federal Register. 5 U.S.C. § 553(d).

⁴⁸⁴ Those portions containing information collection requirements that have not been approved by OMB will be submitted to OMB for review under section 3507(d) of the Paper Work Reduction Act of 1995 (PRA) Public Law 104-13. The Commission will publish a document in the Federal Register announcing the effective date of these provisions.

⁴⁸⁵ *Omnipoint Corporation v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (citing *United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir. 1977)).

procedures the Commission adopted for carriers electing to receive A-CAM II support. Accordingly, even with immediate implementation, eligible rate-of-return carriers will still be afforded reasonable time to take any necessary steps to prepare to accept an Enhanced A-CAM offer before and after the Bureau extends such offers.

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

187. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁴⁸⁶ 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.”⁴⁸⁷ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix B.

188. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *NPRM*. 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 *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

189. *Paperwork Reduction Act Analysis.* The Report and Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA) Public Law 104-13. It 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 and modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,⁴⁸⁸ we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B.

190. The Further Notice of Proposed Rulemaking contains proposed new and modified information collection requirements. The Commission as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

191. *Ex Parte Presentations- Permit-But-Disclose.* The proceedings these Notice of Proposed Rulemaking and Notice of Inquiry initiate shall be treated as “permit-but-disclose” proceedings in accordance with the Commission’s *ex parte* rules.⁴⁸⁹ Persons making *ex parte* presentations must file a

⁴⁸⁶ 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).

⁴⁸⁷ 5 U.S.C. § 605(b).

⁴⁸⁸ Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat 729 (2002); *see* 44 U.S.C. § 3506(c)(4).

⁴⁸⁹ 47 CFR § 1.1200 *et seq.*

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).

192. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in these proceedings.⁴⁹⁰ Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.⁴⁹¹ However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from disclosure in permit-but-disclose proceedings⁴⁹² and exempt from the prohibitions during the Sunshine Agenda period.⁴⁹³ To be clear, while the Commission recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for these proceedings.⁴⁹⁴

193. 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 these proceedings should familiarize themselves with the Commission's *ex parte* rules.

194. *Comments and Replies.* Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.⁴⁹⁵ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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

⁴⁹⁰ See 47 CFR § 1.1200(a). Although the Rules do not generally require *ex parte* presentations to be treated as "permit but disclose" in Notice of Inquiry proceedings, see 47 CFR § 1.1204(b)(1), we exercise our discretion in this instance, and find that the public interest is served by making *ex parte* presentations available to the public, in order to encourage a robust record. See *id.*

⁴⁹¹ 5 U.S.C. § 551 *et seq.*

⁴⁹² See generally 47 CFR § 1.1206.

⁴⁹³ See 47 CFR § 1.1203.

⁴⁹⁴ See *Updating of the Commission's Ex Parte Rules*, GN Docket No. 20-21, Notice of Proposed Rulemaking, 35 FCC Rcd 6947, 6950-54, paras. 9-21 (2020).

⁴⁹⁵ Comments and reply comments filed in response to the Notice of Proposed Rulemaking and the Notice of Inquiry are subject to sections 1.415, 1.419, and 1.430 of the Commission's rules. 47 CFR §§ 1.415, 1.419, 1.430.

- 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-19.⁴⁹⁶ See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020).

195. Comments and reply comments exceeding ten pages must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize 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 or the Notice of Inquiry in order to facilitate our internal review process.

196. *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.

197. *Contact Person.* For further information about these proceedings, please contact, Theodore Burmeister, Special Counsel, Telecommunications Access Policy Division, Wireline Competition Bureau, at Theodore.Burmeister@fcc.gov, or Jesse Jachman, Deputy Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, at Jesse.Jachman@fcc.gov.

VII. ORDERING CLAUSES

198. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, 254, 303(r), and 403, and sections 1.1 and 1.425 of the Commission's rules, 47 CFR §§ 1.1 and 1.425 this Report and Order IS ADOPTED. The Report and Order SHALL BE EFFECTIVE upon publication in the Federal Register, except for portions containing information collection requirements in sections 54.308, 54.313 and 54.316 that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date of these provisions.

199. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 214, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, 254, 303(r), and 403, and sections 1.1, 1.411, and 1.412 of the Commission's rules, 47 CFR §§ 1.1, 1.411, and 1.412, this Notice of Proposed Rulemaking IS ADOPTED. This Notice of

⁴⁹⁶ See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (OS 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

Proposed Rulemaking will be EFFECTIVE upon publication in the Federal Register, with comment dates indicated therein.

200. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 214, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, 254, 303(r), and 403, and sections 1.1 of the Commission's rules, 47 CFR § 1.1, this Notice of Inquiry IS ADOPTED. This Notice of Inquiry will be EFFECTIVE upon publication in the Federal Register, with comment dates indicated therein.

201. IT IS FURTHER ORDERED that Part 54 of the Commission's rules IS AMENDED as set forth in Appendix A, and that any such rule amendments that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act SHALL BE EFFECTIVE after announcement in the Federal Register of Office of Management and Budget approval of the rules, and on the effective date announced therein.

202. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

203. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed above, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54- UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Amend § 54.5 by revising the definition of “High-cost support” to read as follows:

§ 54.5 Terms and Definitions.

* * * * *

High-Cost Support. “High-cost support” refers to those support mechanisms provided pursuant to subparts D, J, K, L, M, and O of this part.

* * * * *

3. Amend § 54.308 by revising paragraph (a)(1) introductory text and adding paragraphs (a)(1)(v), (a)(3) and (e) to read as follows:

§ 54.308 Broadband public interest obligations for recipients of high-cost support.

(a) * * *

(1) Carriers that have elected to receive Connect America Fund-Alternative Connect America Cost Model (CAF-ACAM) support pursuant to § 54.311, other than Enhanced A-CAM support, are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream to a defined number of locations as specified by public notice, with a minimum usage allowance of 150 GB per month, subject to the requirement that usage allowances remain consistent with mean usage in the United States over the course of the term. In addition, such carriers must offer other speeds to subsets of locations, as specified below:

* * * * *

(v) After December 31, 2023, to the extent that an Enhanced A-CAM carrier was previously subject to the foregoing deployment obligations pursuant to A-CAM I, Revised A-CAM I, or A-CAM II, the Enhanced A-CAM carrier will instead be subject to § 54.308(a)(3).

* * * * *

(3) An Enhanced A-CAM carrier, as defined by § 54.311(a)(4), must offer broadband speeds of at least 100 Mbps downstream/20 Mbps upstream to 100 percent of locations in its study areas within the state by the end of 2028.

(i) Enhanced A-CAM required locations are those locations identified in the National Broadband Map within the carrier’s service area where voice and terrestrial broadband services of speeds 100 Mbps downstream/20 Mbps upstream or faster are not yet available or lack an enforceable commitment for deployment of such broadband service. In the context of Enhanced A-CAM, an enforceable commitment exists where a carrier commits to deploying broadband service as a condition of any federal or state grants or other funding. The Wireline Competition Bureau shall provide a list of Enhanced A-CAM required locations for each carrier concurrently with the Enhanced A-CAM offer pursuant to section 54.311(a), and will update such list to reflect any additional information related locations, broadband coverage, or enforceable commitments determined to have existed at the time of the offer.

(ii) An Enhanced A-CAM carrier that has reported deployment of 100 Mbps downstream/20 Mbps upstream or faster service to particular locations in its Enhanced A-CAM study area(s) in the National Broadband Map or the Universal Service Administrative Company's High Cost Universal Broadband Portal must maintain the same or faster service at those locations through the end of the Enhanced A-CAM term.

* * * * *

(e) Enhanced A-CAM Cybersecurity and Supply Chain Risk Management Requirements

(1) An Enhanced A-CAM carrier shall implement operational cybersecurity and supply chain risk management plans meeting the requirements of this section by January 1, 2024.

(2) An Enhanced A-CAM carrier shall certify that it has implemented plans required under paragraph (1) and submit the plans to the Administrator by January 2, 2024 or within 30 days of approval under the Paperwork Reduction Act, whichever is *later*.

(3) Failure to Comply with Enhanced A-CAM Cybersecurity and Supply Chain Risk Management Requirements:

(i) The Wireline Competition Bureau shall direct the Administrator to withhold 25 percent of the Enhanced A-CAM carrier's monthly support for failure to comply with paragraph (2) until the carrier makes the required certification and submits the required plans.

(ii) At any time during the support term, if an Enhanced A-CAM carrier does not have in place operational cybersecurity and supply chain risk management plans meeting the requirements of this section, Wireline Competition Bureau shall direct the Administrator to withhold 25 percent of the carrier's monthly support.

(iii) Once the carrier comes into compliance, the Administrator shall stop withholding support, and the carrier will receive all of the support that had been withheld pursuant to this section.

(4) An Enhanced A-CAM carrier's cybersecurity risk management plans shall reflect the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity, and shall reflect an established set of cybersecurity best practices, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives or the Center for Internet Security Critical Security Controls.

(5) An Enhanced A-CAM carrier's supply chain risk management plans shall incorporate the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry, and related supply chain risk management guidance from NIST 800-161.

(6) If an Enhanced A-CAM carrier makes a substantive modification to its plans under this section, the carrier shall file an updated plan with the Administrator within 30 days of making the modification. A modification to a plan under this section is substantive if at least one of the following conditions apply:

(i) There is a change in the plan's scope, including any addition, removal, or significant alternation to the types of risks covered by the plan (e.g., expanding a plan to cover new areas such as supply chain risks to Internet of Things devices or cloud security could be a substantive change);

(ii) There is a change in the plan's risk mitigation strategies (e.g., implementing a new encryption protocol or deploying a different firewall architecture);

(iii) There is a shift in organizational structure (e.g., creating a new information technology department or hiring a Chief Information Security Officer);

(iv) There is a shift in the threat landscape prompting the organization to recognize that emergence of new threats or vulnerabilities that weren't previously accounted for in the plan;

- (v) Any updates made to comply with new cybersecurity regulations, standards, or laws;
- (vi) Significant changes in the supply chain, including offboarding major suppliers or vendors, or shifts in procurement strategies that may impact the security of the supply chain; or
- (vii) Any large-scale technological changes, including the adoption of new systems or technologies, migrating to a new information technology infrastructure, or significantly changing the information technology architecture.

4. Amend § 54.311 by revising paragraphs (a) introductory text, (a)(2) and (3), adding paragraph (a)(4), revising paragraphs (b), (c), and (d), adding paragraphs (d)(3) and (4), revising paragraph (e) introductory text, (e)(3), (e)(4)(iii), (e)(5) and (6), and adding paragraph (f) to read as follows:

§ 54.311 Connect America Fund Alternative-Connect America Cost Model

(a) ***Voluntary election of model-based support.*** A rate-of-return carrier (as that term is defined in § 54.5) receiving support pursuant to subparts K or M of this part shall have the opportunity to voluntarily elect, on a state-level basis, to receive Connect America Fund–Alternative Connect America Cost Model (CAF–ACAM) support as calculated by the Alternative–Connect America Cost Model (A–CAM) adopted by the Commission in lieu of support calculated pursuant to subparts K or M of this part, subject to the conditions specific to each A–CAM offer as determined by the Commission. Any rate-of-return carrier not electing support pursuant to this section shall continue to receive support calculated pursuant to those mechanisms as specified in Commission rules for high-cost support.

* * * * *

(2) For the purposes of this section, “Revised A–CAM I” refers to carriers initially authorized to receive CAF–ACAM support as of January 24, 2017, and were subsequently authorized to receive CAF–ACAM pursuant to a revised offer on April 29, 2019. For such carriers, the first program year of CAF–ACAM is 2017.

(3) For the purposes of this section, “A–CAM II” refers to carriers initially authorized to receive A–CAM support on August 22, 2019 or November 13, 2020. For such carriers, the first program year of CAF–ACAM is 2019.

(4) For purposes of this section, “Enhanced A–CAM” refers to carriers authorized to receive Enhanced A–CAM support after October 1, 2023. For the purpose of determining deployment obligations for such carriers, the first program year of CAF–ACAM is 2025.

(b) *Geographic areas eligible for support.*

(1) CAF–ACAM model-based support, except for Enhanced A–CAM support, will be made available for a specific number of locations in census blocks identified as eligible for each carrier by public notice. The eligible areas and number of locations for each state identified by the public notice shall not change during the term of support identified in paragraph (c) of this section.

(2) Enhanced A–CAM support will be made available for each carrier’s service areas within the state, in consideration for the deployment and maintenance obligations described in section 54.308(a)(3) of this part.

(c) ***Term of support.*** CAF–ACAM model-based support shall be provided to A–CAM I carriers for a term that extends until December 31, 2026, to Revised A–CAM I and A–CAM II carriers for a term that extends until December 31, 2028, and to Enhanced A–CAM carriers for a term that extends from January 1, 2024, until December 31, 2038.

(d) ***Interim deployment milestones.*** Recipients of CAF–ACAM model-based support must meet the following interim milestones with respect to their deployment obligations set forth in § 54.308(a)(1)(i) and (a)(3) of this subpart.

* * * * *

(3) For the purposes of A-CAM I, Revised A-CAM I, and A-CAM II, compliance shall be determined based on the total number of fully funded locations in a state. Carriers that complete deployment to at least 95 percent of the requisite number of locations will be deemed to be in compliance with their deployment obligations. The remaining locations that receive capped support are subject to the standard specified in § 54.308(a)(1)(ii).

(4) Enhanced A-CAM carriers must complete deployment of 100/20 Mbps service to a number of locations equal to 50 percent of locations required by § 54.308(a)(3)(i) of this subpart by the end of 2026, 75 percent of requisite locations by the end of 2027, and 100 percent of requisite locations by the end of 2028. After December 31, 2023, to the extent that an Enhanced A-CAM carrier was subject to the interim deployment milestones set forth in § 54.311(d)(1) and (2), the Enhanced A-CAM carrier will instead be subject to the interim deployment milestones set forth in this paragraph.

(e) *Transition to CAF-ACAM Support.* An A-CAM I, Revised A-CAM I, A-CAM II, or Enhanced A-CAM carrier not previously subject to A-CAM support, any of whose final model-based support is less than the carrier's legacy rate-of-return support in its base year as defined in paragraph (e)(4) of this section, will transition as follows:

* * * * *

(4) * * *

(iii) For Enhanced A-CAM carriers not previously subject to A-CAM I, Revised A-CAM I, or A-CAM II, the amount of high-cost loop support and Connect America Fund—Broadband Loop Support disbursed to the carrier for 2022 without regard to prior period adjustments related to years other than 2022, as determined by the Administrator as of July 31, 2023 and publicly announced prior to the election period for the voluntary path to the model. The first year of the transition pursuant to this paragraph (e) will be 2035.

(5) An Enhanced A-CAM carrier not previously subject to A-CAM I, Revised A-CAM I, or A-CAM II, and whose final model-based support is less than the carrier's legacy rate-of-return support in its base year as defined in paragraph (e)(4)(iii) of this section, will transition from its frozen base year support to its full Enhanced A-CAM support on the following schedule:

(i) In 2024-2029, it will receive its frozen base year support.

(ii) In 2030, it will receive its base year support minus 4% of the base year support;

(iii) In 2031, it will receive its base year support minus 8% of the base year support;

(iv) In 2032, it will receive its base year support minus 12% of the base year support;

(v) In 2033, it will receive its base year support minus 16% of the base year support;

(vi) In 2034, it will receive its base year support minus 20% of the base year support;

(vii) In 2035-2038, it will transition to its Enhanced A-CAM support pursuant to paragraphs (e)(1) through (3).

(6) An Enhanced A-CAM carrier that was previously subject to A-CAM I, Revised A-CAM I, or A-CAM II and will continue to receive transitional support consistent with its prior A-CAM I, Revised A-CAM I, or A-CAM II authorization, and will not have its transitional support amount adjusted to reflect its Enhanced A-CAM support amounts.

(f) *Legacy Carrier Transitioning to Higher Enhanced A-CAM.* An Enhanced A-CAM carrier that was not subject to A-CAM I, Revised A-CAM I, or A-CAM II and whose final model-based support is more than the carrier's legacy rate-of-return support in its base year as defined in paragraph (f)(2) of this section, will transition from its frozen base year support to its full Enhanced A-CAM support.

(1) The transition will occur on the following schedule:

- (i) In 2024-2029, it will receive its frozen base year support.
- (ii) In 2030, it will receive its base year support plus 20% of the difference between its base year support and its Enhanced A-CAM support;
- (iii) In 2031, it will receive its base year support plus 40% of the difference between its base year support and its Enhanced A-CAM support;
- (iv) In 2032, it will receive its base year support plus 60% of the difference between its base year support and its Enhanced A-CAM support;
- (v) In 2033, it will receive its base year support plus 80% of the difference between its base year support and its Enhanced A-CAM support; and
- (vi) In 2034, it will receive its Enhanced A-CAM support.

(2) The carrier's base year support for purposes of the calculation of transition payments is the amount of high-cost loop support and Connect America Fund—Broadband Loop Support disbursed to the carrier for 2022 without regard to prior period adjustments related to years other than 2022, as determined by the Administrator as of July 31, 2023 and publicly announced prior to the election period for the voluntary path to the model.

5. Amend § 54.313 by revising paragraph (f)(1) and adding paragraph (f)(6) to read as follows:

§ 54.313 Annual Reporting requirements for high-cost recipients.

* * * * *

(f) * * *

(1) Beginning July 1, 2015 and Every Year Thereafter. The following information:

(i) If the rate-of-return carrier is receiving support pursuant to subparts K and M of this part, a certification that it is taking reasonable steps to provide upon reasonable request broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream, with latency suitable for real-time applications, including Voice over internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey, and that requests for such service are met within a reasonable amount of time; if the rate-of-return carrier receives CAF–ACAM support, except for Enhanced A-CAM support, a certification that it is meeting the relevant reasonable request standard; if the carrier is receiving Enhanced A-CAM support, a certification that it is offering broadband service with latency suitable for real-time applications, including Voice over internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas; or if the rate-of-return carrier is receiving Alaska Plan support pursuant to § 54.306, a certification that it is offering broadband service with latency suitable for real-time applications, including Voice over internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, and at speeds committed to in its approved performance plan to the locations it has reported pursuant to § 54.316(a), subject to any limitations due to the availability of backhaul as specified in paragraph (g) of this section.

* * * * *

(6) Enhanced A-CAM carriers must provide the following:

(i) Enhanced A-CAM carriers must certify that, in the previous calendar year, they participated, in good faith, in any relevant BEAD Program challenge processes or other processes conducted by states or other BEAD Program eligible entities to determine the eligibility of locations for the BEAD Program, and that they otherwise coordinated with states, Tribes, and other eligible entities to help avoid duplicative federal broadband funding. Additionally, Enhanced A-CAM carriers must certify that, in the previous calendar year, they complied with

the obligation not to receive or use BEAD Program funding or other future federal grant funding, unless otherwise specified by the Commission or Bureau, that supports broadband deployment for those locations for which they are receiving Enhanced A-CAM support.

(ii) Enhanced A-CAM carriers must describe how and certify that, in the previous calendar year, they continued to participate in the Affordable Connectivity Program or any substantially similar successor program, as required by the terms of their Enhanced A-CAM offers.

(iii) Enhanced A-CAM carriers must certify that they have maintained their cybersecurity and supply chain risk management plans pursuant to section 54.308(e), report whether they filed any substantive modifications pursuant to section 54.308(e)(6) in the prior year, and report the date they filed any substantive modifications.

* * * * *

6. Amend § 54.316 by adding paragraph (a)(9), revising paragraph (b)(2), and adding paragraph (b)(8) to read as follows:

§ 54.316 Broadband Deployment reporting and certification requirements for high-cost recipients.

(a) * * *

(9) Recipients subject to the requirements of § 54.308(a)(3) shall report the number of locations for each state and locational information, including geocodes, indicating whether they are offering service providing speeds of at least 100 Mbps downstream/20 Mbps upstream.

* * * * *

(b) * * *

(2) Rate-of-return carriers electing CAF-ACAM support pursuant to § 54.311, other than Enhanced A-CAM carriers, shall provide:

* * * * *

(8) Enhanced A-CAM carriers shall provide, no later than March 1 following each service milestone specified in § 54.311(d)(3), a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its required locations in the state.

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980,¹ as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support, Notice of Proposed Rulemaking (Enhanced ACAM FNRPM)* released in May of 2022.² The Commission sought written public comment on the proposals in the *Enhanced ACAM FNRPM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. In the *Report and Order*, we adopt the Enhanced Alternative Connect America Cost Model (A-CAM) program as a voluntary path for supporting the widespread deployment of 100/20 Mbps broadband service throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by rate-of-return carriers eligible to receive legacy support by the end of 2028. In adopting this program, we further our long-standing goals by promoting the universal availability of voice and broadband networks, while also taking measures to minimize the burden on the nation's ratepayers. We also adopt requirements for the Enhanced A-CAM program to complement existing federal, state, and local funding programs, so that broadband funding can be used efficiently to maximize the deployment of high-quality broadband service across the United States.

3. In exchange for the commitment to complete this deployment, the Commission will extend offers to current A-CAM carriers and current legacy support recipients within a budget totaling no more than \$1.27 billion annually, or no more than \$1.33 billion annually if certain conditions are met, over a 15-year term beginning January 1, 2024. We require that carriers make their Enhanced A-CAM elections by no later than October 1, 2023 to ensure alignment with the expected BEAD Program timeline as required by the Infrastructure Act and obligate them to serve 100% of unserved locations with service levels consistent with the standard established in the Infrastructure Act. We also establish a framework to avoid duplicating existing efforts from other government programs funding broadband deployment. To address the unique challenges of deploying high-speed broadband in rural Tribal communities, we also adopt a Tribal Broadband Factor for Enhanced A-CAM. We adopt requirements and safeguards for Enhanced A-CAM that address other concerns expressed by commenters requesting that we wait before implementing Enhanced A-CAM. In response to concerns that areas will not be served as quickly as they might be if they were funded by the BEAD Program, we align the deployment timeline for Enhanced A-CAM recipients with the timeline required by the Infrastructure Act. We also require performance requirements that align with the Infrastructure Act, and subject Enhanced A-CAM recipients to the reporting requirements and non-compliance measures that we apply to all high-cost support recipients so that we can monitor and incentivize deployment. We also adopt a minimum carrier participation threshold of 50% for implementing the Enhanced A-CAM program. As we extend Enhanced A-CAM offers to carriers serving Tribal lands, we require Enhanced A-CAM recipients engage, within 90 days of their Enhanced A-CAM elections and at least annually thereafter, with relevant Tribal government(s) regarding deployment to Tribal locations.

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Public Law No. 104-121, 110 Stat. 857 (1996).

² *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking, FCC 22-35 (May 20, 2022).

³ 5 U.S.C. § 604.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.⁴

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁷ A “small-business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹¹

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹² The

⁴ 5 U.S.C. § 604(a)(3).

⁵ *Id.* § 604 (a)(4).

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

⁹ 5 U.S.C. § 601(3)-(6).

¹⁰ SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf>, (Mar. 2023)

¹¹ *Id.*

¹² 5 U.S.C. § 601(4).

Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹³ Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁴

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2017 Census of Governments¹⁶ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number, there were 36,931 general purpose governments (county,¹⁸ municipal, and town or township¹⁹) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts²⁰ with enrollment

¹³ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁴ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁵ 5 U.S.C. § 601(5).

¹⁶ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁷ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁸ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁹ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁰ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

populations of less than 50,000.²¹ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²²

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²³ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.²⁴ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁵ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁶

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁸ Of this number, 2,964 firms operated with fewer than 250 employees.²⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.³⁰ Of these providers, the Commission estimates that 4,146

²¹ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²² This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

²³ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

²⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

²⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf> (2022 Monitoring Report).

providers have 1,500 or fewer employees.³¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³² is the closest industry with an SBA small business size standard.³³ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁶ Of this number, 2,964 firms operated with fewer than 250 employees.³⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.³⁸ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁴⁰ is the closest industry with an SBA small business size standard.⁴¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴² U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴³ Of this number, 2,964 firms operated with fewer than

³¹ *Id.*

³² See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³³ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁴ Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

³⁵ *Id.*

³⁶ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁹ *Id.*

⁴⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴² *Id.*

⁴³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,

(continued....)

250 employees.⁴⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁴⁵ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁴⁶ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

15. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁴⁷ Wired Telecommunications Carriers⁴⁸ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁵¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.⁵² Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁴ is the closest industry with a SBA small business size standard.⁵⁵ The SBA small business size

(Continued from previous page) _____

<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

⁴⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁶ *Id.*

⁴⁷ Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

⁴⁸ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁰ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵³ *Id.*

⁵⁴ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.⁵⁹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

17. *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.⁶⁰ The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁶¹ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶² Mobile virtual network operators (MVNOs) are included in this industry.⁶³ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁴ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁵ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.⁶⁷ Of these providers, the Commission

(Continued from previous page)

⁵⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁶ *Id.*

⁵⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

estimates that 202 providers have 1,500 or fewer employees.⁶⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁶⁹ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁷⁰ Mobile virtual network operators (MVNOs) are included in this industry.⁷¹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷² U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷³ Of that number, 1,375 firms operated with fewer than 250 employees.⁷⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.⁷⁵ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.⁷⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷⁷ is the closest industry with a SBA small business size standard.⁷⁸ 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 in this industry that operated for the entire year.⁸⁰

⁶⁸ *Id.*

⁶⁹ See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

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: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

⁷⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁷⁶ *Id.*

⁷⁷ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁹ *Id.*

Of this number, 2,964 firms operated with fewer than 250 employees.⁸¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸² Of these providers, the Commission estimates that 87 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.

20. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers⁸⁴ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁵ Mobile virtual network operators (MVNOs) are included in this industry.⁸⁶ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁷ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁸⁸ Of that number, 1,375 firms operated with fewer than 250 employees.⁸⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.⁹⁰ Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.⁹¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

(Continued from previous page) _____

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: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

⁸¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>; <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁸³ *Id.*

⁸⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

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: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=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.

⁹⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>; <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁹¹ *Id.*

21. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁹² 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.⁹³ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁹⁵ Of that number, 2,837 firms employed fewer than 250 employees.⁹⁶ 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.⁹⁷ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁹⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *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.⁹⁹ 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.¹⁰⁰ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹⁰¹ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.¹⁰² Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹⁰³ Of that number, 149 firms operated with revenue of less than

⁹² 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>.

⁹³ *Id.*

⁹⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁷ 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>.

⁹⁸ *Id.*

⁹⁹ 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>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

¹⁰³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREFVFI, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREFVFI&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).

\$25 million a year and 44 firms operated with revenue of \$25 million or more.¹⁰⁴ Based on this data, the Commission estimates that a majority of firms in this industry are small.

23. *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.¹⁰⁵ Based on industry data, there are about 420 cable companies in the U.S.¹⁰⁶ Of these, only seven have more than 400,000 subscribers.¹⁰⁷ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁰⁸ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹⁰⁹ Of these, about 639 have more than 15,000 subscribers.¹¹⁰ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

24. *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."¹¹¹ 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.¹¹² Based on industry data, only six cable system operators have more than 677,000 subscribers.¹¹³ Accordingly, the Commission estimates that the majority of cable system operators are small under this

¹⁰⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰⁵ 47 CFR § 76.901(d).

¹⁰⁶ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹⁰⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹⁰⁸ 47 CFR § 76.901(c).

¹⁰⁹ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹¹⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023).

¹¹¹ 47 U.S.C. § 543(m)(2).

¹¹² *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 49.8 million. See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 80, para. 218, Fig. II.E.1. (2022) (2022 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).

¹¹³ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

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.¹¹⁴ 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.

25. *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.¹¹⁵ 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.¹¹⁶ 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.¹¹⁷ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹¹⁸ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹¹⁹ Of those firms, 1,039 had revenue of less than \$25 million.¹²⁰ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

26. *Wired Broadband Internet Access Service Providers (Wired ISPs).*¹²¹ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules.¹²² Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.¹²³ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.¹²⁴ U.S. Census Bureau data for 2017 show

¹¹⁴ 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).

¹¹⁵ See U.S. Census Bureau, 2017 NAICS Definition, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹¹⁹ 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>.

¹²⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹²¹ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

¹²² See 47 CFR § 1.7001(a)(1).

¹²³ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹²⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

that there were 3,054 firms that operated in this industry for the entire year.¹²⁵ Of this number, 2,964 firms operated with fewer than 250 employees.¹²⁶

27. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.¹²⁷ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 *Communications Marketplace Report*,¹²⁸ we believe that the majority of wireline Internet access service providers can be considered small entities.

28. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.¹²⁹ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"¹³⁰ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹³¹ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).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

¹²⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

¹²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²⁷ See *IAS Status 2018*, Fig. 30 (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

¹²⁸ 2022 *Communications Marketplace Report*, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7.

¹²⁹ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

¹³⁰ Federal Communications Commission, *Internet Access Services: Status as of December 31, 2018 (IAS Status 2018)*, Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

¹³¹ See 47 CFR § 1.7001(a)(1).

¹³² See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹³³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

29. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.¹³⁶ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's 2022 *Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹³⁷ as well as on terrestrial fixed wireless broadband providers in general,¹³⁸ we believe that the majority of wireless Internet access service providers can be considered small entities.

30. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹³⁹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁴⁰ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁴¹ Of those firms, 1,039 had revenue of less than \$25 million.¹⁴² Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

31. *All Other Information Services*. This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).¹⁴³ The SBA small business size standard for this industry classifies firms with annual receipts of \$30 million or less as small.¹⁴⁴ U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.¹⁴⁵ Of those

(Continued from previous page) _____

¹³⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁶ See *IAS Status 2018*, Fig. 30.

¹³⁷ 2022 *Communications Marketplace Report*, 2022 WL 18110553 at 27, paras. 64-68.

¹³⁸ *Id.* at 8, para. 22.

¹³⁹ See U.S. Census Bureau, 2017 NAICS Definition, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁴⁰ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁴¹ 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&hidePrevious=false>.

¹⁴² *Id.* The 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.

¹⁴³ See U.S. Census Bureau, 2017 NAICS Definition, "519190 All Other Information Services," <https://www.census.gov/naics/?input=519190&year=2017&details=519190>.

¹⁴⁴ See 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

¹⁴⁵ 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 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>.

firms, 556 had revenue of less than \$25 million.¹⁴⁶ Consequently, we estimate that the majority of firms in this industry are small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

32. In the *Report and Order*, we adopt rules that will create recordkeeping, reporting and other compliance obligations for small and other recipients of the Enhanced A-CAM program. We adopt a 15-year support term and deployment obligations that require every Enhanced A-CAM recipient to deploy, over a four-year term, 100/20 Mbps or faster broadband service, with latency of 100 milliseconds or less, and usage allowances reasonably comparable to those available through comparable offerings in urban areas, to all unserved locations in their service areas. Enhanced A-CAM recipients must also offer voice service to their required locations, and must offer their voice and broadband services at rates that are reasonably comparable to offerings of comparable services in urban areas. Additionally, Enhanced A-CAM recipients must participate in the Affordable Connectivity Program as well as any successor program and describe and certify their compliance with this requirement. Enhanced A-CAM carriers must also implement operational cybersecurity and supply chain risk management plans by January 1, 2024, submit and certify such plans, and file updates for the plans when there are substantive modifications with 30 days of the modification. Enhanced A-CAM carriers must annually certify that they have maintained their cybersecurity and supply chain risk management plans, report whether they filed any substantive modifications, and the date the modification was filed.

33. Like all high-cost support recipients, Enhanced A-CAM recipients must participate in the Lifeline Program. Enhanced A-CAM recipients also remain subject to the Commission's National Security Supply Chain proceeding and remain subject to the annual requirement to demonstrate they meaningfully engaged with the Tribal governments in their supported areas. To the extent a carrier's Enhanced A-CAM offer covers Tribal lands, we require Enhanced A-CAM recipients engage, within 90 days of the Bureau extending an Enhanced A-CAM offer, and at least annually thereafter—as they currently are, with relevant Tribal government(s) regarding deployment to Tribal locations.

34. We also adopt interim deployment milestones. Specifically, at the end of a carrier's second year of Enhanced A-CAM support, the carrier must deploy 100/20 Mbps or faster broadband service to at least 50% of required new locations, and the carrier must deploy such service to an additional 25% of required new locations at the end of each subsequent year, until the carrier deploys to 100% of required new locations at the end of the fourth year of Enhanced A-CAM support. Enhanced A-CAM recipients will also be subject to the same performance testing requirements as other high-cost- support recipients, along with the same support withholding and recovery provisions currently applicable to A-CAM carriers and other high-cost support recipients, with the exception that we do not extend to Enhanced A-CAM the flexibility for A-CAM carriers to deploy to only 95% of their required locations by the end of their final milestone without a reduction in support.

35. To make efforts to avoid duplicative federal broadband funding, Enhanced A-CAM recipients will be required to participate, in good faith, in any relevant Broadband Equity, Access, and Deployment Program (BEAD Program) challenge processes conducted by the states or other BEAD Program eligible entities. Additionally, they will be required to certify annually that they are not receiving or using BEAD Program funding or other future federal grant funding, unless otherwise

¹⁴⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms 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.

specified herein, that supports broadband deployment to those areas in which they are receiving Enhanced A-CAM support. Eligible carriers that elect to participate in the Enhanced A-CAM program must identify in their election letters the technology they intend to use to meet their deployment obligations on a state-by-state basis. Legacy rate-of-return carriers that choose to accept an Enhanced A-CAM offer will have requirements related to their tariffs. To monitor the use of Enhanced A-CAM support to ensure that it is being used for its intended purposes, support recipients will be required to file location data on an annual basis in the online High Cost Universal Broadband (HUBB) portal and to make certifications when they have met their service milestones. Recipients must also file annual FCC Form 481 reports. Additionally, support recipients will be subject to the annual section 54.314 certifications and the same record retention and audit requirements as other high-cost ETCs.

36. The Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions or to quantify the cost of compliance for small entities. The Commission, however, anticipates the approaches it has taken to implement the requirements will have minimal or de minimis cost implications and may reduce compliance requirements for small entities that may have smaller staff and fewer resources.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

37. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”¹⁴⁷

38. The Commission has considered the economic impact on small entities in reaching its final conclusions and taking action in this proceeding. The rules that we adopt in the *Report and Order* will provide greater certainty and flexibility for all carriers, including small entities. For example, we adopt a process for calculating Enhanced A-CAM offers that takes into account the challenges that all Enhanced A-CAM recipients, including small businesses, may face in serving high-cost areas. Specifically, we adopt a voluntary election process that allows each eligible carrier to consider whether accepting an Enhanced A-CAM offer will be most beneficial to that carrier. We adopt a Tribal Broadband Factor to address the unique challenges for deploying high-speed broadband in rural Tribal communities. Moreover, we delegated to the Bureau consideration of whether Enhanced A-CAM support should be increased to cover operational costs for carriers that already deployed broadband at speeds of 100/20 Mbps, which may ease the economic burden on small carriers.

39. We create a voluntary pathway to model-based support for small carriers that currently receive support under legacy embedded cost support mechanisms. We also provide transitional support to those legacy rate-of-return carriers that accept an Enhanced A-CAM offer that is lower than their existing legacy support, easing the economic burden on small entities that choose to accept Enhanced A-CAM offers by giving them time to adapt to the reduction in support. The legacy carriers that elect model-based support will also be eligible to elect incentive regulation for their business data service offerings, reducing the economic burden of providing those services. We also take action to re-set the legacy support budget for CAF BLS and HCLS to reflect the exit from the budget control mechanism of newly electing A-CAM carriers. This recalibration will mitigate the uncertainty for rate-of-return carriers that continue to receive legacy support, many of which are small businesses, caused by application of the Commission’s budget control mechanism as the Commission considers additional budget updates. Absent recalibration, carriers would be under annual threat of increasing budget constraints going forward and the uncertainty of obtaining waiver relief while the Commission considers important and necessary budget updates.

¹⁴⁷ 5 U.S.C. § 604(a)(6).

40. We also considered the ACAM Broadband Coalition's proposal to require complete deployment within eight years,¹⁴⁸ but reject this in favor of a four-year deployment timeline for Enhanced A-CAM, beginning in 2025 and ending in 2028. The additional time may favor small carriers who may require more time to implement a construction and deployment plan, however that timeline runs counter to the Commission's goal of achieving buildout to all locations within four years. Instead, we direct the Bureau to consider, in 2027, whether a one-year extension for Enhanced A-CAM carriers' final deployment milestones would be appropriate in light of any such BEAD Program deployment delays. In adopting cybersecurity requirements, we took steps to mitigate concerns that development and implementation of cybersecurity plans are expensive and time consuming. We afford carriers flexibility to include standards and controls in their cybersecurity management plans that are reasonably tailored to their business needs. Our approach will also likely reduce compliance costs because it allows carriers that have already implemented the National Institute of Standards and Technology Framework for Improving Critical Infrastructure Cybersecurity to comply with the requirement without redoing their plan so long as they implement an established set of cybersecurity best practices. To further mitigate costs for small providers we encouraged Enhanced A-CAM carriers to take advantage of existing federal government resources designed to share supply chain security risk information with trusted communications providers and suppliers and facilitate the creation of cybersecurity and supply-chain risk management plans.

41. Finally, the reporting requirements we adopt for all Enhanced A-CAM support recipients are tailored to ensuring that support is used for its intended purpose and so that we can monitor the progress of recipients in meeting their service milestones. We find that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that we require they report is information we expect they will already be collecting to ensure they comply with the terms and conditions of support and they will be able to submit their location data on a rolling basis to help minimize the burden of uploading a large number of locations at once.

G. Report to Congress

42. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁴⁹ In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.¹⁵⁰

¹⁴⁸ Comments of the ACAM Broadband Coalition, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271, RM-11868, at 19 (rec. July 18, 2022).

¹⁴⁹ 5 U.S.C. § 801(a)(1)(A).

¹⁵⁰ *Id.* § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *NPRM*, the Commission seeks comment on how to amend legacy rate-of-return mechanisms to align them with the current broadband deployment and support environment. The broadband landscape has changed significantly in recent years. The Commission, meanwhile, maintains its commitment to promote deployment of broadband at evolving levels of service, while seeking to avoid unnecessary duplication of services that would be provided in the absence of high-cost universal service, whether by unsubsidized competitors or through awards made by other programs.

3. To address immediate needs, we seek comment on three key areas. First, we seek comment on a variety of reforms to legacy support mechanisms and appropriate funding, so that rate-of-return carriers are subject to a smaller reduction when the budget control mechanism applies. We then seek comment regarding appropriate deployment obligations for carriers receiving Connect America Fund Broadband Loop Support (CAF BLS) when the current deployment term ends this year. Finally, we seek comment regarding methodologies for preventing duplication of support between legacy high-cost universal service support mechanisms and funding provided by other federal and state agencies for the deployment of broadband.

B. Legal Basis

4. The proposed action is authorized pursuant to sections 4(i), 214, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, 254, 303(r), and 403.

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

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. 845 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ *Id.* § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public (continued....)

concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 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

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴ U.S. Census Bureau data from the 2017 Census of Governments¹⁵ indicate there were 90,075 local governmental jurisdictions consisting of general

(Continued from previous page)

comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁷ 15 U.S.C. § 632.

⁸ 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁰ *Id.*

¹¹ 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. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁴ 5 U.S.C. § 601(5).

¹⁵ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,931 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts¹⁹ with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²¹

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²² Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.²³ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.²⁴ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁵

¹⁶ U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ *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 *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 *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 U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²³ *Id.*

²⁴ *Id.*

²⁵ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

10. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁷ Of this number, 2,964 firms operated with fewer than 250 employees.²⁸ Additionally, based on Commission data in the 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.²⁹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³¹ is the closest industry with an SBA small business size standard.³² Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³³ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁵ Of this number, 2,964 firms operated with fewer than 250 employees.³⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.³⁷ Of these providers, the Commission estimates that 4,146 providers have 1,500 or

²⁶ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

²⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

²⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

³⁰ *Id.*

³¹ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³² 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³³ 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.

³⁴ *Id.*

³⁵ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

³⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

fewer employees.³⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers³⁹ is the closest industry with an SBA small business size standard.⁴⁰ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴² Of this number, 2,964 firms operated with fewer than 250 employees.⁴³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.⁴⁴ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁴⁵ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

13. *Competitive Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.⁴⁶ Wired Telecommunications Carriers⁴⁷ 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.⁴⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁹ Of this number, 2,964 firms operated with fewer than

³⁸ *Id.*

³⁹ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁰ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴¹ *Id.*

⁴² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁵ *Id.*

⁴⁶ 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.

⁴⁷ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁸ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁹ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

250 employees.⁵⁰ 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.⁵¹ Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵³ is the closest industry with a SBA small business size standard.⁵⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 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.⁵⁸ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

15. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁵⁹ 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.⁶⁰ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶¹ Mobile virtual network operators (MVNOs) are included in this industry.⁶² The SBA small business size standard for Telecommunications Resellers

⁵⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵² *Id.*

⁵³ U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁴ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁵ *Id.*

⁵⁶ U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePrevious=false>.

⁵⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁹ U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

classifies a business as small if it has 1,500 or fewer employees.⁶³ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁴ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁵ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.⁶⁶ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁶⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁶⁸ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶⁹ Mobile virtual network operators (MVNOs) are included in this industry.⁷⁰ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷¹ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷² Of that number, 1,375 firms operated with fewer than 250 employees.⁷³ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.⁷⁴ Of these providers, the Commission estimates that

⁶³ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁴ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁷ *Id.*

⁶⁸ U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁴ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

438 providers have 1,500 or fewer employees.⁷⁵ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷⁶ is the closest industry with a SBA small business size standard.⁷⁷ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁷⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁸⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸¹ Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers⁸³ is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁸⁴ Mobile virtual network operators (MVNOs) are included in this industry.⁸⁵ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁶ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale

⁷⁵ *Id.*

⁷⁶ U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁷ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁸ *Id.*

⁷⁹ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁸⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁸² *Id.*

⁸³ U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

services for the entire year.⁸⁷ Of that number, 1,375 firms operated with fewer than 250 employees.⁸⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.⁸⁹ Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.⁹⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁹¹ 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.⁹² The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁹³ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁹⁴ Of that number, 2,837 firms employed fewer than 250 employees.⁹⁵ 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.⁹⁶ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁹⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *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.⁹⁸ The broadcast programming is typically narrowcast in nature

⁸⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

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 Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>; <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁹⁰ *Id.*

⁹¹ U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁹² *Id.*

⁹³ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁹⁴ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁹⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁹⁷ *Id.*

⁹⁸ U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

(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.⁹⁹ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹⁰⁰ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.¹⁰¹ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹⁰² 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.¹⁰³ Based on this data, the Commission estimates that a majority of firms in this industry are small.

21. *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.¹⁰⁴ Based on industry data, there are about 420 cable companies in the U.S.¹⁰⁵ Of these, only seven have more than 400,000 subscribers.¹⁰⁶ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁰⁷ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹⁰⁸ Of these, about 639 have more than 15,000 subscribers.¹⁰⁹ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

22. *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."¹¹⁰ For purposes of the Telecom Act Standard, the Commission determined that a cable

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

¹⁰² 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).

¹⁰³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁰⁴ 47 CFR § 76.901(d).

¹⁰⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹⁰⁶ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹⁰⁷ 47 CFR § 76.901(c).

¹⁰⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹⁰⁹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023).

¹¹⁰ 47 U.S.C. § 543(m)(2).

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.¹¹¹ Based on industry data, only six cable system operators have more than 677,000 subscribers.¹¹² 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.¹¹³ 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.

23. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹¹⁴ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.¹¹⁵ Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.¹¹⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹¹⁷ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹¹⁸ Of those firms, 1,039 had revenue of less than \$25 million.¹¹⁹ Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

¹¹¹ *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 49.8 million. *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 80, para. 218, Fig. II.E.1. (2022) (2022 *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).

¹¹² S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹¹³ 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).

¹¹⁴ U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹¹⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹¹⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

24. *Wired Broadband Internet Access Service Providers (Wired ISPs).*¹²⁰ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹²¹ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.¹²² The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.¹²³ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹²⁴ Of this number, 2,964 firms operated with fewer than 250 employees.¹²⁵

25. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.¹²⁶ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 Communications Marketplace Report,¹²⁷ we believe that the majority of wireline Internet access service providers can be considered small entities.

26. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*¹²⁸ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"¹²⁹ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection

¹²⁰ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

¹²¹ 47 CFR § 1.7001(a)(1).

¹²² U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹²³ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹²⁴ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹²⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²⁶ *IAS Status 2018*, Fig. 30 (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

¹²⁷ *2022 Communications Marketplace Report*, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7.

¹²⁸ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

¹²⁹ Federal Communications Commission, *Internet Access Services: Status as of December 31, 2018 (IAS Status 2018)*, Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

under the Commission's rules.¹³⁰ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).¹³¹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹³² U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹³³ Of that number, 2,837 firms employed fewer than 250 employees.¹³⁴

27. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.¹³⁵ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's 2022 Communications Marketplace Report on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹³⁶ as well as on terrestrial fixed wireless broadband providers in general,¹³⁷ we believe that the majority of wireless Internet access service providers can be considered small entities.

28. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹³⁸ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹³⁹ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁴⁰ Of those firms, 1,039

¹³⁰ 47 CFR § 1.7001(a)(1).

¹³¹ 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 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³³ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹³⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁵ *IAS Status 2018*, Fig. 30.

¹³⁶ *2022 Communications Marketplace Report*, 2022 WL 18110553 at 27, paras. 64-68.

¹³⁷ *Id.* at 8, para. 22.

¹³⁸ U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹³⁹ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁴⁰ 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: EC1700SIZEREFirm, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREFirm&hidePreview=false>.

had revenue of less than \$25 million.¹⁴¹ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

29. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).¹⁴² The SBA small business size standard for this industry classifies firms with annual receipts of \$30 million or less as small.¹⁴³ U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.¹⁴⁴ Of those firms, 556 had revenue of less than \$25 million.¹⁴⁵ Consequently, we estimate that the majority of firms in this industry are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

30. The Commission's proposal to reform legacy rate-of-return mechanisms to align these mechanisms with current broadband deployment and the specific issues to implement the reform upon which we seek comment in the NPRM, may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities. For example, we seek comment regarding the deployment obligations for rate-of-return carriers receiving CAF BLS. We seek comment on whether we should continue to require CAF BLS recipients to meet broadband deployment obligations or increase the broadband speeds beyond their current obligations. If the Commission chooses to continue to require deployment obligations, small entities and other CAF BLS recipients will likely have to serve a certain number of locations with broadband service meeting certain performance requirements.

31. We also seek comment on whether the Universal Service Administrative Company should collect information regarding grants received by legacy support recipients on CAF BLS-related forms, or in annual compliance forms to prevent double recovery of investment paid for with grants. This would require legacy support recipients, including small entities, to track and report the grants they receive from other funding programs. Additionally, we seek comment on updating a challenge process for determining which census blocks are competitively served. As part of this process, competitive carriers, that may include small entities, could be required to submit data to demonstrate that they are already serving a location or that they received awards from other programs to serve an area in order to prevent a rate-of-return carrier from receiving support from legacy support mechanisms to serve the same area. As an alternative, we also seek comment on relying on existing data sources instead of requiring competitors to submit information.

¹⁴¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹⁴² U.S. Census Bureau, *2017 NAICS Definition*, "519190 All Other Information Services," <https://www.census.gov/naics/?input=519190&year=2017&details=519190>.

¹⁴³ 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

¹⁴⁴ 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 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁴⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms 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.

32. At this time, 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 relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries made in the *NPRM*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. 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.”¹⁴⁶

34. In the *NPRM*, we seek to balance the requirement to provide support that is sufficient to achieve the Commission’s universal service goals, but also provide appropriate incentives for prudent and efficient expenditures. With these goals in mind, we seek comment on measures related to the budget for CAF BLS and other legacy support mechanisms that could potentially benefit legacy support recipients, including small entities, by having their support shifted towards costs that are trending higher for such carriers. For example, we seek comment on alternatives like resetting the budget amount to account for trends like the conversion of voice lines in consumer broadband-only loops, reducing high-cost loop support (HCLS) and targeting the support to CAF BLS to account for broadband deployment costs, or shifting support from another mechanism like Connect America Fund Intercarrier Compensation (CAF ICC). We also seek comment on increasing the amount of end-user revenue imputed to CBOL lines in the CAF BLS calculation. While some of these proposals may have the consequence of reducing high-cost universal support to small entities, they may potentially result in more stable and predictable annual support when the budget control is applied, giving all legacy carriers, including small carriers, more certainty regarding their support. In considering these matters, we note that the costs of high-cost universal service is ultimately borne by consumers, including small entities, through the contributions factors assessed on their bills.

35. We also considered and seek comment on alternatives for specific deployment obligations for rate-of-return carriers receiving support through legacy support mechanisms. For example, we consider whether we should increase the obligations to require the deployment of broadband at 100/20 Mbps consistent with the Infrastructure Act and the Enhanced Alternative Connect America Cost Model (A-CAM) program, and what methodology to use to determine those obligations. Alternatively, we seek comment on retaining the existing requirement that legacy support recipients offer broadband at speeds of 25/3 Mbps deployment obligations and the methodology for determining these obligations.. We also seek comment on revisiting deployment obligations to account for another agency making a qualifying award with enforceable deployment obligations in the rate-of-return carrier’s service area. If the Commission were to adopt lower broadband speed obligations, like 25/3 Mbps, it might reduce costs for all legacy support recipients, including small entities. A carrier’s costs may also be reduced if other funding programs award grants in the rate-of-return carrier’s service area, and the legacy rate-of-return carrier is no longer required to serve the locations receiving the alternative funding. However, these scenarios may also result in the reduction of support for such carriers if the Commission adjusts support to account for the lower costs or duplicative funding.

¹⁴⁶ 5 U.S.C. § 603(c)(1)-(4).

36. We seek comment on alternatives for reducing a rate-of-return carrier's support amount to reflect the availability of funding from other federal and state programs in their service areas or to reflect that an unsubsidized competitor serves the area. For example, we seek comment on alternatives for identifying overlap, methods for disaggregating CAF BLS between competitor-served or -obligated areas, the timing for making support reductions, and the process for making the determinations that qualifying awards have been made to a competitor. In areas where the rate-of-return carrier receives a grant from another source, we seek comment on alternatives for how to account for the grant in the rate-of-return's cost recovery.

37. More generally, the Commission expects to more fully consider the economic impact on small entities following its review of comments filed in response to the NPRM and the IRFA, including costs and benefits information and any alternative proposals. The matters discussed in the NPRM are designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods before reaching its final. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities as a result of any final rules that are adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

38. None.

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

In the Matter of	)	
	)	
Modifying Rules for FM Terrestrial Digital Audio	)	MB Docket No. 22-405
Broadcasting Systems	)	
	)	
	)	
	)	
	)	

ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: July 31, 2023

Released: August 1, 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:

I. INTRODUCTION

1. In this *Order and Notice of Proposed Rulemaking (NPRM)*, we grant two Petitions for Rulemaking and propose changes to our digital audio broadcasting (DAB) technical rules that would permit additional FM stations to increase FM hybrid digital effective radiated power (FM Digital ERP) beyond the existing levels without the need for individual Commission authorization. In addition, we propose to allow a digital FM station to operate with asymmetric power on the digital sidebands. This would allow stations to operate with different power levels on the upper and lower digital sidebands, as a way to facilitate greater digital FM radio coverage without interfering with adjacent channel FM stations.¹

2. The two Petitions for Rulemaking were consolidated by the Media Bureau (Bureau) because the proposed rule changes both relate to improving digital FM signal quality and minimizing the effect of the digital FM station signal on adjacent channel FM transmissions.² The petitioners point out the increasing penetration of digital FM receivers, especially in automobiles, and note that station conversions to digital have not experienced an equivalent growth. Petitioners submit that a significant contributor to the slower digital conversion rate is the difficulty of replicating an FM station's analog signal using currently allowable digital FM power levels. In the earlier of the two petitions, filed December 9, 2019, petitioners National Association of Broadcasters (NAB), Xperi Corporation (Xperi), and National Public Radio (NPR) request blanket authorization to set digital power at different levels on each digital sideband, thus allowing a digital FM station to protect, for example, an analog FM station on a lower first adjacent channel, while enabling an increase in digital power on the upper sideband where

¹ We note that the Low Power FM service, the FM translator service, and the FM booster service are all eligible to operate in hybrid mode, in the same manner as the full-power FM service. See *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rule Making, 22 FCC Rcd 10344, 10366-67, 10381-81, paras. 56-58, 92-93 (2007) (*DAB Second R&O*). In this *NPRM* any references to the "FM service" or "FM" include all of these discrete FM services, unless noted otherwise.

² *Media Bureau Seeks Comment on Petitions for Rulemaking Proposing Amendments to FM Broadcast Digital Radio Rules*, Public Notice, DA 22-1226 (MB Nov. 28, 2022) (*FM Digital Comment PN*).

there is no adjacent analog FM station or a more distant adjacent station.³ In the second petition, filed October 26, 2022, NAB and Xperi request that the FCC update the methodology stations use to determine maximum FM digital power levels.⁴ We grant these petitions and seek comment on whether the rule changes proposed below, based on the Asymmetric Sideband Petition and Power Increase Petition, would serve the public interest by providing FM digital stations with the ability to increase power and, concomitantly, increase coverage area, building penetration, and provide a more robust digital signal. We additionally seek comment on: whether such rule changes would cause or increase interference to analog FM stations adjacent to digital FM station; whether the proposed rule changes would have other adverse effects on incumbent FM stations; whether and to whom notice of increased digital FM power should be provided; and whether additional interference remediation procedures should be introduced. We tentatively conclude that adoption of the proposed rule changes would advance the Commission's ongoing commitment to developing terrestrial digital broadcasting with minimal to no adverse effects, including any harmful interference, on existing service. We therefore seek comment from broadcasters, engineers, and other interested parties to help us clarify some of the issues raised by the proposed rule changes and to assess their relative costs and benefits.

II. BACKGROUND

3. *Power Increase Petition; History of Digital FM Power Limits.* In 2002, the Commission selected in-band, on-channel (IBOC) technology to enable radio broadcast stations to commence digital broadcasting.⁵ In the *DAB R&O*, the Commission adopted notification procedures allowing existing FM radio stations to begin digital transmissions immediately on an interim basis using the IBOC system.⁶ The iBiquity FM IBOC digital system includes several hybrid modes and separate all-digital modes. In the hybrid and extended hybrid modes, a station simultaneously transmits both the analog and digital signals.⁷ In the all-digital modes, the station drops the analog signal and is able to increase the capacity of the digital signal. The Commission initially limited digital operations to the hybrid digital mode,⁸ which permits the simultaneous transmission of both the analog and digital signals within the current spectral emissions mask of a single FM channel, placing redundant blocks of digital information in the sidebands on both sides of and immediately adjacent to the analog signal.⁹

4. iBiquity and several independent parties conducted extensive field and laboratory tests of the IBOC system prior to Commission adoption. Based on the National Radio Systems Committee's

³ Petition for Rulemaking of Nat'l Ass'n of Broad., Xperi Corp., and Nat'l Public Radio, MB Docket No. 22-405 (filed Dec. 9, 2019), <https://www.fcc.gov/ecfs/document/1125972022299/1> (Asymmetric Sideband Petition).

⁴ Petition for Rulemaking of Nat'l Ass'n of Broad. and Xperi Inc., MB Docket No. 22-405 (filed Oct. 26, 2022), <https://www.fcc.gov/ecfs/document/10261669202264/1> (Power Increase Petition).

⁵ *Digital Audio Broadcasting Systems And Their Impact On The Terrestrial Radio Broadcast Service*, First Report and Order, 17 FCC Rcd 19990 (2002) (*DAB R&O*). DAB generally refers to the digital service broadcast by radio stations whereas IBOC generally refers to the technical system supporting DAB service. While early DAB orders addressed both AM and FM digital broadcasting, this *NPRM* deals exclusively with digital FM operations and regulations.

⁶ iBiquity subsequently was sold, and the acquiring company renamed itself Xperi.

⁷ The extended hybrid mode adds an additional 50 kbps (kilobits per second) to the 96 kbps digital capacity of the hybrid mode. See *DAB Second R&O*, 22 FCC Rcd at 10344, para. 2. See also 47 CFR § 73.402 Definitions.

⁸ The Commission subsequently authorized use of the FM IBOC extended hybrid digital mode in the *DAB Second R&O*. See *DAB Second R&O*, 22 FCC Rcd at 10352, paras. 18-19.

⁹ The sideband frequency higher than the FM channel's center frequency is known as the upper sideband, while that which is lower than the FM channel's center frequency is known as the lower sideband.

(NRSC)¹⁰ evaluation of those test results, in December 2001 the NRSC approved the NRSC-5 standard,¹¹ which specifies a digital FM ERP equal to one percent of authorized analog FM power (20 decibels below carrier or -20 dBc). Subsequently, the Commission adopted this as the maximum digital power level for the hybrid digital mode of the FM IBOC system the Commission authorized in the 2002 *DAB R&O*.¹² In 2010, the Bureau released an Order increasing the allowable power level of the FM station's digital sidebands from -20 dBc to -14 dBc, upon electronic notification to the Commission.¹³ In the *2010 MB DAB Order*, the Bureau further allowed certain FM stations to increase digital power above -14 dBc, to up to -10 dBc, upon a showing that such power increase would comply with the formula in the *2010 MB DAB Order*, and therefore would not cause harmful interference to adjacent analog FM stations.¹⁴

5. Petitioners state that digital FM receiver penetration continues to grow: according to the October 2022 Power Increase Petition, there are over 90 million autos in the U.S. with digital receivers; receiver penetration has exceeded 40% in some markets; and almost 60% of new automobiles sold in the U.S. are equipped with digital IBOC receivers.¹⁵ Petitioners NAB and Xperi contend, however, that many stations have resisted adopting IBOC technology due to the inability to replicate their analog signal coverage with digital coverage, owing to the limits placed on digital sideband power.¹⁶ They maintain that the Commission, by its own admission,¹⁷ overprotected adjacent-channel FM analog stations when implementing the allowable FM digital power table set forth in the *2010 MB DAB Order*, and further state that 12 years of experience with the current FM digital power levels has yielded few if any complaints of interference from hybrid digital FM transmissions.¹⁸ As evidence for its contentions, petitioners NAB and Xperi attach an analysis of existing digital FM stations transmitting at the current allowable limit of -14 dBc, but whose digital signal substantially overlaps that of adjacent analog FM stations. They assert that in none of these real-world situations have there been any instances of digital-to-analog interference.¹⁹ NAB and Xperi further attach the results of their own field test, conducted under experimental authority, using three stations in the New York market, two adjacent “interfering” stations and one “interfered with” station. In this study the adjacent-channel digital stations operated first with FM digital signals at -14 dBc, and then at -10 dBc, while recordings were made of the adjacent channel analog station under each condition. According to a panel of listeners—consisting of NAB and Xperi employees—who evaluated the recordings, there was “no significant change or degradation of the desired [FM analog] signal when the 1st-adjacent channel interferer went from -14 dBc to -10 dBc” even though

¹⁰ The NRSC is an industry group jointly sponsored by the National Association of Broadcasters and the Consumer Technology Association.

¹¹ Press Release, NRSC, NRSC Approves Digital Radio Broadcasting Standard (Apr. 16, 2005).

¹² See *DAB R&O*, 17 FCC Rcd at 20004 n.67 and Appendix B, 17 FCC Rcd at 20041-43. See also 47 CFR § 73.404(a).

¹³ *Digital Audio Broadcasting Systems And Their Impact on the Terrestrial Radio Broadcast Service*, Order, 25 FCC Rcd 1182, 1189, para. 16 (MB 2010) (*2010 MB DAB Order*).

¹⁴ *Id.* at 1182, 1189-90, paras 16-20. See also 47 CFR §73.404(a). The showing required to obtain FM digital power of between -14 dBc and -10 dBc included the calculation results using the following formula: Allowable FM digital power = $[2.27 * (60 - \text{FM digital station } F(50,10) \text{ dB}\mu) - 33.6]$. Thus, a licensee desiring FM digital ERP in excess of -14 dBc total power is required to calculate the digital station's analog $F(50,10)$ field strength at all points on the protected 60 dB μ $F(50,50)$ contour of a potentially affected first-adjacent channel analog FM station. This calculation must be performed using each station's licensed analog facilities and the standard FCC contour prediction methodology. *2010 MB DAB Order*, 25 FCC Rcd at 1187, 1190, paras. 12, 20.

¹⁵ Power Increase Petition at 3-4.

¹⁶ *Id.* at 4-5. See 47 CFR § 73.404(a).

¹⁷ *2010 MB DAB Order*, 25 FCC Rcd at 1189, para. 19.

¹⁸ Power Increase Petition at 6, 9-10.

¹⁹ *Id.* at 10-17 and Appendix 1.

these stations were operating at levels far in excess of the levels permitted under the current methodology.²⁰

6. *Asymmetric Sideband Petition.* The Commission's existing rules assumed that digital power would be the same on both digital sidebands.²¹ NAB, Xperi, and NPR, in the Asymmetric Sideband Petition, assert that with asymmetric sidebands a digital FM station could protect one adjacent analog FM station while concurrently increasing power on the other sideband frequency in order to expand its digital coverage and building penetration.²² These petitioners conducted a study that they state demonstrates that many more digital FM stations could increase power above -14 dBc on at least one sideband. Out of 10,875 digital FM stations studied, petitioners contend that 6,120 could increase power to -10 dBc under the current rules, whereas if asymmetric sidebands were allowed, an additional 3,496 stations could increase one sideband to -10 dBc, with another 532 being able to increase one sideband's power to between -14 and -10 dBc.²³ These petitioners also note that, under the current rules, stations may only request asymmetric sidebands under an experimental authorization.²⁴ They argue that the need to request experimental authorization, and the temporary nature of such authorizations, discourages use of asymmetric sidebands,²⁵ which in turn limits digital FM stations to the power level needed to protect the closer or higher-powered adjacent-channel analog FM station.²⁶ Petitioners thus request that we amend our rules to allow FM stations to operate with asymmetric digital sidebands, without having to request experimental authorization to do so, in order to remove unnecessary regulatory barriers and promote broader adoption of terrestrial digital FM broadcasting.²⁷ The Bureau sought comment on the consolidated Power Increase Petition and Asymmetric Sideband Petition in the *FM Digital Comment PN*, released November 28, 2022.²⁸

III. DISCUSSION

7. After review of the Power Increase Petition and the Asymmetric Sideband Petition, and the comments filed in response, we conclude that the record discloses sufficient reasons to justify the institution of a rulemaking proceeding seeking further comment on these proposals.²⁹ We tentatively conclude that the proposals in both the Power Increase Petition and the Asymmetric Sideband Petition represent steps toward improving the terrestrial digital FM broadcast radio service. We seek comment on our proposal to allow additional stations to increase FM digital power levels, to authorize asymmetric sideband power levels without the need for experimental authorization, and to rely on our existing interference mitigation and remediation processes, and notification procedures.

²⁰ *Id.* at 17-20 and Appendices 2-3.

²¹ See *2010 MB DAB Order*, 25 FCC Rcd at 1190, para. 20 (setting forth methodology for calculating maximum permissible FM Digital ERP that assumes operation with symmetric sidebands). A station wishing to operate with asymmetric sideband power must request experimental operation, including a showing that the digital sideband signal contours will not overlap adjacent stations' protected contours. The staff generally grants requests that do not propose prohibited overlap.

²² *Id.*

²³ *Id.* at 9-11. Petitioners' study was conducted in 2017.

²⁴ Asymmetric Sideband Petition at 11.

²⁵ *Id.*

²⁶ *Id.* at 8-10.

²⁷ *Id.* at 8-11.

²⁸ *FM Digital Comment PN*, *supra* note 4, at 1.

²⁹ See 47 CFR § 1.407.

A. Power Increase Petition

8. We propose to amend our rules to change the power increase methodology and notification procedures, consistent with the Petition. Specifically, we propose to change the methodology used by digital FM stations to determine whether they are eligible to increase digital FM power up to -10 dBc, or 10% of analog power. We also propose that such increases be allowed without the need for additional individual special authorization, but upon basic notification to the Commission. We further propose that stations notify the Commission of a power increase up to -10 dBc in the Bureau's Licensing and Management System (LMS), using the same notification procedures as currently used to notify the Commission of digital operation up to -14 dBc.

9. *Maximum Permissible FM Digital ERP Table.* We propose to amend our rules to modify the methodology a digital FM station must use to determine whether it is eligible to increase its power above -14 dBc. This modification, if adopted, would allow more stations to increase power up to -10 dBc without the requirement of submitting a contour analysis. As stated in note 1, *supra*, secondary services such as LPFM and FM translators are eligible to operate in hybrid mode. To the extent that such a secondary service station seeks to increase its digital power, it would use the same methodology set forth herein. As summarized above, currently a digital FM station may operate with digital power up to -14 dBc. Additionally, a digital FM station could apply to operate with power of up to -10 dBc (10% of analog power), pursuant to the table adopted in the *2010 MB DAB Order*.³⁰ Petitioners now assert that the intervening dozen years of experience with the established 2010 power limits, as well as follow-up field tests and other studies, demonstrate that most digital FM stations should be able to operate at power levels of up to -10 dBc without special Commission authorization, and without causing interference to adjacent channel FM facilities.³¹ They propose an updated table for determining maximum permissible FM Digital ERP as follows:³²

Proponent Analog F(50,10) Field Strength at First Adjacent Station's³³ Analog 60 dBμ F(50,50) Contour (Symmetric Sideband Operation)	Maximum Permissible FM Digital ERP
57.9 dBμ and above	-14 dBc
56.5 dBμ to 57.8 dBμ	-13 dBc
55.6 dBμ to 56.4 dBμ	-12 dBc
54.1 dBμ to 55.5 dBμ	-11 dBc
54.0 dBμ or less	-10 dBc

As detailed in the *2010 MB DAB Order*,³⁴ a licensee desiring FM Digital ERP in excess of -14 dBc must calculate the station's analog F(50,10) field strength at all points on the 60 dBμ F(50,50) contour of a potentially affected first-adjacent channel analog FM station. This calculation must be done using each

³⁰ See *supra* note 14. See also *2010 MB DAB Order*, 25 FCC Rcd at 1190, para. 20.

³¹ Power Increase Petition at 9-15, 17-20, and Appendices 1 and 2.

³² *Id.* at 7-8. The table is derived from an updated formula proposed by petitioners, as follows: Allowable IBOC power (dBc, total power) = 44 – [IBOC Station F(50,10) dBμ at the desired station 60 dBμ F(50,50) contour] (if using symmetric sidebands), or Allowable IBOC power (dBc, per sideband) = 41 – [IBOC Station F(50,10) dBμ at the desired station 60 dBμ F(50,50) contour] (if using asymmetric sidebands). Petitioners note that total power is 3 dB greater than that of each individual sideband, explaining the 3 dB difference between the two formulas.

³³ As petitioners note, "the word 'protected' has been struck from the first column heading in the table to emphasize that the 60 dBμ contour is the contour of interest regardless of station class." Power Increase Petition at 6 n.12. We also note that, as stated in note 1, *supra*, digital LPFM stations and FM translators and boosters may avail themselves of the increased maximum permissible digital ERP. However, this does not provide secondary stations with additional protection from interference by full-service stations.

³⁴ *2010 MB DAB Order*, 25 FCC Rcd at 1190, para. 20.

station's licensed analog facilities and the standard FCC contour prediction methodology.³⁵ Once the most restrictive analog F(50,10) field strength of the proponent station has been determined, the licensee will use the updated table to determine the proponent station's maximum permissible FM Digital ERP.

10. As discussed above, petitioners studied pairs of stations in which the digital FM station operated at -14 dBc, yet the station's signal strength at the protected contour of the adjacent analog FM station is greater than that allowed by the current methodology.³⁶ Despite this, petitioners state that none of the studied analog FM stations reported any significant interference from the digital FM stations, in spite of signal strengths higher than permitted by the current methodology. We note that we have not received any interference complaints from any of the adjacent channel stations most likely to experience interference from the stations that petitioners studied, with greater-than-normal power ratios. We request comment on the methodology or interpretation of petitioners' studies, and whether they support petitioners' claim that use of the proposed revised table will not result in harmful interference.

11. The majority of commenters support the proposals set forth in the Power Increase Petition.³⁷ Most agreed with petitioners that allowing more stations to increase digital power would assist FM digital stations to expand their digital service areas, as well as improve building signal penetration.³⁸ As discussed below, two commenters express concern about the effect of increased digital FM power on Low-Power FM (LPFM) and smaller Class A FM stations, contending that such stations serve listeners outside the protected 60 dBμ contour.³⁹

12. We tentatively conclude that the record collected to date supports our proposed methodology change. We reiterate that the Commission initiated the process of authorizing digital broadcast operations in 1999 with the eventual goal of moving terrestrial broadcasting from an all-analog to an all-digital world.⁴⁰ Although we have stated repeatedly that there is no timetable for this eventual change to all-digital broadcast radio⁴¹—and do not alter that stance in any way today—our objective remains to advance the progress of digital radio without causing harmful interference or disruption to

³⁵ See 47 CFR § 73.313. As explained in the *2010 MB DAB Order*, 25 FCC Rcd at 1190 n.43, since the Commission's rules permit only a limited differential in the location of separate FM analog and digital transmitting facilities and there will be very little difference in the predicted maximum permissible FM Digital ERP for an eligible FM station if calculated from either of the two locations, we require use of the licensed analog facilities for this calculation.

³⁶ Power Increase Petition at 10-15 and Appendix 1 at 7-34. Because each digital station studied was operating at the current maximum allowable power level of -14 dBc, none were required to make a special authorization showing using the current methodology.

³⁷ See, e.g., Comments of Beasley Media Group Licenses, LLC (Beasley Comments) at 4 (contending that there can be "no downside to adjusting the formula for power levels."); Comments of CMG Media Corp. (CMG Comments) at 2 (supporting "swift grant of the [Power Increase] Petition and the Asymmetric Sideband Petition as the next step in the technological advancement of the radio industry."); Comments of Communications Technologies, Inc. (CTI Comments) at 3; Comments of New York Public Radio (NYPR Comments) at 2 (stating that adoption of the updated digital power methodology and asymmetric sideband operation "will do much to spur improvements and increased adoption of HD Radio technology nationwide."); Comments of E. Glynn Walden (Walden Comments) at 3; Comments of Kevin J. Haider (Haider Comments) at 1; Comments of David Maxson (Maxson Comments) at 1 ("The NAB/Xperi technical assessment demonstrates their proposed protection equation will be more than sufficient to maintain interference-free use of the FM spectrum.").

³⁸ See, e.g., CMG Comments at 2; Comments of Nautel Maine, Inc. (Nautel Comments) at 2; Walden Comments at 2.

³⁹ See *infra* paras. 14-17, for a discussion of the effect of increased FM digital power on secondary service stations.

⁴⁰ See *DAB R&O*, 17 FCC Rcd at 19992-93, para. 7. See also *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, Notice of Proposed Rulemaking, MM Docket No. 99-325, 15 FCC Rcd 1722, 1730, para. 16 (1999).

⁴¹ See, e.g., *DAB Second R&O*, 22 FCC Rcd at 10350-51, para. 13.

existing analog operations. This is especially true given the record evidence of increased digital FM receiver penetration,⁴² even though we recognize that such receivers are far from ubiquitous, and that the record is less complete with regard to non-automotive digital FM receiver penetration. It is this desire to encourage continued adoption of digital FM broadcast technology that informs our tentative conclusions and proposals in this *NPRM*.

13. We tentatively conclude that the proposals set forth in the Power Increase Petition support the goal of furthering the progress of digital FM broadcast radio. We therefore propose to amend our rules to change the methodology used by digital FM stations to determine whether they are eligible to operate with allowable IBOC power up to and including -10 dBc, and to permit any existing FM digital station currently operating with power below -10 dBc that satisfies the table we propose to adopt herein, to increase allowable IBOC power without seeking prior Commission authorization and without the requirement of submitting a contour overlap analysis. We further propose to adopt the petitioners' table for calculating maximum allowable FM IBOC power set forth in paragraph 9, above. We seek comment on this proposal. Are the contours and power levels set forth in the Maximum Permissible FM Digital ERP Table reasonable from an engineering standpoint? If not, how would commenters modify the table? To the extent that any such modifications are proposed, we request that commenters detail the engineering rationale underlying any such modifications. If commenters generally support providing greater flexibility for stations to increase their FM digital power but disagree with the use of the Maximum Permissible FM Digital ERP Table, what other methods would they suggest for calculating maximum FM digital power?

14. *Interference and Proposed Interference Remediation Procedures.* We seek comment on whether changing the power increase methodology will create an unacceptable risk of interference to adjacent-channel stations. Most commenters agree with petitioners that interference has not been and would not be an issue with the proposal to broaden the number of stations eligible to increase digital power levels.⁴³ Petitioners, and those who concur with them, base their contentions on the technical analyses and field studies they cite.⁴⁴ Some commenters, however, express caution surrounding digital interference to FM analog stations, especially smaller stations. These commenters argue that the proposed change to the methodology could harm smaller stations such as Class A FM stations, LPFM stations, and FM translators and AM stations rebroadcasting over FM translators,⁴⁵ as well as other entities beside FM stations, such as broadband providers.⁴⁶

⁴² See Power Increase Petition at 2-4; Asymmetric Sideband Petition at 2-5.

⁴³ See, e.g., Beasley Comments at 3 (asserting that the Power Increase Petition proposals are "supported by thorough engineering studies" and that there is "no downside" to adjusting the digital power methodology); Maxson Comments at 1 ("The NAB/Xperi technical assessment demonstrates their proposed protection equation will be more than sufficient to maintain interference-free use of the FM spectrum."); Reply Comments of iHeartCommunications, Inc. (IHC Reply) at 3-4 (stating that "the comprehensive technical analysis, long-term real-life experiences and field studies presented to the Commission in the NAB/Xperi Petition justify adjusting the IBOC formula to permit certain stations to operate above -14 dBc," and further that real-world experience and field studies demonstrate that the current methodology is too conservative).

⁴⁴ Power Increase Petition at 9-15, 17-20, and Appendices 1 and 2.

⁴⁵ See Comments of Santiam Community Radio Corp. (Santiam Comments) at 1; Letter from Robert McAllan, CEO, Press Communications, LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-405, at 1-2 (filed Mar. 2, 2023) (Press First *Ex Parte*). See also Comments of NPR (NPR Comments) at 3 (requesting that any new rules protect FM stations that are not increasing digital power levels). See also *infra* para. 17, for a discussion of the effect of increased FM digital power on secondary service stations.

⁴⁶ See Letter from Maureen O'Connell, Vice President, Regulatory Affairs, Charter Communications, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-405, at 1 (filed July 28, 2023) (Charter *Ex Parte*).

15. In the *2010 MB DAB Order*, the Bureau set forth detailed procedures to identify and remedy complaints of digital-to-analog FM interference among full-service FM broadcast stations.⁴⁷ Those procedures require, first, that an analog FM station receiving verifiable listener complaints of digital interference within its protected contour contact the digital FM station, and that the stations cooperate to confirm the interference and attempt to eliminate it using voluntary tiered FM digital power reductions.⁴⁸ If the stations are unable to agree on appropriate interference remediation measures, the affected analog FM licensee may file a complaint with the Media Bureau.⁴⁹ Media Bureau staff will review each complaint and order appropriate action within 90 days of filing the complaint. If the Bureau has not acted within 90 days, the interfering station must reduce its digital power, and ongoing complaints of interference may require subsequent stepped reductions of digital power.⁵⁰

16. Like the petitioners and commenters,⁵¹ we have noted few interference complaints from full-service analog FM stations resulting from adjacent-channel digital transmissions. Given the paucity of interference complaints, we tentatively conclude that the interference remediation procedures outlined above and set forth in the *2010 MB DAB Order* will continue to suffice to handle such digital-to-analog interference complaints as may arise between full-service FM stations. These interference mitigation and remediation procedures would therefore remain in place to guard against any instances of actual interference to other facilities. We seek comment on this tentative conclusion. To the extent that commenters believe that these current procedures would be inadequate to deal with the increased power levels proposed in this *NPRM*, we ask that they state specifically where the current system is deficient, and describe in detail the interference identification and remediation measures they feel are needed.

17. As discussed in the *2010 MB DAB Order*, as secondary services LPFM and FM translators stations are not eligible for the interference remediation procedures adopted therein.⁵² Because secondary services are not protected from interference from full-service stations, we do not propose to modify this approach such that secondary services can use these interference remediation procedures to claim interference from full-service stations. However, although the number of secondary service stations employing hybrid digital operation to date is small, we invite comment as to whether we should adopt any digital interference remediation procedures for secondary service analog stations claiming interference from secondary service digital stations. All full-service stations, including Class A stations, may take advantage of the interference remediation procedures set forth in the *2010 MB DAB Order* and as proposed herein.

⁴⁷ *2010 MB DAB Order*, 25 FCC Rcd at 1191-93, paras. 24-30.

⁴⁸ *Id.* at 1193, para. 27. If the stations resolve the interference by voluntarily reducing FM digital power, the digital FM station must notify the Commission of the reduced digital power level, and maintain its digital ERP at the jointly agreed-upon level. *Id.*

⁴⁹ This complaint must contain the following: (a) at least six reports of ongoing (not transitory) objectionable interference; (b) a map showing the location of the reported interference; (c) a detailed description of the nature and extent of the interference experienced at each mapped location; and (d) a complete description of the tests and equipment used to identify the alleged interference and the scope of the unsuccessful efforts to resolve the interference. *Id.* at 1193, para. 28.

⁵⁰ *Id.* at 1193, para. 29. After 90 days, if the Media Bureau has not acted on the complaint, stations operating with FM digital ERP in excess of -14 dBc must immediately reduce FM Digital ERP to -14 dBc. If ongoing complaints of objectionable interference from the FM digital facilities persist, the Bureau may require subsequent 3 dB reductions in FM Digital ERP to -17 dBc and -20 dBc, respectively, until it acts on the pending interference complaint. Stations operating with FM digital ERP of -14 dBc or less must immediately reduce FM Digital ERP to -17 dBc. If interference complaints persist after this initial reduction, the Bureau will order the station to reduce FM digital ERP to the currently permitted maximum of -20 dBc and require it to remain at that level until the Bureau acts on the pending FM digital interference complaint. *Id.*

⁵¹ See Power Increase Petition at 10-17 and Appendix 1. See also, e.g., Beasley Comments at 3.

⁵² *2010 MB DAB Order*, 25 FCC Rcd at 1192-93, para. 26.

18. Commenter Aaron Read labels as “disingenuous” a system of determining interference based on listener complaints; rather, he argues for a “a clear, objective, mathematical/contour-based system” for resolving interference issues before the problem becomes acute.⁵³ Commenters may wish to address whether the station complaints described above should be based on objective criteria such as “agreed-upon [mathematical] formulas,” rather than listener reports.⁵⁴ Should the number of reports of ongoing interference required (currently six) be increased or decreased? Should a complaining station be allowed instead to submit studies and/or measurements demonstrating that the digital FM signal within the complaining station’s protected contour exceeds allowable limits? Additionally, how should a digital FM station that has increased its digital power be treated if and when an adjacent-channel analog FM station subsequently increases its analog power, and/or moves its facilities closer to the digital FM station? Should we give precedence to the analog FM signal? Alternatively, should the digital FM facility that now seeks a power increase be protected over a subsequent facility modification by an adjacent-channel analog FM station?

19. Two commenters raise the issue of how a digital FM station power increase would affect protection to incumbent stations. One commenter recounts its experience as an LPFM operator, having its signal blanketed by a local digital signal operating at only four percent of its analog ERP.⁵⁵ It asks that any increase to FM digital sideband power be “carefully considered” due to its impact on LPFM and other smaller stations, suggesting that LPFM and FM translator signals should be protected from digital signal encroachment to at least the 50 dBμ contour.⁵⁶ Another commenter asserts that the proposed power increase would largely benefit large station group owners at the expense of small broadcasters, and would “destroy well-established listening patterns to analog FM stations,” especially in areas like New Jersey where the FM band is saturated with services.⁵⁷ It believes that small Class A stations should be protected beyond their 60 dBμ contours,⁵⁸ and further argues that the proposed rule changes would give large Class B stations in metropolitan areas such as New York and Philadelphia an unfair competitive advantage over smaller, local analog FM stations.⁵⁹ Both commenters argue that protection to the 60 dBμ contour is insufficient for analog FM stations on adjacent channels that, they contend, have listenership well beyond that contour.⁶⁰ We tentatively conclude that there is no need to provide protection from actual interference outside the protected contour of an analog FM station from the digital signal of a full-service FM station, and seek comment on this conclusion. Should protection of incumbent analog FM stations on adjacent channels be increased beyond the 60 dBμ contour and, if so, to what contour? Commenters are asked to give detailed evidence for or against increasing the level of protection to analog FM stations on adjacent channels from increased FM digital sideband power proposals. Press offers a number of proposals to remedy what it sees as the problems the Power Increase Petition would cause to smaller, coastal FM stations, including: (i) allowing such stations to move up to three miles inland under certain

⁵³ Comments of Aaron Read (Read Comments) at 1-2. *See also* Comments of CDE (CDE Comments) at 2; Reply Comments of CDE (CDE Reply) at 2 (requesting that we adopt procedures to establish the presence or absence of interference as a result of the increase in digital sideband power before increasing power levels; also opposing a “global” increase in FM digital power absent “appropriate interference studies” to determine the potential of actual interference).

⁵⁴ Read Comments at 1.

⁵⁵ Santiam Comments at 1.

⁵⁶ *Id.*

⁵⁷ Press First *Ex Parte* at 1-2.

⁵⁸ Letter from Robert McAllan, CEO, Press Communications, LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 22-405, at 6-8 (filed Mar. 23, 2023) (Press Second *Ex Parte*).

⁵⁹ *Id.* at 1-2, 13-15. Press also asserts that expanding FM digital service at the expense of smaller Class A stations would effectively cancel the latter’s proven analog service “for a digital service that has to date shown little, if any, public interest benefit.” *Id.* at 1.

⁶⁰ *See* Santiam Comments at 1; Press Second *Ex Parte* at 5-8.

conditions; (ii) adopting a universal analog 60 dBμ protection in Zone I⁶¹ for all co-, first-, and second-adjacent analog Class A to Class B station-to-station separations; and (iii) extending protection beyond the 60 dBμ contour for Class A stations to the 45 dBμ contour or even a 50 dBμ Longley-Rice contour.⁶² While noting that Press's proposed solutions appear to be geographically targeted and class-specific, we invite comment on Press's proposals. Finally, Charter Communications (Charter) expresses concern that changing our methodology for determining digital FM stations' eligibility to increase their power, and allowing such power increases without prior Commission authorization, could cause harmful interference to Charter's broadband systems, which use the same frequencies as FM broadcast radio for both upstream and downstream transmissions.⁶³ Charter urges that seeking comment about the potential effects of this proposal on other users of the 88-108 MHz band will yield the benefit of a complete record on the subject before we take any action.⁶⁴ We therefore invite comment as to the potential effect of our proposed change in the methodology for calculating digital FM power levels on all stakeholders utilizing the 88-108 MHz frequency band, whether they are broadcasters or providers of other services.

20. *Superpowered FM Stations.* We propose to continue to limit the power level for previously authorized superpowered FM stations to the station's class maximum.⁶⁵ REC Networks (REC), while generally supportive of the proposals in the Power Increase Petition, notes that the proposed power increases should not be permitted for previously authorized superpowered stations, which historically have been limited in digital power to the class maximum power under section 73.211 of the rules.⁶⁶ REC notes that the Power Increase Petition proposes to let a digital FM station meeting the proposed new table to increase its digital ERP up to -10 dBc, or 10% of the analog ERP. It states that allowing legacy superpowered FM stations to increase digital power to this level could allow certain stations to increase digital power to above the class maximum, resulting in harmful interference.⁶⁷ We tentatively conclude that a superpowered station's digital ERP should continue to be limited to the class maximum provided in sections 73.211 and 73.511.⁶⁸ Thus, we propose that a superpowered FM station seeking to increase its digital power above -14 dBc may request experimental authorization or special temporary authorization (STA) to do so, and the staff will review such requests on a case-by-case basis. We solicit comment on this conclusion and proposal, and request that commenters opposing this view detail the reasons why they believe that a digital FM station whose power greatly exceeds its class maximum will not cause excessive interference to adjacent channel analog facilities.⁶⁹

⁶¹ 47 CFR § 73.205(a). Zone I consists of all of the states of Illinois, Indiana, Ohio, West Virginia, Pennsylvania, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, and Massachusetts, and portions of Wisconsin, Michigan, Virginia, New York, Vermont, New Hampshire, and Maine.

⁶² Press Second *Ex Parte* at 17-18.

⁶³ Charter *Ex Parte* at 1.

⁶⁴ *Id.* at 1-2.

⁶⁵ As noted in Appendix A, to conform to the publishing conventions of the National Archives and Records Administration's Office of the Federal Register, we propose to add paragraph numbers to the list of definitions in 47 CFR §§ 73.310(a) and (b). *See* Appendix A. The definitions restated in Appendix A are identical to the current definitions, except for the definition of "Previously authorized superpowered FM station," which is a new definition we propose to add.

⁶⁶ Comments of REC Networks (REC Comments) at 1-3. *See also* 47 CFR § 73.211. Superpowered FM stations have been previously authorized to operate with facilities that exceed the ERP/Height Above Average Terrain (HAAT) limitations of 47 CFR §§ 73.211 or 73.511 for their specific class of station.

⁶⁷ REC Comments at 2-3.

⁶⁸ 47 CFR §§ 73.211, 73.511.

⁶⁹ A station may determine whether it is, by definition, a superpowered FM station using the Media Bureau's Digital Maximum ERP Calculator for Superpowered FM Stations (<https://www.fcc.gov/media/radio/digital-radio-superpowered-fm-stations>).

21. *Notification of FM Digital Power Increase.* We seek comment on the type of notification, if any, we should require of a digital FM station increasing digital power, and whom should be notified. NPR states that it does not oppose the proposals in the Power Increase Petition as long as any adopted notification procedures also include a provision that the FM digital station increasing power notify the licensees of first-adjacent channel FM stations at least 30 days prior to implementation of the power increase, but in no event after the power increase has already taken place.⁷⁰ The International Association of Audio Information Services (IAAIS), representing radio reading services that use analog FM station sub-carriers to provide audio versions of publications for print-disabled individuals, likewise requests that a host station increasing digital power to -10 dBc provide written notification to any radio reading services on that host station's sub-carriers, as well as to all radio reading services broadcasting over any adjacent channel stations' sub-carriers.⁷¹

22. Under the current system, stations increasing symmetric digital sideband power to levels up to -14 dBc need submit LMS Form 2100, Schedule 335-FM, FM Digital Notification (Schedule 335-FM), without any further showings or analysis to be submitted to the staff for approval. The digital FM station must electronically notify the Media Bureau of increased power FM digital operation within 10 days of commencement of operations at increased power.⁷² Although these notifications are available to the public from the FCC's database, the staff takes no action on the notifications, and they do not appear in the Commission's public notices of broadcast applications or broadcast actions. Symmetric digital operation at power levels between -14 dBc and -10 dBc currently require both notification on Schedule 335-FM and a showing that the contours generated do not overlap with the protected contours of adjacent-channel FM stations. Such showings are confirmed by the staff. Under our proposal herein, such showings would no longer be required for power increases up to -10 dBc—the station seeking a power increase would only have to provide notification by filing Schedule 335-FM, and the staff would neither grant nor deny such notification. We tentatively conclude that this notification-only procedure should be sufficient for digital FM stations increasing digital sideband power the additional 4 dB we propose to allow in this *NPRM*, and seek comment on this conclusion. We likewise tentatively conclude that Schedule 335-FM notification should be required for any digital FM station permanently reducing digital power, and further tentatively conclude that any such notification of digital FM power reduction be accompanied by a short statement of the reason(s) for the power reduction (e.g., interference complaints, inadequate signal coverage, etc.), and seek comment on this tentative conclusion.

23. Although the filing of Schedule 335-FM does not generate a separate LMS Public Notice, all filed LMS forms are searchable, and are thus available to the public using the LMS "Search" function.⁷³ We thus seek comment on whether this accessibility should provide adequate notice to other stations and interested parties that a first-adjacent channel FM digital station is increasing its digital power. We seek comment on whether Schedule 335-FM filings in LMS will provide adequate notice or if we should adopt any other notification procedure. Commenters holding differing views should explain why we should require additional specific notice, i.e., to first-adjacent stations or entities other than the Commission, than is currently required. Should we require direct notice to all potentially affected first-adjacent channel FM stations in addition to that provided by the notification filed in LMS? Should potential direct notice to first-adjacent channel FM stations be given a certain period of time before the digital station is allowed to implement the digital power increase, such as the 30 days suggested by NPR?⁷⁴ In the alternative, should the station increasing digital power be required not only to file Schedule 335-FM, but further be obliged to wait a certain period of time before implementing the power increase, so as to give interested parties an opportunity to comment and/or object? We ask that

⁷⁰ NPR Comments at 1, 3-4.

⁷¹ Comments of IAAIS (IAAIS Comments) at 2-3.

⁷² 2010 MB DAB Order, 25 FCC Rcd at 1189, para. 16.

⁷³ <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicSearchLanding.html>.

⁷⁴ NPR Comments at 3.

commenters provide reasons for their positions regarding notice, and further to provide specifics as to both the type of notice that should be given and the key recipients of that notice.

24. IAAIS expresses concerns about digital FM sideband power and its effects on radio reading services. Radio reading services, using primarily volunteer staff, provide valuable services by reading daily and weekly newspapers, magazines, current books, and other programs of interest to blind, visually impaired, physically disabled, and other print-disabled persons, who cannot easily access or consume written media.⁷⁵ While these important services employ a variety of methods to deliver their content, the majority of IAAIS members broadcast over analog FM radio subcarriers.⁷⁶ With regard to IAAIS's concerns about the effect of increased digital FM sideband power on such subcarriers, even absent a general requirement of direct notice of digital power increase to potentially affected stations, should such radio reading services receive special notification from the station proposing to increase digital power, whether that is the station hosting the radio reading service or a nearby adjacent channel station? If so, what form should that direct notice take? If, after reviewing comments, we determine that a station increasing digital power must notify all first-adjacent channel stations of the increase, should we further require that any first-adjacent channel station receiving such notice notify any radio reading service(s) that it hosts?

B. Asymmetric Sideband Petition

25. We propose to grant blanket authorization to digital FM stations to originate digital transmissions at different power levels on the upper and lower digital sidebands without having to request experimental authorization. As with any digital FM power increase resulting from the proposed revised power table, discussed above, we propose that a digital FM station need only notify us of asymmetric sideband operation by filing notification (Schedule 335-FM) in the Bureau's LMS database.

26. *Asymmetric Sideband Operation / Interference Issues.* Currently, as discussed above, digital FM stations must use the same ERP on both the upper and lower digital sidebands.⁷⁷ Thus, as pointed out by petitioners NAB, Xperi, and NPR, any digital FM station's digital power was limited to that needed to protect the nearer of the adjacent channel analog FM stations, regardless of whether there was a need to limit power on the other sideband.⁷⁸ Petitioners contend that allowing calculation of the maximum allowable digital FM ERP on a per-sideband basis allows such stations to optimize their digital signal coverage while still protecting analog FM stations on adjacent channels.⁷⁹ For example, a digital FM station with an analog station only on the first adjacent channel above its frequency could selectively reduce power on the upper sideband to avoid causing interference, while maintaining or even increasing digital ERP on the lower sideband to enhance signal coverage without interfering with a nearby station. Alternatively, a digital FM station in the same situation could maintain its digital ERP on the upper sideband while increasing power on the lower sideband. The 2019 Asymmetric Sideband Petition proposed an adjustment to the current methodology for calculating maximum FM Digital ERP, that would

⁷⁵ IAAIS Comments at 1.

⁷⁶ *Id.* A subcarrier, known also as Subsidiary Communications Authority or SCA, is a separate audio or data channel that is transmitted along with the main audio signal over a broadcast station. These subcarrier channels are not receivable with a regular radio; special receivers are required.

⁷⁷ See 2010 MB DAB Order, 25 FCC Rcd at 1190, para. 20 (setting forth methodology for calculating maximum permissible FM Digital ERP that assumes operation with symmetric sidebands). A station wishing to operate with asymmetric sideband power must request experimental operation, including a showing that the digital sideband signal contours will not overlap adjacent stations' protected contours. The staff will grant requests that do not propose prohibited overlap.

⁷⁸ Asymmetric Sideband Petition at 9.

⁷⁹ *Id.* at 8-9.

subtract 3 dB, owing to the 3 dB difference between total digital power and per-sideband power.⁸⁰ The 2022 Power Increase Petition proposes a new formula to calculate maximum digital power per sideband, updated to comport with the Power Increase Petition proposal.⁸¹ The proposed new method for calculating per-sideband FM Digital ERP yields the following table:

Proponent Analog F(50,10) Field Strength at First Adjacent Station's Analog 60 dBμ F(50,50) Contour (Asymmetric Sideband Operation)	Maximum Permissible FM Digital ERP
54.9 dBμ and above	-14 dBc
53.5 dBμ to 54.8 dBμ	-13 dBc
52.6 dBμ to 53.4 dBμ	-12 dBc
51.1 dBμ to 52.5 dBμ	-11 dBc
51.0 dBμ or less	-10 dBc

When operating in symmetric mode, each digital sideband contributes exactly half of the total authorized digital power for that station. For example, a station that is authorized to operate in symmetric mode with a total digital power of -10 dBc operates with half that power (-13 dBc) in each digital sideband. When a station operates in asymmetric mode with one digital sideband having more power than the other, it is necessary to ensure that each sideband is limited to the appropriate contour-limited value from the table, and that the total digital power in both sidebands together does not exceed the total amount of digital power that would be authorized if the station were operating in symmetric mode. Accordingly, the Effective Radiated Power at each sideband must be adjusted so that the total sideband powers do not exceed the total power that would be authorized for that station operating in symmetric sideband mode.

27. Those commenters that addressed the Asymmetric Sideband Petition uniformly supported it.⁸² Many of the supporters noted that eliminating the need to seek experimental authorization for asymmetric sideband operation would encourage more stations to adopt this operational mode.⁸³

28. Given the general lack of commenter objection and the record as presented by the petitioners and certain commenters, we propose to authorize asymmetric sideband operation for FM digital broadcasters operating at any power level, without the need first to seek experimental authorization. As with any potential FM digital power increase, as discussed at paragraph 22, above, we propose that a digital FM station seeking to operate with asymmetric sidebands must notify the Bureau using Schedule 335-FM. We reiterate that the filing of Schedule 335-FM with the Commission does not trigger the release of a separate Public Notice in LMS, but that, like all LMS forms, the filing is

⁸⁰ *Id.* at 6 (proposing the formula: Allowable IBOC Power = $[2.27 * (60 - \text{IBOC station F}(50,10) \text{ dB}\mu) - 36.6]$). See also Power Increase Petition at 7 n.13.

⁸¹ The updated formula is: Allowable IBOC power (dBc, per sideband) = $41 - [\text{IBOC Station F}(50,10) \text{ dB}\mu \text{ at the desired station } 60 \text{ dB}\mu \text{ F}(50,50) \text{ contour}]$. Power Increase Petition at 7.

⁸² See IHC Reply at 2-3; Walden Comments at 3; REC Comments at 4; Read Comments at 1; NYPR Comments at 5; Nautel Comments at 1; Haider Comments at 1; CTI Comments at 3; CMG Comments at 2-4; Beasley Comments at 2-3. See also NPR Comments at 2; Xperi Reply at 3. It must be noted that Press, which filed its *ex parte* presentations after the commenting period expired, questions whether the proposals in the Asymmetric Sideband Petition, if adopted, would actually protect adjacent FM analog stations to the extent it believes is required. See Press Second *Ex Parte* at 4.

⁸³ See Beasley Comments at 3 (reporting experimental operation of its station WCSX(FM), Birmingham, Michigan, with asymmetric sidebands as having “uniformly positive” results, improving the stability and robustness of the digital signal while generating no interference reports); REC Comments at 4; Walden Comments at 3; IHC Reply at 1-2; NYPR Comments at 5 (stating that its classical music station WQXR-FM, Newark, New Jersey, is limited on one sideband from increasing digital power, but is not so limited on the other sideband, thus the use of asymmetric sidebands would enable it greatly to improve its digital service).

searchable and thus available to members of the public using the LMS “Search” function.⁸⁴ We therefore seek comment on whether notification to the Commission should suffice to provide notice to other interested parties, including adjacent channel stations. To the extent that commenters believe that more or different notice should be required, we ask that they specify the type of notice and the reasons why form availability in LMS is not sufficient. We further tentatively conclude that Schedule 335-FM notification should be required for any digital FM station that permanently reverts to symmetric sideband operation from asymmetric sideband operation, and further tentatively conclude that any such notification of return to symmetric sideband operation be accompanied by a short statement of the reason(s) for this action. We seek comment on this tentative conclusion.

29. Likewise, we believe that the interference mitigation and remediation procedures set forth in the *2010 MB DAB Order* should be sufficient to remedy any reports of inter-station interference as a result of asymmetric sideband operation. We observe that asymmetric sideband operation *per se* should not cause an increase in interference or complaints thereof, as stations employing such operation are already protecting the closer of the adjacent stations to their sideband frequencies, and the only power increases should be toward adjacent channel stations that are more distant, either physically or by frequency. Again, to the extent that commenters believe that more stringent interference mitigation and remediation procedures are required, we ask that such commenters detail the measures they deem necessary as well as the precise reasons why the current procedures are inadequate.

C. Other Issues

30. *Pending Proceedings.* If we authorize the proposals set forth in the Power Increase Petition and the Asymmetric Sideband Petition, we propose that experimental requests and applications for special temporary authorizations that have not been the subject of any staff decision as of the effective date of any rules adopted in any subsequent *Report and Order* in this proceeding will be decided based on the new rules.⁸⁵ We further propose that experimental requests and applications for special temporary authorizations that have been the subject of a staff decision, even if the subject of a pending petition for reconsideration or application for review, will be decided based on the rules in effect at the time staff issued its decision. We further propose that any licensees operating facilities under experimental or special temporary authorizations, that are compliant with any rules adopted in this proceeding, need only file notification on Schedule 335-FM within 30 days of the effective date of any rules adopted in a subsequent *Report and Order* in this proceeding. We seek comment generally on these issues.

31. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁸⁶ 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 considerations⁸⁷ and

⁸⁴ <https://enterpriseefiling.fcc.gov/dataentry/public/tv/publicSearchLanding.html>.

⁸⁵ See *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457, 3482, para. 49 (2019), citing *Melcher v. FCC*, 134 F.3d 1143, 1165 (D.C. Cir. 1998); *Chadmoore Commc'ns, Inc. v. FCC*, 113 F.3d 235, 241 (D.C. Cir.1997); *Hispanic Inf. & Telecomm. Network, Inc. v. FCC*, 865 F.2d 1289, 1294-95 (D.C.Cir.1989) (“The filing of an application creates no vested right to a hearing; if the substantive standards change so that the applicant is no longer qualified, the application may be dismissed.”).

⁸⁶ 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.

⁸⁷ 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

(continued....)

benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

32. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁸⁸ 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.”⁸⁹ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this *NPRM* on small entities. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

33. *Paperwork Reduction Act.* This document contains 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 the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

34. *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.⁹⁰ 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.

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).

⁸⁸ 5 U.S.C. §§ 601-612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Publ. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁸⁹ 5 U.S.C. § 605(b).

⁹⁰ 47 CFR §§ 1.1200 *et seq.*

35. *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.
 - 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-19.⁹¹
- 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.

36. *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).

37. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

38. *Additional Information.* For additional information on this proceeding, contact Thomas Nessinger, Thomas.Nessinger@fcc.gov, of the Media Bureau, Audio Division, at (202) 418-2709, or James Bradshaw, James.Bradshaw@fcc.gov of the Media Bureau, Audio Division, at (202) 418-2739.

V. ORDERING CLAUSES

39. Accordingly, **IT IS ORDERED**, pursuant to section 1.407 of the Commission's rules, 47 CFR § 1.407, that the Petition for Rulemaking of the National Association of Broadcasters, Xperi Corporation, and National Public Radio filed on Dec. 9, 2019 and the Petition for Rulemaking of the National Association of Broadcasters and Xperi Corporation filed on Oct. 26, 2022 **ARE GRANTED**.

40. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324 of the Communications Act of 1934, as

⁹¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324 this Notice of Proposed Rulemaking **IS ADOPTED**.

41. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, Reference Information Center, **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rule Changes

For the reasons discussed in this preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. In § 73.310 revise paragraphs (a) and (b) to read as follows:

§ 73.310 FM technical definitions.

(a) *Frequency modulation.* The following definitions pertain to frequency modulation, as defined in § 73.310(a)(17).

(1) *Antenna height above average terrain (HAAT).* HAAT is calculated by: determining the average of the antenna heights above the terrain from 3 to 16 kilometers (2 to 10 miles) from the antenna for the eight directions evenly spaced for each 45° of azimuth starting with True North (a different antenna height will be determined in each direction from the antenna); and computing the average of these separate heights. In some cases less than eight directions may be used. (See § 73.313(d).) Where circular or elliptical polarization is used, the antenna height above average terrain must be based upon the height of the radiation of the antenna that transmits the horizontal component of radiation.

(2) *Antenna power gain.* The square of the ratio of the root-mean-square (RMS) free space field strength produced at 1 kilometer in the horizontal plane in millivolts per meter for 1 kW antenna input power to 221.4 mV/m. This ratio is expressed in decibels (dB). If specified for a particular direction, antenna power gain is based on that field strength in the direction only.

(3) *Auxiliary facility.* An auxiliary facility is an antenna separate from the main facility's antenna, permanently installed on the same tower or at a different location, from which a station may broadcast for short periods without prior Commission authorization or notice to the Commission while the main facility is not in operation (e.g., where tower work necessitates turning off the main antenna or where lightning has caused damage to the main antenna or transmission system) (See § 73.1675).

(4) *Center frequency.* The term “center frequency” means:

- (i) The average frequency of the emitted wave when modulated by a sinusoidal signal.
- (ii) The frequency of the emitted wave without modulation.

(5) *Composite antenna pattern.* The composite antenna pattern is a relative field horizontal plane pattern for 360 degrees of azimuth, for which the value at a particular azimuth is the greater of the horizontally polarized or vertically polarized component relative field values. The composite antenna pattern is normalized to a maximum of unity (1.000) relative field.

(6) *Composite baseband signal*. A signal which is composed of all program and other communications signals that frequency modulates the FM carrier.

(7) *Effective radiated power*. The term “effective radiated power” means the product of the antenna power (transmitter output power less transmission line loss) times:

(i) The antenna power gain, or

(ii) the antenna field gain squared. Where circular or elliptical polarization is employed, the term effective radiated power is applied separately to the horizontal and vertical components of radiation. For allocation purposes, the effective radiated power authorized is the horizontally polarized component of radiation only.

(8) *Equivalent isotropically radiated power (EIRP)*. The term “equivalent isotropically radiated power (also known as “effective radiated power above isotropic) means the product of the antenna input power and the antenna gain in a given direction relative to an isotropic antenna.

(9) *FM Blanketing*. Blanketing is that form of interference to the reception of other broadcast stations which is caused by the presence of an FM broadcast signal of 115 dB μ (562 mV/m) or greater signal strength in the area adjacent to the antenna of the transmitting station. The 115 dB μ contour is referred to as the blanketing contour and the area within this contour is referred to as the blanketing area.

(10) *FM broadcast band*. The band of frequencies extending from 88 to 108 MHz, which includes those assigned to noncommercial educational broadcasting.

(11) *FM broadcast channel*. A band of frequencies 200 kHz wide and designated by its center frequency. Channels for FM broadcast stations begin at 88.1 MHz and continue in successive steps of 200 kHz to and including 107.9 MHz.

(12) *FM broadcast station*. A station employing frequency modulation in the FM broadcast band and licensed primarily for the transmission of radiotelephone emissions intended to be received by the general public.

(13) *Field strength*. The electric field strength in the horizontal plane.

(14) *Free space field strength*. The field strength that would exist at a point in the absence of waves reflected from the earth or other reflecting objects.

(15) *Frequency departure*. The amount of variation of a carrier frequency or center frequency from its assigned value.

(16) *Frequency deviation*. The peak difference between modulated wave and the carrier frequency.

(17) *Frequency modulation*. A system of modulation where the instantaneous radio frequency varies in proportion to the instantaneous amplitude of the modulating signal (amplitude of modulating signal to be measured after pre-emphasis, if used) and the instantaneous radio frequency is independent of the frequency of the modulating signal.

(18) *Frequency swing*. The peak difference between the maximum and the minimum values of the instantaneous frequency of the carrier wave during modulation.

(19) *Multiplex transmission.* The term “multiplex transmission” means the simultaneous transmission of two or more signals within a single channel. Multiplex transmission as applied to FM broadcast stations means the transmission of facsimile or other signals in addition to the regular broadcast signals.

(20) *Percentage modulation.* The ratio of the actual frequency deviation to the frequency deviation defined as 100% modulation, expressed in percentage. For FM broadcast stations, a frequency deviation of $\pm 75\text{kHz}$ is defined as 100% modulation.

(21) *Previously authorized superpowered FM station.* An FM station authorized to operate with facilities that exceed the Effective Radiated Power/Height Above Average Terrain limitations of §§ 73.211 or 73.511 for their specific class.

(b) *Stereophonic sound broadcasting.* The following definitions pertain to stereophonic sound broadcasting, as defined in § 73.310(b)(8).

(1) *Cross-talk.* An undesired signal occurring in one channel caused by an electrical signal in another channel.

(2) *FM stereophonic broadcast.* The transmission of a stereophonic program by a single FM broadcast station utilizing the main channel and a stereophonic subchannel.

(3) *Left (or right) signal.* The electrical output of a microphone or combination of microphones placed so as to convey the intensity, time, and location of sounds originating predominately to the listener’s left (or right) of the center of the performing area.

(4) *Left (or right) stereophonic channel.* The left (or right) signal as electrically reproduced in reception of FM stereophonic broadcasts.

(5) *Main channel.* The band of frequencies from 50 to 15,000 Hz which frequency-modulate the main carrier.

(6) *Pilot subcarrier.* A subcarrier that serves as a control signal for use in the reception of FM stereophonic sound broadcasts.

(7) *Stereophonic separation.* The ratio of the electrical signal caused in sound channel A to the signal caused in sound channel B by the transmission of only a channel B signal. Channels A and B may be any two channels of a stereophonic sound broadcast transmission system.

(8) *Stereophonic sound.* The audio information carried by plurality of channels arranged to afford the listener a sense of the spatial distribution of sound sources. Stereophonic sound broadcasting includes, but is not limited to, biphonic (two channel), triphonic (three channel) and quadrophonic (four channel) program services.

(9) *Stereophonic sound subcarrier.* A subcarrier within the FM broadcast baseband used for transmitting signals for stereophonic sound reception of the main broadcast program service.

(10) *Stereophonic sound subchannel.* The band of frequencies from 23 kHz to 99 kHz containing sound subcarriers and their associated sidebands.

* * * * *

3. In § 73.402 add paragraph (i) to read as follows:

§ 73.402 Definitions.

* * * * *

(i) *Asymmetric sideband operation.* For digital FM stations, the use of different power levels on the upper and lower digital sidebands in a hybrid or extended hybrid DAB system.

4. In § 73.404 add paragraphs (e), (f), and (g) to read as follows:

§73.404 IBOC DAB operation.

* * * * *

(e) All FM stations transmitting hybrid IBOC signals may operate with total effective radiated power of up to -14 dBc. No station may operate its digital carriers with a total effective radiated power in excess of -10 dBc. A station using symmetric sidebands planning to operate with a total radiated power in excess of -14 dBc must confirm compliance with Table 1 below by calculating the signal strength of its analog signal at the first adjacent station's 60 dBμ contour. All calculations must be made using the standard FCC contour prediction methodology.

Table 1 to Paragraph (e) – Maximum Permissible FM Digital ERP for Symmetric Sideband Operation

Proponent Analog F(50,10) Field Strength at First Adjacent Station's Analog 60 dBμ F(50,50) Contour (Symmetric Sideband Operation)	Maximum Permissible FM Digital ERP
57.9 dBμ and above	-14 dBc
56.5 dBμ to 57.8 dBμ	-13 dBc
55.6 dBμ to 56.4 dBμ	-12 dBc
54.1 dBμ to 55.5 dBμ	-11 dBc
54.0 dBμ or less	-10 dBc

(f) FM stations may transmit hybrid IBOC signals with asymmetric power on the digital sidebands, as defined in § 73.402(i). Where asymmetric operation is used, the Effective Radiated Power at each sideband must be adjusted so that the total sideband powers do not exceed the total power that would be authorized for the station operating in symmetric sideband mode. A station using asymmetric sidebands planning to operate with a radiated power in excess of -17 dBc on either sideband (upper or lower) must confirm compliance with Table 1 below by calculating the signal strength of its analog signal at the respective (upper or lower) first adjacent station's 60 dBμ contour. All calculations must be made using the standard FCC contour prediction methodology.

Table 1 to Paragraph (f) – Maximum Permissible FM Digital ERP for Asymmetric Sideband Operation

Proponent Analog F(50,10) Field Strength at the Upper or Lower First Adjacent Station's Analog 60 dBμ F(50,50) Contour (Asymmetric Sideband Operation)	Maximum Permissible FM Digital ERP for the Respective (Upper or Lower) Sideband
54.9 dB μ and above	-17 dBc
53.5 dB μ to 54.8 dB μ	-16 dBc
52.6 dB μ to 53.4 dB μ	-15 dBc
51.1 dB μ to 52.5 dB μ	-14 dBc
51.0 dB μ or less	-13 dBc

(g) The digital effective radiated power of a previously authorized superpowered FM station, as defined in § 73.310(a)(7) and (21), must be limited to the class maximum set forth in §§ 73.211 and 73.511.

5. In § 73.406 add paragraphs (d)(5), (d)(6), (d)(7), and (d)(8), to read as follows:

§73.406 Notification.

* * * * *

(d) * * *

(5) If applicable, for FM stations planning to operate with symmetric sidebands in excess of -14 dBc, a certification that the proposed FM digital Effective Radiated Power is permitted, using the table set forth in Table 1 to § 73.404(e). Certifications must be based on the most restrictive analog field strength of the proponent at any nearby first-adjacent channel station's 60 dB μ contour.

(6) If applicable, for FM stations employing asymmetric sideband operation as defined in § 73.402(i), a certification that the proposed digital sideband power on each sideband conforms to the Maximum Permissible FM Digital ERP set forth in Table 1 to § 73.404(f), and that the total digital sideband power will not exceed the total power if the digital sideband operation were symmetric.

(7) Any digital FM station permanently reducing digital power must notify the Commission of such digital power reduction on Form 2100, Schedule 335-FM. Any such notification of digital FM power reduction must include a short statement of the reason(s) for the power reduction.

(8) Any digital FM station permanently discontinuing asymmetric sideband operation and returning to symmetric sideband operation must notify the Commission of such return to symmetric sideband operation on Form 2100, Schedule 335-FM. Any such notification of discontinuing asymmetric sideband operation must include a short statement of the reason(s) for such action.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *NPRM*, the Commission proposes to revise its methodology for determining whether a digital FM station may increase the effective radiated power (ERP) on its digital sidebands; to allow a digital FM station to implement or increase digital ERP from 14 dB below the analog carrier ERP (expressed as -14 dBc) to -10 dBc, without the need to do more than notify the Commission of such operation by FCC form; and to allow a digital FM station to operate with different power levels on its upper and lower digital sidebands, without first having to seek experimental authorization for such operation. The Commission initiated the *NPRM* in response to two Petitions for Rulemaking that were consolidated by the Media Bureau (Bureau) because the proposed rule changes both relate to improving digital FM signal quality and minimizing the effect of the digital FM station signal on adjacent channel FM transmissions. In the earlier of the two petitions, filed December 9, 2019, petitioners National Association of Broadcasters (NAB), Xperi Corporation (Xperi), and National Public Radio (NPR) request blanket authorization to set digital power at different levels on each digital sideband, thus allowing a digital FM station to protect, for example, an analog FM station on a lower first adjacent channel, while enabling an increase in digital power on the upper sideband where there is no adjacent analog FM station or a more distant adjacent station.⁴ In the second petition, filed October 26, 2022, NAB and Xperi request that the FCC adopt an updated methodology to determine digital FM power levels for stations seeking to exceed the currently authorized FM digital effective radiated power (ERP) of -14 dBc.⁵ The Commission seeks comment on whether the rule changes proposed, based on the Asymmetric Sideband Petition and Power Increase Petition, would serve the public interest by providing digital FM stations with the ability to increase power and, concomitantly, increase coverage area, building penetration, and provide a more robust digital signal. Petitioners, and most commenters on the petitions, maintain that the current method for determining digital FM power overprotects analog FM stations on adjacent frequencies from digital interference, and that higher digital FM power levels would enable digital FM stations to more closely replicate their analog FM coverage with digital coverage. With regard to the Asymmetric Sideband Petition, petitioners contend that allowing calculation of the maximum allowable digital FM power on a per-sideband basis allows such stations to optimize their digital signal coverage while still protecting

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ Petition for Rulemaking of Nat'l Ass'n of Broad., Xperi Corp., and Nat'l Public Radio, MB Docket No. 22-405 (filed Dec. 9, 2019), <https://www.fcc.gov/ecfs/document/1125972022299/1> (Asymmetric Sideband Petition).

⁵ Petition for Rulemaking of Nat'l Ass'n of Broad. and Xperi Corp., MB Docket No. 22-405 (filed Oct. 26, 2022), <https://www.fcc.gov/ecfs/document/10261669202264/1> (Power Increase Petition).

analog FM stations on adjacent channels.⁶ For example, a digital FM station with an analog station only on the first adjacent channel above its frequency could selectively reduce power on the upper sideband to avoid causing interference, while maintaining or even increasing digital power on the lower sideband to enhance signal coverage without interfering with a nearby station. Alternatively, a digital FM station in the same situation could maintain its digital power on the upper sideband while increasing power on the lower sideband.

3. The Commission seeks comment on the following issues relating to digital FM station operations: (1) to change the methodology used by digital FM stations to determine whether they are eligible to increase digital FM ERP up to -10 dBc, or 10% of analog power, upon basic notification to the Commission and without the need for additional individual special authorization; (2) to allow a power increase up to -10 dBc by notifying the Commission in the Bureau's Licensing and Management System (LMS), utilizing the same notification procedures as currently used; (3) whether changing the method for calculating whether a digital FM station can increase its digital power will create an unacceptable risk of interference to adjacent-channel stations; (4) whether to continue to limit the power level for previously authorized superpowered FM stations to their class maximum; (5) the type of notification, if any, we should require of a digital FM station increasing digital power, and whom should be notified; (6) whether the interference mitigation and remediation procedures currently used for inter-station digital FM interference should be sufficient to remedy any reports of interference to FM broadcast stations or other spectrum users as a result of a station's increase in its digital power; (7) whether to grant blanket authorization to digital FM stations to originate digital transmissions at different power levels on the upper and lower digital sidebands without having to request experimental authorization; and (8) whether the interference mitigation and remediation procedures currently used for inter-station digital FM interference should be sufficient to remedy any reports of inter-station interference as a result of asymmetric sideband operation.

B. Legal Basis

4. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 301, 302a, 303, 307, 308, 309, 316, 319, and 324.

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.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 *Id.* at 8-9.

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." *Id.* § 601(3).

¹⁰ 15 U.S.C. § 632.

6. *Radio Stations.* This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.”¹¹ Programming may originate in their own studio, from an affiliated network, or from external sources.¹² The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.¹³ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.¹⁴ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.¹⁵ Based on this data and the SBA’s small business size standard, we estimate a majority of such entities are small entities.

7. The Commission estimates that as of March 31, 2023, there were 4,472 licensed commercial AM radio stations and 6,681 licensed commercial FM radio stations, for a combined total of 11,153 commercial radio stations.¹⁶ Of this total, 11,151 stations (or 99.98 %) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2023, there were 4,219 licensed noncommercial (NCE) FM radio stations, 1,999 low power FM (LPFM) stations, and 8,939 FM translators and boosters.¹⁷ The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA’s large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

8. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹⁸ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the

¹¹ See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

¹² *Id.*

¹³ 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

¹⁴ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

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 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.

¹⁶ See *Broadcast Station Totals as of March 31, 2023*, Public Notice, DA 23-300 (MB rel. Apr. 6, 2023) (*March 2023 Broadcast Station Totals PN*).

¹⁷ See *March 2023 Broadcast Station Totals PN*.

¹⁸ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 CFR § 21.103(a)(1).

estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of “small business” is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

9. *Low Power FM Stations.* The SBA small business size standard for Radio Stations¹⁹ applies to low power FM stations. The Radio Stations industry comprises establishments primarily engaged in broadcasting aural programs by radio to the public.²⁰ Programming may originate in their own studio, from an affiliated network, or from external sources.²¹ The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.²² U.S. Census Bureau data for 2017 show that 2,963 firms in this industry operated during that year.²³ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.²⁴ Therefore, based on the SBA’s size standard we conclude that the majority of low power FM stations are small.

10. Additionally, according to Commission data as of March 31, 2023, there were 1,999 Low Power FM licensed broadcast stations and 8,939 FM Translator Stations.²⁵ The Commission does not compile and otherwise does not have access to financial information for these stations that would permit it to determine how many of the stations would qualify as small entities under the SBA size standard. However, given that low power FM stations and FM translators and boosters are very small and limited in their operations and unlikely to have annual receipts anywhere near the SBA small size standard, we will presume that these licensees qualify as small entities under the SBA size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

11. In this section, we identify the reporting, recordkeeping, and other compliance requirements proposed in the *NPRM* and consider whether small entities are affected disproportionately by any such requirements. As discussed above, the *NPRM* seeks comment on changes to the Commission’s rules governing digital FM broadcast stations. Allowing some broadcasters that are small entities to increase digital FM power, or to operate with asymmetric sideband power, as proposed in the *NPRM* would be a voluntary process. Each FM station that meets the proposed requirements can make an

¹⁹ See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

²⁰ *Id.*

²¹ *Id.*

²² 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

²³ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

²⁴ *Id.* The 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.

²⁵ See *March 2023 Broadcast Station Totals PN*.

individual decision about whether operating with higher digital power and/or asymmetric sideband power is a feasible technical and economic upgrade option. The Commission does not propose to compel, but rather merely to authorize, the proposed digital power increases and operations. The *NPRM* proposes new mandatory reporting, recordkeeping, and compliance requirements for small entities that are FM licensees and choose to increase their power and/or adopt asymmetric sideband operation. We note that the adoption of the proposed rules may require modification of current requirements and processes for small entities that choose to implement these operational changes, and may require modification of FCC forms, including but not limited to, FCC Form 2100, Schedule 335-FM, which is the form currently used to notify the Commission of the initiation of digital operations. The *NPRM* thus may impose additional obligations or expenditure of resources on small businesses that elect to modify their digital service, and may require small entities to hire professionals to comply with the proposed rules.

12. The *NPRM* seeks comment on the notification and interference mitigation and remediation obligations of digital FM stations, including small entities. For example, our proposal to amend our rules to modify the methodology a digital FM station must use to determine whether it is eligible to increase its power above -14 dBc, if adopted, would reduce compliance obligations for small entities by allowing them to increase power up to -10 dBc without submitting a contour analysis. Small entity stations that seek to increase digital sideband power by the addition of 4 dB would need to notify the Commission by filing Schedule 335-FM. At this time the Commission cannot quantify the cost of compliance for small entities that choose to modify their operations pursuant to the *NPRM* proposals. However, we expect the information we receive in comments to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *NPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”²⁶

14. The *NPRM* considers a voluntary process by which some FM stations may operate at increased digital power and/or with differing power levels on each digital sideband. According to commenters, the proposal would benefit digital FM broadcasters and listeners alike by promoting greater adoption of FM digital transmission systems. Commenters also assert that adoption of the *NPRM* proposals would increase the robustness of the digital FM broadcast service by improving stations’ signal quality, including building penetration and allowing a digital FM licensee to expand its digital service area to approximate more closely its analog service area. Other commenters caution that the proposed change may harm small entities by causing surrounding interference for smaller stations such as Class A FM stations, LPFM stations, and stations broadcasting over FM translators.

15. In the *NPRM*, the Commission considers specific steps it could take and alternatives to the proposed rules that could minimize potential economic impact on small entities that might be affected by the proposed rule change, as well as any other rule changes that may be required. For example, to avoid increasing burdens on digital FM broadcasters, the Commission proposes that any notification of increases in digital FM ERP and/or initiation of asymmetric sideband operation be made by filing FCC Form 2100, Schedule 335-FM, in the searchable LMS database. This is the same form currently used to notify the Commission of the initiation of digital operations. Under the proposed rule changes fewer

²⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

stations would be required to submit a contour study with Schedule 335-FM, as is currently the case for digital FM stations proposing digital power levels above -14 dBc. Therefore, the administrative impact of the proposed rule changes will be similar to that of existing digital FM service, will be less burdensome for most digital FM broadcasters, and thus is not likely to have an additional adverse economic impact on small entities.

16. The Commission also considers alternatives to its current interference remediation procedures, including whether station complaints should be assessed based on listener complaints or based on studies and/or measurements demonstrating that a digital FM signal within the complaining station's protected contour exceeds allowable limits. Another alternative considered in relation to interference that may impact small entities is whether protection of incumbent analog FM stations on adjacent channels should be increased beyond the 60 dB μ contour. We tentatively conclude that this protection is not necessary, however, we also consider whether this protection should be increased and, if so, to what contour. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM*.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

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

In the Matter of	)	
	)	
Affordable Connectivity Program	)	WC Docket No. 21-450
	)	
	)	

SIXTH REPORT AND ORDER

Adopted: August 3, 2023

Released: August 4, 2023

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Simington issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
III. DISCUSSION	6
A. Determination of High-Cost Areas	7
B. Eligibility for the High-Cost Area Benefit.....	10
IV. PROCEDURAL MATTERS.....	42
V. ORDERING CLAUSES.....	45
APPENDIX A – Final Rules	
APPENDIX B – Final Regulatory Flexibility Analysis	

I. INTRODUCTION

1. In this Sixth Report and Order (Order), as required by the Infrastructure Investment and Jobs Act (Infrastructure Act), the Federal Communications Commission (Commission) adopts rules to establish the enhanced discounts available for monthly broadband services provided in high-cost areas by participants in the Affordable Connectivity Program (ACP). The Infrastructure Act recognizes that in certain high-cost areas of the country, offering broadband service to ACP eligible households at the standard up-to-\$30 monthly benefit level could lead providers to experience particularized economic hardship such that the provider may not be able to maintain the operation of part or all of its broadband network.¹ To address this, the Infrastructure Act allows for providers to provide an up-to-\$75 monthly benefit to ACP eligible households in high-cost areas upon a showing of such particularized economic hardship in a given high-cost area.² The steps we take today to implement this provision will help narrow the digital divide by ensuring that more low-income households throughout the country, including households in rural and insular areas, have access to discounted broadband services. In particular, the high-cost area benefit will maximize provider participation in the ACP, by encouraging additional providers to participate in the ACP in high-cost areas and incentivizing existing ACP providers

¹ See 47 U.S.C. § 1752(a)(7).

² See *id.*

experiencing an economic hardship in high-cost areas to continue participating in the program. The high-cost area benefit also complements and supports other federal initiatives, including those in the Infrastructure Investment and Jobs Act, to spur deployment and adoption in rural areas by strengthening the business case for providers to deploy broadband in rural and insular areas.

II. BACKGROUND

2. On November 15, 2021, the Infrastructure Act became law, directing the Commission to establish the ACP.³ With an appropriation of \$14.2 billion, the ACP supports discounted broadband service to qualifying low-income households by providing a monthly benefit of: (1) up to \$30 per month;⁴ (2) up to \$75 per month for eligible households on qualifying Tribal lands;⁵ or (3) up to \$75 per month for eligible households in high-cost areas.⁶ We adopted rules establishing the standard benefit and the Tribal lands enhanced benefit in January 2022.⁷

3. Congress specifically directed the Commission to “establish a mechanism by which a participating [ACP] provider in a high-cost area . . . may provide an affordable connectivity benefit in an amount up to [\$75] . . . upon a showing that the applicability of the lower [\$30] limit . . . would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.”⁸ Congress separately directed the National Telecommunications and Information Administration (NTIA) to determine, in consultation with the Commission, the high-cost areas in the United States that will be used to determine eligibility for the ACP high-cost area benefit.⁹

4. On November 18, 2021, the Wireline Competition Bureau (Bureau) released a Public Notice seeking comment on implementation of the ACP.¹⁰ The Bureau specifically sought comment on how the high-cost area benefit should be applied in the eligible high-cost areas identified by NTIA. The Bureau asked, among other things: (1) how the Commission can best administer this provision with a minimum burden on qualifying households and providers; (2) what a provider should be required to show to establish that there would be a “particularized economic hardship”; (3) whether the Commission should adopt a specific standard or test for such hardship; (4) who should decide whether a provider has met the standard; and (5) how aggrieved providers should appeal decisions related to this standard.¹¹ Four commenters addressed these questions.¹²

³ Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong. (2021) (Infrastructure Act).

⁴ 47 U.S.C. § 1752(a)(7).

⁵ *Id.*

⁶ 47 U.S.C. § 1752(a)(7)(B).

⁷ See *Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (rel. Jan. 21, 2022) (*ACP Report and Order and Further Notice*).

⁸ 47 U.S.C. § 1752(a)(7)(B).

⁹ 47 U.S.C. §§ 1702(a)(2)(G), 1752(a)(7)(B).

¹⁰ See *WCB Seeks Comment on the Implementation of the Affordable Connectivity Program*, DA 21-1453 (WCB rel. Nov. 18, 2021) (*ACP Public Notice*).

¹¹ See *id.* at 30, para. 73.

¹² See ACA Connects Comments, WC Docket No. 21-450, at 28 (rec. Dec. 8, 2021) (ACA Connects *ACP Public Notice* Comments); Conexon, LLC and Conexon Connect LLC (Conexon) Joint Comments, WC Docket No. 21-450, at 5-9 (rec. Dec. 8, 2021) (Conexon Joint *ACP Public Notice* Comments); NTCA—The Rural Broadband Assoc. (NTCA) Comments, WC Docket Nos. 21-450 and 20-445, at 16-17 (rec. Dec. 8, 2021) (NTCA *ACP Public Notice* Comments); USTelecom Reply Comments, WC Docket No. 21-450, at 11-12 (rec. Dec. 28, 2021) (USTelecom *ACP Public Notice* Reply Comments).

5. On January 21, 2022, in a *Further Notice* issued with the Order adopting final rules for the ACP, we again sought comment on how to implement the ACP high-cost area benefit.¹³ Specifically, we requested comment on the mechanism for implementing the high-cost area benefit and the proposals of previous commenters for determining whether a provider would incur a “particularized economic hardship” without the high-cost area benefit.¹⁴ We also asked about the type of information providers should be required to provide to make this showing or alternatives such as using poverty levels or other publicly available information instead of requiring specific information from providers.¹⁵ Moreover, the Commission further asked about: (1) whether the Commission should take into account other subsidies or financial benefits received by the provider; (2) how the review process should be implemented; (3) who should decide whether a showing is met; and (4) what steps the Commission should consider when setting up the process for making determinations about a household’s eligibility.¹⁶ The Commission received nine responsive comments.¹⁷

III. DISCUSSION

6. We now establish the requirements to implement the ACP high-cost area benefit as required by the Infrastructure Act. In this section, we discuss determining high-cost areas that will be eligible for the high-cost area benefit, eligibility to receive the high-cost area benefit, requirements to make a showing of economic hardship, as well as other administrative aspects necessary to implement the high-cost area benefit.

A. Determination of High-Cost Areas

7. Pursuant to the Infrastructure Act, for purposes of the ACP high-cost area benefit, the Commission must use the definition of high-cost areas established by the NTIA for its Broadband Equity, Access, and Deployment (BEAD) grant program.¹⁸ The ACP statutory provisions specifically reference NTIA’s determination of high-cost areas under the BEAD program in defining a high-cost area for the ACP high-cost area benefit.¹⁹ As such, the high-cost areas used by the Commission for the ACP high-cost area benefit will be the same as the high-cost areas used for the BEAD program as determined by NTIA.

¹³ See *Further Notice*, 37 FCC Rcd at 605-614, paras. 270-93.

¹⁴ See *id.* at 613, para. 289.

¹⁵ See *id.* at 614, para. 291.

¹⁶ See *id.* at 614, paras. 291-92.

¹⁷ See ACA Connects Comments, WC Docket Nos. 21-450 and 20-445, at 1-9 (rec. Mar. 16, 2022) (ACA *Further Notice* Comments); Aleut Tribal Government Comments, WC Docket No. 21-450, at 1 (rec. Mar. 16, 2022); Cities of Boston, Mass. *et al.* Reply Comments, WC Docket Nos. 21-450 and 20-445, at 29 (rec. Apr. 15, 2022) (Local Governments *Further Notice* Reply Comments); Lauren Flannigan Comment, WC Docket No. 21-450, at 1 (rec. Feb. 28, 2022) (Flannigan *Further Notice* Comments); Mississippi Center for Justice Comments, WC Docket No. 21-450, at 3-4 (rec. Apr. 14, 2022) (Mississippi Center for Justice *Further Notice* Comments); New York State Public Service Commission Comments, WC Docket No. 21-450, at 4 (rec. Mar. 16, 2022) (New York PSC *Further Notice* Comments); NTCA Comments, WC Docket Nos. 21-450 and 20-445, at 1-5 (rec. Mar. 16, 2022) (NTCA *Further Notice* Comments); SANDAG *Further Notice* Comments at 6-7; Wireless Internet Service Providers Assoc. (WISPA) Comments, WC Docket No. 21-450, at 1-4 (rec. Mar. 16, 2022) (WISPA *Further Notice* Comments).

¹⁸ Compare 47 U.S.C. § 1752(a)(7)(B) with 47 U.S.C. § 1702(a)(2)(G).

¹⁹ The statute states “[t]he Commission shall . . . establish a mechanism by which a participating provider in a high-cost area (as defined in section 1702(a)(2) of this title) may provide an affordable connectivity benefit[.]” 47 U.S.C. § 1752(a)(7)(B). Section 1702(a)(2) specifies definitions for NTIA’s BEAD program, including the definition of “high-cost area.” *Id.* § 1702(a)(2).

8. The statute establishing the BEAD program requires NTIA, “on or after the date on which the [Commission’s] broadband DATA maps are made public,” to allocate funding to eligible States for the high-cost areas within the State.²⁰ By definition, a “‘high-cost area’ [as determined by NTIA in consultation with the Commission] means an unserved area in which the cost of building out broadband service is higher, as compared with the average cost of building out broadband service in unserved areas in the United States.”²¹ For purposes of defining “high-cost area,” the term “unserved area” means an area in which not less than 80 percent of broadband-serviceable locations are unserved locations.²²

9. On June 26, 2023, NTIA announced the State allocations for the BEAD grant program.²³ As part of BEAD, NTIA has made State allocations in part based on the determined “high-cost areas” within each State.²⁴ Pursuant to the Infrastructure Act,²⁵ we therefore make the ACP high-cost area benefit available in those high-cost areas identified by NTIA consistent with the Infrastructure Act’s definition of “high-cost area,” and subject to the provider’s demonstration of particularized economic hardship, as described in further detail below.²⁶

B. Eligibility for the High-Cost Area Benefit

10. We next address the requirements for participating providers seeking to offer a high-cost area benefit to eligible households located in designated high-cost areas served by the provider. Specifically, we define “particularized economic hardship,” to clarify that the benefit is limited to facilities-based providers, and address the specific showing that participating providers must make to demonstrate they are experiencing a particularized economic hardship in a given high-cost area. We also prescribe the process for submitting, reviewing, and taking action on such showings, and for requests for review of adverse decisions. Lastly, we clarify the interplay between the qualifying Tribal land and high-cost area benefits by interpreting the Infrastructure Act to mean that participating providers can either offer one or the other, but not both simultaneously, to eligible households located on both a Tribal land and in a designated high-cost area.

11. *Particularized Economic Hardship.* First, consistent with the Infrastructure Act, we will require a participating provider to demonstrate economic hardship to be eligible for the high-cost area benefit. The Infrastructure Act directs the Commission to establish a mechanism whereby a “participating provider” in a high-cost area “may provide” an enhanced monthly benefit up to \$75 “upon

²⁰ State is defined to mean “any State of the United States, the District of Columbia, Puerto Rico, American Samoa, Guam, the United States Virgin Islands, [and] the Northern Mariana Islands.” 47 U.S.C. §§ 942(e)(8), 1702(2)(m).

²¹ 47 U.S.C. § 1702(a)(2)(G)(i).

²² 47 U.S.C. § 1702(a)(2)(G)(ii). A “Location” means a business or residential location in the United States at which fixed broadband internet access service is, or can be, installed. See 47 U.S.C. § 1702(a)(2)(H) (“The terms ‘location’ and ‘broadband-serviceable location’ have meanings given those terms by the Commission under rules and guidance that are in effect, as of November 15, 2021.”); *Establishing the Digital Opportunity Data Collection et al.*, WC Docket Nos. 19-195 and 11-10, Third Report and Order, 36 FCC Rcd 1126, 1175-76, para. 126 (2021). “Broadband-serviceable location” means “all locations where a broadband connection can be installed. See *Establishing the Digital Opportunity Data Collection et al.*, WC Docket Nos. 19-195 and 11-10, Second Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7484, para. 54 (2020) (*Broadband Data Collection*).

²³ Press Release, NTIA, Biden-Harris Administration Announces State Allocations for \$42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda (June 26, 2023), <https://ntia.gov/press-release/2023/biden-harris-administration-announces-state-allocations-4245-billion-high-speed>.

²⁴ *Id.*

²⁵ See 47 U.S.C. §§ 1752(a)(7)(B), 1702(a)(2)(G) (defining “high-cost area” and describing NTIA’s role in determining high-cost areas).

²⁶ See 47 U.S.C. § 1752(a)(7)(B).

a showing that the applicability of the lower [\$30] limit . . . would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.”²⁷ We implement this directive by requiring a participating provider seeking application of the high-cost area benefit to demonstrate the economic hardship to which it would be subject if only the standard \$30 monthly discount were applied to its provision of ACP service in a high-cost area(s). This approach to implementing the statute is consistent with the positions taken by several commenters in the record.²⁸

12. Next, we define particularized economic hardship by focusing on the provider’s operating costs and revenues in the high-cost area(s) where the provider seeks approval to offer the high-cost area benefit.²⁹ We find that a provider that demonstrates it is unable to cover the costs of maintaining the operation of all or part of its broadband network in a high-cost area where it seeks to offer the high-cost area benefit as described below meets the “particularized economic hardship” standard.³⁰ Hereafter, we describe such a provider as operating at a loss. To establish “particularized economic hardship,” we will require providers to submit documentation, such as an income statement, showing that they are unable to cover the costs of maintaining the operation of all or part of their broadband network for each high-cost area for which the high-cost area benefit is being sought.³¹ Aside from required documentation, we will also require each provider to certify to and explain how the up to \$75 a month high-cost area benefit would materially improve the provider’s ability to offer service through the ACP and maintain and operate its broadband network and how the economic hardship limits its ability to “maintain the operation of all or part of its broadband network” in each high-cost area for which it seeks to offer the high-cost area benefit.³²

13. We find this standard to be consistent with the language and intent of the statute, as well as the record. Congress did not provide details on the nature of the showing of economic hardship providers must make to obtain the high-cost area benefit. The statute provides that the provider must show that the applicability of the basic \$30 benefit would cause “particularized economic hardship . . . such that the provider may not be able to maintain the operation of part or all of its broadband network.”³³

²⁷ 47 U.S.C. § 1752(a)(7)(B).

²⁸ See ACA Connects *Further Notice* Comments at 5-6; Conexon Joint *ACP Public Notice* Comments at 5; Flannigan *Further Notice* Comments at 1; see also The Local Governments *Further Notice* Reply Comments at 29 (“According to the [Infrastructure Act], the high cost benefit may be provided where providers show an economic hardship”); NTCA *ACP Public Notice* Comments at 16-17 (“The Commission . . . is directed to establish the showing that an individual provider would need to make to demonstrate they would face a ‘particularized economic hardship’”).

²⁹ 47 U.S.C. § 1752(a)(7)(B).

³⁰ See, e.g., ACA Connects *Further Notice* Comments at 5-6 (“[T]he provider should be given flexibility that, when evaluated holistically in the context of the provider’s overall resources and financial position, the loss . . . would be impactful on the maintenance of the operations of its broadband network on a going forward basis.”); Laura Flannigan Comment at 1 (“[I]nformation such as a providers revenue and capital expenditures should be required to prove that providers need additional subsidies in order to maintain their network.”); NTCA *ACP Public Notice* Comments at 17 (“[W]here a High-Cost support recipient participating in the ACP can demonstrate that end-user revenues plus the level of high-cost USF support received fail to cover the cost of serving ACP-eligible customers . . . , this by definition would seem to be a ‘particularized economic hardship.’”); Conexon Joint *ACP Public Notice* Comments at 5 (“Service to locations where the subscriber revenue alone does not cover depreciation expense, operating expense, the cost of capital, and other associated expenses will cause particularized economic hardship to any provider, thereby making it uneconomic to maintain the operation of that part of its network.”).

³¹ See *infra* paras. 19–22.

³² 47 U.S.C. § 1752(a)(7)(B).

³³ 47 U.S.C. § 1752(a)(7)(B).

We sought comment on the mechanism by which providers can show particularized economic hardship.³⁴ Because a provider operating at a loss in the high-cost area for which it seeks the high-cost area benefit may be unable to maintain broadband network operations in that area, we find this standard to be consistent with the language and intent of the statute. For purposes of this standard, the provider will need to factor in the standard monthly \$30 ACP benefit as well as subsidies and other financial benefits the provider receives, including Universal Service Fund (USF) high-cost support, as they are directly relevant when evaluating the overall costs and revenues of the provider. No commenter opposed the Commission's proposal in the *Further Notice* of including subsidies and other financial benefits in the economic hardship analysis.³⁵

14. We reject ACA Connects' suggestion to interpret "particularized economic hardship" to mean those instances where the provider's administrative costs of participating in the ACP exceeds the benefits received, and where the provider shows that in the context of its overall financial position, that net loss would affect its ability to maintain part of its broadband network.³⁶ A provider could be profitable overall and willing to maintain network operations even if the costs of voluntarily participating in the ACP exceeded the benefits received. Conversely, a provider could be unprofitable overall, but the administrative costs of ACP participation could be less than the benefits received. Accordingly, we find ACA Connects' suggested approach would not provide a meaningful indication of whether a provider can "maintain the operation of part or all of its broadband network" when just the standard \$30 benefit is available to eligible households in the designated high-cost areas it serves.³⁷

15. We also decline to define "particularized economic hardship" as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider's entire service territory, as suggested by ACA Connects.³⁸ We did seek comment on this approach in the *Further Notice* in response to earlier comments by NTCA and Conexon.³⁹ However, we received no comments that would help us determine how to apply a standard under a threshold-based approach to determine whether a provider may not be able to maintain the operation of part or all of its broadband network without the high-cost area benefit. Furthermore, we believe that a subscriber threshold-based approach would be at odds with Congress's directive to require a showing of "particularized" economic hardship. We interpret the meaning of "particularized" in the context of the high-cost area benefit to mean that a provider must show that it is individually experiencing economic hardship.⁴⁰ A subscriber-based threshold approach is inconsistent with this interpretation because it would necessarily assume that all providers that met the threshold were experiencing sufficiently similar circumstances to merit access to the high-cost area benefit, without regard to whether each provider's specific circumstances demonstrated that the provider would experience economic hardship absent the application of the high-cost area benefit. Accordingly, we find that the statute requires us to define particularized economic hardship based on an individualized showing so that each provider can account for its own particularized cost and revenue structure.

16. To the extent that NTCA suggests an approach that allows providers to qualify for the high-cost area benefit based solely on the receipt of USF high-cost support, we decline to adopt such an

³⁴ *ACP Further Notice*, 37 FCC Rcd at 613-614, paras. 289-91.

³⁵ *See id.* at 614, para. 291.

³⁶ ACA Connects *Further Notice* Comments at 3-6.

³⁷ 47 U.S.C. § 1752(a)(7)(B).

³⁸ ACA Connects *Further Notice* Comments at 7-8.

³⁹ *See Further Notice*, 37 FCC Rcd at 614, para. 290.

⁴⁰ Particularize is defined as "to state in detail" or to "specify." *See* MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/particularize> (last visited Aug. 3, 2023).

approach.⁴¹ Recipients of USF high-cost support receive subsidies to provide reasonably comparable services at rates reasonably comparable to those in urban areas.⁴² Indeed, those subsidies are a way for providers to cover certain costs of operating and maintaining their networks, which may, if anything, make it less likely that a provider would be suffering a particularized economic hardship in the geographic area where it receives high-cost support. Therefore, receipt of USF high-cost support, in and of itself, does not show the provider is experiencing a “particularized economic hardship” in general, or as defined herein. To bolster its argument, NTCA attempts to tie the ACP high-cost area benefit to the role USF high-cost support plays in enabling “‘affordable’ broadband services for all rural consumers, regardless of income level.”⁴³ NTCA contends that the “‘enhanced’ ACP subsidy can make up for [the] ‘gap’ between ‘reasonable comparability’ and ‘affordability’ that the High-Cost USF program does not close on its own.”⁴⁴ However, this argument does not address the specific language of the statute, which focuses on a provider’s inability to “maintain the operation of part or all of [a provider’s] broadband network” rather than on whether the service at issue is affordable to subscribers with the standard ACP benefit.⁴⁵ Accordingly, we reject this proposal.

17. We also disagree with WISPA’s position that small Internet Service Providers “lack the administrative resources to establish their specific costs to provide broadband service in an area,” and that it is unnecessary to examine an individual operator’s cost of doing business.”⁴⁶ Instead, WISPA asserts that all areas eligible for the Connect America Fund or Rural Digital Opportunity Fund, as well as any census block identified as a high-poverty area on the map created by the Department of Agriculture and NTIA, should be designated as high-cost areas eligible for the \$75 subsidy.⁴⁷ WISPA’s suggested approach would seem to read the “particularized economic hardship” showing out of the statute entirely. As discussed above, the statute’s particularized economic hardship requirement is separate from and in addition to the requirement that this enhanced support only be made available in “high-cost areas,” and the determination of those high-cost areas will be made by NTIA. Moreover, we expect that any business, regardless of size, will have knowledge of the costs and revenues associated with its business operations, at least to the extent necessary to determine if the provider is experiencing particularized economic hardship in a high-cost area.

18. *Facilities-Based Provider Limitation.* Pursuant to the Infrastructure Act’s direction that a provider show that particularized economic hardship may impair its ability “to maintain the operation of part or all of *its broadband network*,” we clarify that only facilities-based providers will be eligible for the high-cost benefit.⁴⁸ We find that the Act directs us to prohibit non-facilities-based providers from receiving a high-cost area benefit as such providers would not experience an inability to maintain their

⁴¹ NTCA *Further Notice* Comments at 2; Letter from Michael Romano, Exec. V.P., NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-450, at 1-2 (filed Nov. 29, 2022). The approach suggested by NTCA in its *Further Notice* comments differs somewhat from its earlier position on determining hardship, i.e., “where a High-Cost support recipient participating in the ACP can demonstrate that end-user revenues plus the level of high-cost USF support received fail to cover the cost of serving ACP-eligible customers at a rate that is available to low-income consumers in urban areas” NTCA *ACP Public Notice* Comments at 16-17.

⁴² 47 U.S.C. § 254(b)(3).

⁴³ NTCA *Further Notice* Comments at 3.

⁴⁴ *Id.* at 4.

⁴⁵ 47 U.S.C. § 1752(a)(7)(B).

⁴⁶ WISPA *Further Notice* Comments at 2.

⁴⁷ *Id.* at 3.

⁴⁸ 47 U.S.C. § 1752(a)(7)(B) (emphasis added); *see also* ACA Connects *ACP Public Notice* Comments at 28 (“[T]he statu[t]e is clear that only providers that own or operate ‘broadband network[s]’ in high-cost areas should be eligible to claim the enhanced benefit.”).

network absent the application of the high-cost benefit. For purposes of this Order, we define facilities-based provider consistent with the Commission's rules regarding the Form 477 collection, to include provider owned physical facilities, and wireless spectrum.⁴⁹ We direct USAC to validate and verify a provider's facilities-based status as part of the process of approving providers to offer the high-cost area benefit. Providers will additionally be required to certify to their status as a facilities-based provider as part of their application to offer the high-cost area benefit.

19. *Showing to Support Request for Approval to Offer the High-Cost Area Benefit.* Our objective is to administer the high-cost area benefit consistent with the statutory language requiring, among other things, a showing of particularized economic hardship by the ACP provider balanced with "a minimal burden on qualifying households and providers."⁵⁰ In implementing this approach, we seek to safeguard program integrity while also minimizing the administrative burden for a provider seeking to demonstrate that it is unable to cover the costs of operating and maintaining all or part of its network operations in the high-cost area(s) absent the high-cost area benefit.

20. We outline the type of documentation that we expect would be sufficient for a provider to demonstrate that it is experiencing "particularized economic hardship" for purposes of the high-cost area benefit. Participating providers must demonstrate particularized economic hardship by submitting an affidavit supported by an income statement demonstrating the provider is currently operating at a loss in each high-cost area(s) for which the provider is seeking approval to offer the high-cost area benefit. To facilitate the administration of the benefit and minimize provider burdens, providers may submit a single application with supporting documentation for all of the high-cost areas where they are seeking approval to offer the high-cost area benefit.

21. To support its affidavit, the provider must include a copy of its most recent income statement(s), prepared in the ordinary course of business, consolidated and at the component level, as applicable, covering the previous fiscal year of operations or the last six quarters of operations, and separately identify, in the method determined by the Bureau, the high-cost areas, as designated by NTIA, that the provider serves and in which it is seeking to provide the high-cost area benefit. An income statement, otherwise known as a profit and loss statement, showing the provider's revenue, expenses, gains, and losses during the required time period, strikes the appropriate balance between ensuring the high-cost area benefit is appropriately limited and minimizing the administrative burden on providers. An income statement is a routine financial statement prepared by companies,⁵¹ and thus most providers already prepare such statements in the normal course of business. The income statement must, at a minimum, include detailed information on the provider's net income, operating revenue and operating expenses, including, but not necessarily limited to, cost of goods sold or services, selling, general and administrative expenses and depreciation or amortization expenses. To protect program integrity providers that are publicly traded or that prepare audited income statements in the ordinary course of business shall be required to submit the audited income statement, rather than an unaudited income statement, to support their affidavit. We delegate authority to the Bureau, in consultation with the Office of Economics and Analytics (OEA) as appropriate, and consistent with the standard established in this Order, to further specify or modify the types of documentation that providers must submit to show "particularized economic hardship".

⁴⁹ See 47 CFR § 1.7001(2)(i)-(v) (defining facilities-based provider).

⁵⁰ See *ACP Public Notice* at 30, para. 71.

⁵¹ We note that providers that are publicly traded companies are required to file financial information with the Securities and Exchange Commission. See U.S. Securities and Exchange Commission, *Beginners' Guide to Financial Statements* (Jan. 12, 2014), <https://www.sec.gov/oiea/reports-and-publications/investor-publications/beginners-guide-financial-statements>); U.S. Securities and Exchange Commission, "Form 10-K.", <https://www.investor.gov/introduction-investing/investing-basics/glossary/form-10-k>.

22. To protect program integrity, and consistent with other submissions made to justify the receipt of a federal benefit, such an affidavit shall be made under penalty of perjury from a company officer with knowledge of the provider company's costs and revenues.⁵² The affidavit must describe in sufficient detail the methodology used for determining that the annualized expenses of maintaining the operation of the provider's broadband network in a particular high-cost area exceeds the provider's expected total revenues in that high-cost area.⁵³ This should include an allocation of provider broadband Internet access service revenues and costs for the relevant high-cost area(s) if the income statement is too broad to demonstrate that the provider is operating at a loss relative to providing broadband Internet access service in the high-cost area(s) in question. The affidavit should also factor in payments from customers for broadband Internet access service as well as the up-to-\$30 ACP benefit and additional subsidies and other financial benefits received, including USF high-cost support related to providing broadband Internet access service.⁵⁴ The affidavit must also include an explanation as to how the economic hardship resulting from the operating loss may limit the provider's ability to maintain the operation of all or part of its broadband network in the high-cost area(s) for which it seeks to offer the high-cost area benefit. Additionally, in the affidavit, each provider must explain when and why the provider originally began operating in the high-cost area(s). In support of the affidavit a provider is also required to submit any federal income tax returns relating to the submitted income statements. These tax returns could be used to identify anomalies or other potential issues in the financial data being provided as part of the application for the high-cost area benefit.

23. To demonstrate that a provider is operating at a loss, the income statement, and cost-allocation as applicable, must show that the provider's broadband revenue has been below broadband expenses in at least four of the last six fiscal quarters or for the last full fiscal year for each relevant high-cost area. If the income statement includes costs and revenues for broadband network operations outside of the high-cost areas for which the provider seeks approval to offer the high-cost area benefit, then the provider will need to allocate the costs and revenues associated with the relevant high-cost area(s) and provide the cost and revenue allocation for the high-cost area(s) in the supporting affidavit.

24. To determine the share of the provider's total operating costs that are associated with its broadband network operations in the relevant high-cost area(s), the provider must use a reasonable cost assignment and/or cost-allocation method. A provider should first attempt to directly assign or attribute costs to broadband Internet access services and to the relevant high-cost area(s). Costs that are not directly assignable (e.g., common or shared costs) should be allocated based on a cost-causative mechanism wherein the participating provider should identify a cost-causative link to an expense category (or group of categories) that has already been directly assigned or attributed. Finally, where none of the methods described above are possible, the participating provider should employ a reasonable cost-allocation of operating expenses, which may be based on factors, such as, for the relevant high-cost area(s), the share of a provider's total investments, total locations served, or in proportion to the share of

⁵² See, e.g., *Medicare Enrollment Application for Eligible Ordering/Certifying Physicians and other Eligible Professionals*, available at: <https://www.cms.gov/medicare/cms-forms/cms-forms/downloads/cms855o.pdf> (those applying to offer this benefit must certify under penalty of perjury, that among other things, the contents of the application are true, correct and complete); *Application for Supplemental Social Security Income*, available at: https://www.ssa.gov/legislation/Attachment%20for%20SSA%20Testimony%207_25_12%20Human%20Resources%20Sub%20Hearing.pdf (application for disability benefits that requires applicants certify to the contents of the application under penalty of perjury); 47 CFR § 54.1808(e) (ACP certification requirement).

⁵³ Revenues considered must be those that are associated with the provision of broadband, including broadband/voice bundled service, which are eligible to be supported by the ACP benefit. For customers that are subscribed to bundled service that includes broadband but also includes cable or other non-voice services ineligible to be supported by the ACP benefit, revenue from the cable or other non-voice service must be excluded.

⁵⁴ In the *Further Notice*, we sought comment on the specific information that providers should provide in order to show particularized economic hardship. See *Further Notice*, 37 FCC Rcd at 614, para. 291.

directly assignable investments or expenses for the relevant high-cost area(s). Different cost allocators may be used to allocate different shared costs and must be sufficiently described in the supporting affidavit. For providers applying for multiple high-cost areas, the cost allocation methods should be consistent for all relevant high-cost areas to the extent feasible. To determine the share of the provider's total revenues associated with its broadband network operations in the relevant high-cost area(s), the provider must calculate and allocate revenue for the relevant time periods based on revenues for the applicable high-cost area(s), and account for any subsidies received by the provider or other financial benefits, including USF high-cost support. Regardless of which cost allocation methods is used, all company-wide financial data submitted in support of an application for the high-cost area benefit must comply with generally accepted accounting principles (GAAP).⁵⁵

25. To maximize flexibility, we will allow a provider to choose the reasonable cost and revenue allocation method(s) within the parameters described above, rather than prescribe one. To mitigate any program integrity issues that this discretion might introduce, however, we require providers to identify and justify their chosen allocation method(s).⁵⁶ Allowing providers options for reasonable cost and revenue allocation method(s) will allow even those providers with limited financial expertise to submit a showing based on their records that meets the standards adopted herein. We direct the Bureau to develop a more detailed process for determining, in consultation with OEA, whether the provider's allocation method and justification are reasonable.

26. Notwithstanding our recognition that the needs to minimize the burden on participating providers and to encourage provider participation in the ACP are paramount, we require the filing of documentation showing that a provider will experience particularized economic hardship, which shall include the filing of both an affidavit with the information outlined above, along with the required income statement, and tax filings.⁵⁷ An income statement alone would not provide sufficient assurances that a provider has satisfied the standard for offering the high-cost area benefit in a given high-cost area. The affidavit is an important safeguard for ensuring that the high-cost area benefit is appropriately limited to providers that are facing "particularized economic hardship" such that they will be unable to maintain part or all of their broadband network if they can only offer the standard \$30 ACP benefit. We recognize that providers may not routinely prepare cost-allocations specific to the relevant high-cost areas. However, for income statements that are not specific to the relevant high-cost areas, cost allocations are necessary to satisfy the statute's requirement that the high-cost area benefit only be made available in high-cost areas where the provider experiences economic hardship. As noted earlier, to minimize the burden associated with cost-allocations, we allow providers some flexibility in determining which cost-allocation method to use where the provider is unable to directly assign or attribute costs to broadband Internet access services and to the relevant high-cost area(s) or use a cost-causative mechanism. An affidavit accompanying an income statement strikes the appropriate balance between protecting program integrity while minimizing the burden on providers.

27. Commenters stressed the importance of the Commission choosing a means for "qualification that imposes the least administrative burdens on providers, while protecting against waste, fraud, and abuse."⁵⁸ We agree, although we also conclude that proposals that effectively eliminate the

⁵⁵ See 47 CFR § 32.1.

⁵⁶ Consistent with the documentation retention requirements in 47 CFR § 54.1808(e)(12), providers must retain all underlying documentation supporting their cost allocation and must make that documentation available upon request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General or other local, state or Federal agency with jurisdiction over the provider.

⁵⁷ See U.S. Securities and Exchange Commission. "Form 10-K", <https://www.investor.gov/introduction-investing/investing-basics/glossary/form-10-k>.

⁵⁸ WISPA *Further Notice* Comments at 2.

need for any showing altogether are at odds with the statute.⁵⁹ Similarly, we find that a mere certification as to a provider's particularized economic hardship in the high-cost area(s) it serves, as suggested by ACA Connects, is insufficient to satisfy the express "showing" mandated by Congress and impedes the Commission's ability to ascertain whether the provider is, in fact, experiencing a particularized economic hardship.⁶⁰

28. We decline to adopt the suggestion from the Mississippi Center for Justice that the Commission require service providers to submit additional speed and coverage tests before allowing a broadband service provider to receive the high-cost area benefit.⁶¹ While we are sympathetic to concerns about whether a provider's asserted coverage and speed matches actual network performance, the Infrastructure Act is clear that the only criterion the Commission may consider when deciding whether a provider can receive the high-cost area benefit, is whether the absence of a high-cost area benefit would cause a particularized economic hardship to the provider.⁶² Furthermore, the Commission has taken steps in other proceedings to address service quality concerns and the reporting of accurate coverage and speed data.⁶³ Accordingly, we decline to require participating providers to perform these additional tests.

29. *Additional Information Required for High-Cost Area Benefit Application.* To facilitate the evaluation of a provider request for approval to offer the high-cost area benefit and to help protect program integrity, we direct the Universal Service Administrative Company (USAC) to communicate with the provider about its request and collect information, as part of the application for approval to offer the high-cost area benefit, sufficient to identify the provider and the nature of the services it offers in the relevant high-cost areas, such as: contact information; FCC Registration Number; Unique Entity Identifier; Federal Tax ID Number; Service Provider ID Number; whether the provider is facilities-based in the relevant high-cost areas; and the nature of the provider's broadband network technology in the relevant high-cost area(s).⁶⁴ Finally, a provider's submission must include certifications from a company officer with knowledge of the provider's cost and revenues under penalty of perjury that: (1) all information submitted is true and correct to the best of the filer's knowledge; (2) the provider will comply with all applicable statutes and the Commission's rules and orders; and (3) the provider will use any reimbursed funds received for its intended purpose of providing discounted broadband Internet access services to eligible low-income households.⁶⁵

30. To help protect program integrity, a participating provider will also be required to indicate in its application seeking to offer the ACP high-cost area benefit whether it has previously applied for federal financial assistance in the three fiscal years prior to the provider's application. Upon request, the participating provider must submit to USAC or the Commission applications for loans submitted to the U.S. Department of Agriculture Rural Utility Service (RUS), approvals or denials of such loans, the provider's RUS Operating Report for Telecommunications Borrowers filed with the RUS, and any financial reports filed with a state Public Utility Commission, as applicable. The requirement to submit these documents is an important safeguard against provider manipulation of the financial

⁵⁹ See NTCA *Further Notice* Comments at 2-3; WISPA *Further Notice* Comments at 2-3.

⁶⁰ See ACA Connects *Further Notice* Comments at 7.

⁶¹ Mississippi Center for Justice *Further Notice* Comments at 3-4.

⁶² 47 U.S.C. § 1752(a)(7)(B).

⁶³ See generally *Broadband Data Collection*, 35 FCC Rcd at 7460.

⁶⁴ See 47 CFR § 54.1801(c); USAC, <https://www.usac.org/wp-content/uploads/about/documents/acp/ACP-Election-Form.pdf> (last visited Aug. 3, 2023). To the extent that this information is already collected from providers participating in the ACP, we direct USAC to explore potential ways to minimize the need for providers to re-provide information that they may have previously provided in other ACP submissions.

⁶⁵ See 47 CFR § 54.1808(e) (setting forth the certification that the officer of the ACP participating provider must make when submitting a reimbursement claim).

information in its application. This requirement will also assist USAC in ascertaining the validity of the financial information in the provider's application materials. Finally, in evaluating a provider's request for approval to offer the high-cost area benefit and to help protect program integrity the Commission or USAC must consider the extent to which other providers are operating in the high-cost area and not requesting this benefit.

31. *Submission and Review of Showings and Appeals.* We direct USAC, under the oversight of the Bureau and the Office of the Managing Director (OMD), to develop a mechanism to enable participating providers to electronically submit the requisite particularized economic hardship showings. We further direct USAC, under the oversight of the Bureau and OEA, to produce provider education and training materials concerning seeking approval to offer the high-cost area benefit and we direct the Bureau to provide additional guidance to providers on the submission process. All provider submissions will be treated as presumptively confidential and will not be available for routine public inspection consistent with the Freedom of Information Act and the Commission's rules.⁶⁶ While the actual content of the provider filings will remain confidential, we direct USAC to publicly issue information identifying which providers are approved to offer the high-cost area benefit and the high-cost areas where they are approved to offer it. We further direct the Bureau to release a Public Notice within 90 days after NTIA's determination of high-cost areas, announcing the date upon which providers can start to submit applications requesting authority to offer the high-cost area benefit. The Bureau shall have the discretion to determine whether to establish an initial deadline for provider requests or accept applications on a rolling basis.

32. We direct USAC to review each economic hardship submission for completeness and then either approve or deny each submission pursuant to guidance and oversight by the Bureau and OEA. Each decision by USAC shall be made in writing, provide a written explanation of the basis for the decision, and provide the approval period for the high-cost area benefit as appropriate. Each USAC decision will be subject to the restrictions of section 54.702(c) of the Commission's rules which prohibits USAC from making policy, interpreting unclear provisions of the statute or rules, or from interpreting the intent of Congress.⁶⁷ Any provider aggrieved by an action taken by USAC may seek review of that action, as set forth in Subpart I of the Commission's rules.⁶⁸ While review of that action is pending, a provider will be able to submit claims for up to the \$30 standard monthly benefit. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in 47 CFR § 54.1808. The provider may only submit revised claims for up to \$75 per month per eligible subscriber for the snapshot dates from the start of the period of approval, and the provider will be responsible for passing the full benefit amount on to subscribers as a discount off the price of their monthly bills before seeking reimbursement for the high-cost area benefit amount.⁶⁹

33. We direct USAC to make updates to ACP systems, including to the National Lifeline Accountability Database, as appropriate, to allow providers that are approved to receive reimbursement for the high-cost area benefit to enroll households with the high-cost area benefit or to update existing ACP subscribers' records to reflect the designated high-cost areas associated with the participating provider's approved showing. We also direct USAC to incorporate the high-cost area benefit into the

⁶⁶ See 5 U.S.C. § 552(b)(4) (stating that "trade secrets and commercial or financial information obtained from a person and privileged or confidential" are exempt from the Freedom of Information Act requirements); 47 CFR § 0.457 (discussing records not routinely available for public inspection, including "trade secrets and commercial or financial information obtained from any person and privileged or confidential.").

⁶⁷ 47 CFR § 54.702(c).

⁶⁸ See 47 CFR §§ 54.719-54.725; *ACP Report and Order*, 37 FCC Rcd 604, para. 264.

⁶⁹ See 47 CFR § 54.1803(a) (requiring providers to certify that they have passed on the full benefit amount for which they are seeking reimbursement).

ACP claims and enrollment tracker, with a separate column for households receiving the up to \$75 high-cost area benefit. We further direct USAC, with Bureau oversight, to develop provider training materials on how to enroll or update subscriber information to reflect the high-cost area benefit and to seek reimbursement for the enhanced benefit for eligible households in the relevant high-cost areas.

34. *Annual Resubmission Requirement.* To account for changing financial circumstances, participating providers approved to offer the high-cost area benefit must annually resubmit a showing of particularized economic hardship to demonstrate continued eligibility to offer the high-cost area benefit. We direct the Bureau to determine any modifications providers should make to the financial showing for the resubmission, consistent with the statutory language and standard outlined in this Order, as well as the deadline for such resubmissions. The deadline shall allow sufficient time for review and a determination on the renewal submission, and provider notification to households of any benefit level changes as appropriate, before the expiration of the prior approval period. We direct USAC to issue reminders to providers with current approvals of the renewal submission requirements within at least 30 days and at least 15 days of the deadline the Bureau announces for resubmissions. These reminders shall also inform providers that failure to make a resubmission will result in the loss of their approval to offer the high-cost area benefit and the date on which the provider must cease offering and can no longer claim the high-cost area benefit if it does not timely make a renewal submission. We direct the Bureau to ensure that the renewal resubmissions are reviewed and a determination is issued in a reasonable timeframe.

35. There may be instances where a provider fails to submit the renewal submission, or does not satisfy the criteria to offer the high-cost area benefit based on its renewal submission. We recognize that the loss of the high-cost area benefit may cause a financial burden to low-income households that would be transitioned to the standard discount rather than the higher subsidy. To mitigate financial hardship and to avoid an accrual of household debt related to the loss of the high-cost area benefit, we adopt several protections for ACP households where the provider is no longer approved to offer the high-cost ACP benefit. If a provider fails to submit the renewal submission by the deadline, the provider shall provide written notice to its ACP households receiving the high-cost area benefit at least 30 days prior to the last date that the provider is approved to offer the high-cost area benefit and a second notice at least 15 days before the last date that the provider is approved to offer the high-cost area benefit. If USAC determines that a provider no longer qualifies for the high-cost area benefit based on its renewal submission, the provider shall also follow the same customer notification process and deadlines as providers that fail to submit the renewal submission by the deadline. Such notices shall include: (1) a statement that the provider will no longer be offering the high-cost benefit; (2) the effective date of the loss of the high-cost area benefit; (3) a statement that upon the effective date of the loss of the high-cost area benefit, the ACP-supported service purchased by the household will no longer be discounted at the higher subsidy amount; and (4) the amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.

36. We find that providers may transition a household to a lower-priced service plan once the provider is no longer eligible to offer the high-cost area benefit upon advance notice to the household and after offering a reasonable opportunity for the household to agree to retain its current service plan or switch to another service plan.⁷⁰ If the provider offers to transition the eligible household to a lower-priced plan, the offer to transition must be included in the required 30-day and 15-day notices, and must: (1) provide details about the new plan and monthly price; (2) inform the subscribers they can opt out of the transition and retain their current service plan or change to a different service plan than the lower-priced plan the service provider identified; (3) provide instructions for opting out of the transition or switching plans; and (4) provide the deadline for opting out of the transition or switching plans. We

⁷⁰ *ACP Report and Order*, 37 FCC Rcd at 584-858, para. 220 (finding that allowing consumers that expressed an ability and willingness to pay for broadband to opt out rather than requiring consumers to opt-in for the continuation of non-discounted broadband with a reduced benefit amount mitigates bill shock while ensuring that subscribers are able to continue receiving broadband internet service).

believe this approach minimizes the potential for bill shock by allowing providers to transition eligible subscribers to a lower-priced plan, while also giving them an opportunity to opt out of the transition and either remain on their current service plan or choose another service plan. We clarify that moving eligible subscribers to a lower-priced plan upon advance notice and reasonable opportunity for subscribers to opt out of such a transition where the high-cost area benefit is no longer available does not constitute inappropriate down-selling.⁷¹

37. *Subscriber Initial Notice Concerning High-Cost Area Benefit.* We require providers to seek annual approval to continue offering the high-cost area benefit. Accordingly, there is a potential for ACP subscribers receiving the high-cost area benefit to experience financial difficulty if their provider ceases being eligible to offer the high-cost area benefit.⁷²

38. To promote transparency and avoid the potential for subscriber confusion, participating providers approved to offer the high-cost area benefit must provide written notice to the subscriber when the provider first applies the high-cost area benefit to the subscriber's bill, stating:⁷³ (1) that the subscriber is receiving an high-cost area benefit and specifying the difference between the standard ACP benefit and the high-cost area benefit being applied to the subscriber's ACP service; (2) that the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the high-cost area benefit; (3) that the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and (4) that the provider is required to provide the subscriber advance notice of any changes to the subscriber's ACP service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.

39. *Program Integrity.* To ensure that providers are only seeking reimbursement for households that are eligible to receive the ACP high-cost area benefit, we direct USAC to conduct program integrity reviews of claims related to the high-cost area benefit on an annual basis, in addition to targeted reviews of providers approved to offer the high-cost area benefit as needed (e.g., based on indicia of program integrity risks). We recognize that a risk exists where providers receiving the high-cost benefit could attempt to raise rates or push ACP subscribers to higher priced plans to maximize their reimbursement for the high-cost area benefit claims. We remind providers that they are required to offer the same services to ACP households on the same terms and conditions as non-ACP households and inappropriate upselling is a violation of the ACP rules.⁷⁴ We also clarify that, as with the standard benefit and the enhanced Tribal benefit, providers are required to pass through the entire benefit to ACP eligible households.⁷⁵ In addition to USAC's program integrity reviews, the Bureau, in coordination with OEA, shall also use available data from ACP providers to maximize program integrity with respect to the high-cost area benefit, including, but not limited to, inflating rates, or claiming the high-cost area benefit for a greater number of households than the number of the provider's broadband serviceable locations in a given high-cost area. We remind providers that the Commission may suspend or remove a participating provider from the ACP for a variety of reasons, including violations of the rules or requirements of ACP

⁷¹ See *id.*; 47 CFR § 54.1810(e).

⁷² See *supra* paras. 31-32. As explained in the *ACP Report and Order*, in connection with the transition from the Emergency Broadband Benefit Program (EBB Program) to the ACP, which has a lower standard benefit amount, numerous commenters expressed concern about the potential for subscriber confusion and bill shock stemming from the transition from the EBB benefit level to the ACP benefit level. See *ACP Report and Order*, 37 FCC Rcd at 581-587, paras. 214-223. The potential removal of the high-cost area benefit raises similar concerns.

⁷³ This approach is similar to the customer notice approach in connection with the transition from the EBB Program (which had a higher monthly benefit amount) to the Affordable Connectivity Program. See *ACP Report and Order*, 37 FCC Rcd at 586, para. 222 (finding that allowing EBB households to transition to lower cost service plans after providing notice in advance of the change in price would be sufficient to mitigate bill shock).

⁷⁴ 47 U.S.C. § 1752(b)(7)(A)(i); 47 CFR § 54.1810(e)(1)-(2).

⁷⁵ See 47 CFR § 54.1803(a).

or any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the ACP or undermines the integrity of the program.⁷⁶ We further direct the Bureau, in coordination with USAC, to provide additional details and procedures, as necessary, in conformance with this Order to ensure the efficient functioning of the high-cost area benefit.

40. Lastly, we remind providers that the Infrastructure Act allows eligible households to apply the ACP benefit to "any internet service offering of the participating provider, at the same terms available to households that are not eligible households."⁷⁷ The Commission has found this requirement will help "ensure the marketplace will not be limited, and consumers can apply the affordable connectivity benefit to a plan of their choosing."⁷⁸ This, in turn, will help minimize concerns that "providers may introduce or alter plans solely to maximize the reimbursement amount."⁷⁹ However, as the Commission clarified, providers are not precluded "from making internet service offerings that are only available to ACP subscribers provided that the terms are at least as good as plans that are available to non-eligible households...."⁸⁰

41. *Clarification of the Scope of Both ACP Enhanced Benefits.* The statute is silent on whether a household that is both eligible for the ACP high-cost area benefit and the ACP enhanced qualifying Tribal land benefit may receive both benefits simultaneously. However, nothing indicates that Congress intended for households in this scenario to be eligible to receive more than one ACP enhanced benefit. Further, allowing households to receive both enhanced ACP benefits at the same time would not be a fiscally responsible use of limited ACP funds. Absent Congressional intent to the contrary, we clarify that the ACP enhanced benefits are not cumulative and thus, a participating provider can only offer and seek reimbursement for one ACP enhanced benefit to eligible households in such situations. Accordingly, a participating provider is allowed to seek reimbursement for the enhanced qualifying Tribal land or the high-cost area benefit per eligible household up to the maximum benefit amount of \$75 per month, not both.

IV. PROCEDURAL MATTERS

42. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA)⁸¹ 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."⁸² Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule and/or policy changes contained in this *Report and Order* on small entities. The Final Regulatory Flexibility Analysis is set forth in Appendix B.

43. *Paperwork Reduction Act.* Pursuant to 47 U.S.C. section 1752(h)(2) the collection of information sponsored or conducted under the regulations promulgated in this Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3521.⁸³

⁷⁶ 47 CFR § 54.1810(e)(2).

⁷⁷ 47 U.S.C. § 1752(b)(7).

⁷⁸ *ACP Report and Order*, 37 FCC Rcd 586, para. 98.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See 5 U.S.C. § 604. 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). (FRFA)

⁸² 5 U.S.C. § 605(b).

⁸³ 47 U.S.C. § 1752(h)(2).

44. *Congressional Review Act.* The Commission will submit this Order to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will also send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

45. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182, as amended by Section 60502 of the Infrastructure Investment and Jobs Act and codified at 47 U.S.C. § 1752, this Sixth Report and Order, IS ADOPTED and shall be effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

46. IT IS FURTHER ORDERED, that Part 54 of the Commission’s rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days following publication of the text or summary thereof in the Federal Register.

47. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Sixth Report and Order to the Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

48. IT IS FURTHER ORDERED that the Commission’s Office of Secretary, Reference Information Center, SHALL SEND a copy of this Sixth Report and Order including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 403, 1004, 1302, 1601-1609, 1752, unless otherwise noted.

Subpart R—Affordable Connectivity Program

* * * * *

2. Section 54.1803 is amended by revising paragraph (a) to read as follows:

§ 54.1803 Affordable Connectivity Program Support Amounts

(a) The monthly affordable connectivity benefit support amount for all participating providers shall equal the actual discount provided to an eligible household off of the actual amount charged to such household but not more than \$30.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than \$75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household on Tribal lands, as defined in § 54.1800(s), or not more than \$75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household in a high-cost area, as defined in § 54.1814(a), and is approved to offer the enhanced high-cost benefit in that high-cost area pursuant to the process in § 54.1814(b).

* * * * *

3. Add § 54.1814 to subpart R to read as follows:

§ 54.1814 High-Cost Area Benefit

(a) *Definitions:*

(1) *Audited Income Statement.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, an “audited income statement” is an income statement that has been audited by an independent Certified Public Accountant (CPA).

(2) *Component-Level Income Statement.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, a “component-level income statement” is an income statement that shows financial results for the subsidiary or business component that is operating and/or offering retail broadband internet access service for sale in the designated high-cost areas as defined by 47 U.S.C. § 1702(a)(2)(G).

(3) *Consolidated Income Statement.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, a “consolidated income statement” is an income statement that shows aggregated financial results for multiple entities or subsidiaries connected with a single parent company.

(4) *High-Cost Area.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, the term “high-cost area” means an area as defined by 47 U.S.C. § 1702(a)(2)(G) as determined by the National Telecommunications and Information Administration.

(5) *Particularized Economic Hardship.* A provider has a “particularized economic hardship” in a high-cost area only if: (a) it is not possible for that provider to offer service in the high-cost area while covering the costs of maintaining the operation of all or part of its broadband network in that area at the standard up to \$30 a month discount; and (b) the up to \$75 a month high-cost area benefit would materially improve the provider’s ability to offer service through the ACP and maintain and operate its broadband network in that area.

(b) *High-cost Area benefit approval process.* A facilities-based ACP participating provider in a high-cost area (as defined in § 54.1814(a)) may provide an affordable connectivity benefit in an amount up to \$75.00 for a broadband Internet access service offering in a high-cost area upon a showing that the applicability of the standard up to \$30.00 benefit under § 54.1803(a) by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network in that high-cost area.

(1) A participating provider seeking approval to provide the high-cost area benefit must first electronically file a request with the Universal Service Administrative Company by the deadline established by the Wireline Competition Bureau.

(i) The electronic request shall require the participating provider to specify whether it has previously applied for federal financial assistance, as defined in 2 CFR § 25.406, in the three fiscal years prior to the provider’s application. Upon request, the participating provider must submit to the Administrator or the Commission applications for loans submitted to the U.S. Department of Agriculture Rural Utility Service (RUS), approvals or denials of such loans, the provider’s RUS Operating Report for Telecommunications Borrowers filed with the RUS, and any financial reports filed with a state Public Utility Commission, as applicable.

(2) The participating provider’s request shall include the documentation required to demonstrate particularized economic hardship. The request shall include an income statement, a supporting affidavit, any applicable federal tax filings and/or returns, and any other relevant documentation as determined by the Bureau and OEA.

(i) The income statement(s) must:

- (A) Be produced in the ordinary course of business;
- (B) Include both consolidated and component-level income statements;
- (C) Be audited by an independent public accountant, where such statements are produced in the ordinary course of business or are required by 17 U.S.C. §§ 78m, 78o(d); and
- (D) Include detailed information on the provider’s net income, operating revenue, and operating expenses, including, but not necessarily limited to, cost of goods sold or services, selling, general and administrative expenses and depreciation or amortization expenses.

(ii) The supporting affidavit, must include revenue and cost allocations and a description of the methodology, demonstrating that the provider was operating at a loss related to providing broadband Internet access service in the relevant high-cost area(s) for the last fiscal year or in at least four of the last six fiscal quarters, or other acceptable documentation determined by the Wireline Competition Bureau in consultation with the Office of Economics and Analytics.

(iii) The participating provider must first attempt to directly assign or attribute costs to broadband Internet access services, and if that is not possible, must use a cost-causative mechanism to the extent possible. If neither is possible, the participating provider must employ a reasonable cost-allocation with a justification for its methodology.

-
- (iv) The tax filing should include Form 1120, Form 1120-S or other applicable Federal Income Tax returns as required by 26 CFR Pt. 1.
 - (3) The participating provider's application must also include certifications from a company officer with knowledge of the provider's cost and revenues under penalty of perjury that:
 - (i) All information submitted is true and correct to the best of the filer's knowledge;
 - (ii) The provider will comply with all applicable statutes and the Commission's rules and orders; and
 - (iii) The provider will use any reimbursed funds received for its intended purpose of providing discounted broadband Internet access services to eligible low-income households.
 - (iv) The provider is a facilities-based provider as defined by 47 C.F.R. 1.7001(2)(i-v).
 - (v) The provider used cost allocation methodology consistent with the rules.
- (c) *Review process.* The Administrator, under oversight of the Wireline Competition Bureau and the Office of Economics and Analytics, shall review each participating provider's request to offer the high-cost area benefit and determine whether the provider has demonstrated a particularized economic hardship in the high-cost areas for which it is requesting to offer the high-cost area benefit. If the Administrator finds the particularized economic hardship showing is satisfied in accordance with the Commission's rules and orders, and any guidance from the Wireline Competition Bureau and the Office of Economics and Analytics, then the Administrator will approve the request and notify the participating provider. Otherwise, the Administrator will deny the request and provide the participating provider a written explanation of the basis for the denial.
- (1) The Administrator will review applications within a timeline to be determined by the Bureau.
 - (2) Providers may appeal the Administrator's determination as set forth in Part 54, subpart I of the Commission's rules.
 - (3) Providers may only submit claims for up to the \$30.00 standard benefit amount while an appeal of an Administrator's determination is underway. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in § 54.1808. The provider may submit revised claims for up to \$75.00 only from the start of the approval period indicated in the appeal determination letter.
- (d) *Annual renewal process.* A participating provider that has been approved to provide the high-cost area benefit must request approval annually thereafter to continue to provide the enhanced benefit to eligible households in a subsequent year. The participating provider will need to demonstrate particularized economic hardship in the renewal submission, through the documentation specified by the Wireline Competition Bureau. The deadline for submitting the renewal request shall be determined by the Wireline Competition Bureau.
- (e) *Notice to eligible households.*
- (1) Participating providers approved to offer the high-cost area benefit shall provide Affordable Connectivity Program subscribers written notice when the provider begins applying the high-cost area benefit to the subscriber's bill. The written notice must state:
 - (i) that the subscriber is receiving a high-cost area benefit and the difference between the standard benefit amount and the enhanced high-cost benefit being applied to the subscriber's supported service;
 - (ii) that the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the enhanced high-cost area benefit;

- (iii) that the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and
 - (iv) that the provider is required to provide the subscriber advance notice of any changes to the subscriber's supported service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.
- (2) If a participating provider fails to timely submit the renewal submission by the deadline or no longer qualifies to offer the high-cost area benefit based on its annual resubmission, then the participating provider shall provide written notice to its Affordable Connectivity Program customers receiving the high-cost area benefit at least 30 days and at least 15 days before the expiration of its approval to offer the high-cost area benefit. Such subscriber notices shall include:
- (i) A statement that the provider will no longer be offering the high-cost area benefit in the relevant high-cost area;
 - (ii) The effective date of the end of the high-cost area benefit;
 - (iii) A statement that upon the effective date of the loss of the high-cost area benefit, the Affordable Connectivity Program supported service purchased by the household will no longer be discounted at the higher subsidy amount; and
 - (iv) The amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.
- (3) If a participating provider is no longer authorized to offer the high-cost area benefit, the provider may transition an eligible household to a lower-priced ACP service plan once the high-cost area benefit is no longer available, upon advance notice to the household and an opportunity for the household to opt out of the change and remain on its current service plan or select another service plan. Participating providers must include the advance transition notice in the required written notice about the end of the provider's approval to offer the high-cost area benefit. The advanced notice must:
- (i) Provide details about the new plan and monthly price;
 - (ii) State that the subscriber may remain on its current plan or choose another plan;
 - (iii) Provide instructions on how the subscriber can opt out of the transition or change its service plan;
 - (iv) Provide the deadline for the subscriber to notify the provider that the subscriber would like to remain on its current plan or choose another plan.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*Notice*) released in March 2021.² The Commission sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Rules

2. In the Infrastructure Investment and Jobs Act (Infrastructure Act), Congress established the Affordable Connectivity Program (or ACP), which is designed to promote access to broadband Internet access services by households that meet specified eligibility criteria by providing funding for participating providers to offer certain services and connected devices to these households at discounted prices.⁴ The Affordable Connectivity Program funds an affordable connectivity benefit consisting of a per month discount up to \$30 on the price of broadband Internet access services that participating providers supply to eligible households in most parts of the country and a per month discount up to \$75 on such prices for households on qualifying Tribal lands.⁵ The Commission established rules governing the affordable connectivity standard \$30 benefit and the enhanced Tribal lands benefit in the *ACP Report and Order* adopted on January 14, 2022.

3. The Infrastructure Act also establishes a separate, enhanced affordable connectivity benefit for eligible households served by participating providers in certain high-cost areas. Specifically, the Infrastructure Act makes available a high-cost area benefit of up to \$75 per month for broadband Internet access service offered by participating providers in certain areas where the cost of building broadband facilities is relatively high, upon a showing that the lower \$30 per month benefit “would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.”⁶ In the earlier *Further Notice* to which the IRFA applied, we sought comment on the rules to implement this enhanced benefit.

4. In the Order, the Commission adopts the rules necessary to implement the enhanced benefit in high-cost areas the National Telecommunications and Information Administration (NTIA) designated in consultation with the Commission. Specifically, the Commission addresses the rules and procedures for participating providers that are facilities-based to offer an high-cost area benefit to eligible households located in designated high-cost areas served by the provider. We define “particularized economic hardship” for purposes of determining eligibility for the high-cost area benefit. We then address the specific showing that participating providers must make to demonstrate they are experiencing a particularized economic hardship. We also prescribe the process for submitting, reviewing, taking action on such showings, and for requests for review of adverse decisions.

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 *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System; Wireless Emergency Alerts*, PS Docket Nos. 15-94 and 15-91, *Notice of Proposed Rulemaking and Notice of Inquiry*, FCC 21-36 (March 17, 2021) (*Notice*).

³ See 5 U.S.C. § 604.

⁴ 47 U.S.C. § 1752.

⁵ *Id.* § 1752(a)(7)(A), (b)(1), (b)(4).

⁶ *Id.*; see also *id.* § 1752(a)(7) (defining “high-cost area” and other relevant terms).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments raised that specifically addressed the rules and policies set forth in the IRFA. WISPA cautioned the Commission to “be mindful that procedures posing excessive administrative burdens on small providers thwart the central purpose of the Infrastructure Act” and that “ISP companies with . . . limited staffing lack the internal administrative resources to establish their specific costs to provide broadband service in an area.”⁷ ACA Connects also encouraged the Commission to only require a certification for small providers with fewer than a Commission-defined subscriber threshold to presumably minimize the administrative burden on such entities.⁸

6. The Commission is constrained by the plain language of the statute to require a participating provider, including small entities, to make a showing of “particularized economic hardship such that the provider may not be able to maintain the operation of part or all of its broadband network” to offer the high-cost area benefit and the up to \$75 a month high-cost area benefit would materially improve the provider’s ability to offer service through the ACP and maintain and operate its broadband network in that area.⁹ Such a showing inevitably involves a measure of a provider’s costs and revenues. We have, however, taken steps to minimize the burden on small entities. In areas where a participating ACP provider is present, the provider will need to submit an affidavit asserting it will incur a “particularized economic hardship” and supply an income statement, that businesses routinely keep in the normal course of business, to show the provider is operating at a loss. Only if the income statement includes costs and revenues for areas outside of the designated high-cost areas, then the provider would need to provide additional information to allocate costs and revenues to the high-cost areas where it seeks to offer the high-cost benefit. This will greatly minimize the administrative burden on all providers that voluntarily seek to offer the high-cost area benefit, including small entity providers, by minimizing the need to gather and submit specific cost and revenue information for review and analysis. The Commission did consider the proposal to define “particularized economic hardship” as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider’s entire service area, but determined that this approach was inconsistent with the statutory language, as discussed in section III.B. of the *Order*.

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 of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.¹⁰

8. The Chief Counsel did not file any comments in response to the proposed rule(s) 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 proposed rules, if adopted.¹¹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small

⁷ WISPA *Further Notice* Comments at 2.

⁸ See ACA Connects *Further Notice* Comments at 7-8.

⁹ 47 U.S.C. § 1752(a)(7)(B).

¹⁰ 5 U.S.C. § 604(a)(3).

¹¹ 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”¹² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹³ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁴

10. Small Businesses, Small Organizations, and Small Governmental Jurisdictions. 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.¹⁵ 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.¹⁶ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹⁷

11. 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.”¹⁸ 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.¹⁹ 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.²⁰

12. 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.”²¹ U.S. Census Bureau data from the 2017 Census

¹² See *id.* § 601(6).

¹³ See *id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632).

¹⁴ See 15 U.S.C. § 632.

¹⁵ See 5 U.S.C. § 601(3)-(6).

¹⁶ 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).

¹⁷ *Id.*

¹⁸ See 5 U.S.C. § 601(4).

¹⁹ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,”

<https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

²⁰ 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.

²¹ See 5 U.S.C. § 601(5).

of Governments²² indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²³ Of this number, there were 36,931 general purpose governments (county,²⁴ municipal, and town or township²⁵) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts²⁶ with enrollment populations of less than 50,000.²⁷ 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.”²⁸

13. *Wired Broadband Internet Access Service Providers (Wired ISPs).*²⁹ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules.³⁰ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.³¹ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.³² U.S. Census Bureau data for 2017 show that

²² 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>.

²³ 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.

²⁴ 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.

²⁵ 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.

²⁶ 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.

²⁷ 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.

²⁸ 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.

²⁹ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

³⁰ See 47 CFR § 1.7001(a)(1).

³¹ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

there were 3,054 firms that operated in this industry for the entire year.³³ Of this number, 2,964 firms operated with fewer than 250 employees.³⁴

14. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.³⁵ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2020 Communications Marketplace Report*,³⁶ we believe that the majority of wireline Internet access service providers can be considered small entities.

15. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*³⁷ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"³⁸ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.³⁹ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁴⁰ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁴² Of that number, 2,837 firms employed fewer than 250 employees.⁴³

³³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&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 See *IAS Status 2018*, Fig. 30 (The technologies used by providers include DSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than DSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

³⁶ See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 44, paras. 34-35, Figs. II.B.2-4, 6. (2020) (*2020 Communications Marketplace Report*).

³⁷ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

³⁸ Federal Communications Commission, *Internet Access Services: Status as of December 31, 2018 (IAS Status 2018)*, Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

³⁹ See 47 CFR § 1.7001(a)(1).

⁴⁰ 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>.

⁴¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁴² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

16. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.⁴⁴ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2020 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,⁴⁵ as well as on terrestrial fixed wireless broadband providers in general,⁴⁶ we believe that the majority of wireless Internet access service providers can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

17. *High-Cost Area Benefit.* Providers of wireline or wireless broadband Internet access services, including small businesses, that voluntarily seek to qualify for the enhanced benefit will need to report and retain certain data about their operations. The necessary data include the costs of deploying and maintaining broadband Internet access networks in particular high-cost areas, including the cost of capital, depreciation expenses, operating costs, and other associated expenses. These costs may vary, in part, depending on the topological features, population distribution, and other conditions in such areas. Other relevant factors may include estimates of consumer demand and likely revenues from providing broadband Internet access services. Importantly, no small entity will be required to report or retain such data as a general matter.

18. The recordkeeping or reporting requirements adopted in this proceeding will apply only to those providers that choose to participate in the ACP and that voluntarily seek to provide service that qualifies for the enhanced benefit in high-cost areas where the benefit may be available. Moreover, because participation is entirely optional, we believe that providers that voluntarily avail themselves of the enhanced benefit component of the Affordable Connectivity Program will enjoy benefits that far exceed the reporting and recordkeeping costs.

19. We therefore find the cost of compliance for small entities will be minimal given the steps taken to minimize the administrative burden as discussed in section B of this FRFA.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities."⁴⁷

(Continued from previous page)

⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁴ See *IAS Status 2018*, Fig. 30.

⁴⁵ See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 4, paras. 9-13. (2020) (*2020 Communications Marketplace Report*).

⁴⁶ *Id.* at para. 91.

⁴⁷ 5 U.S.C. § 604(a)(6).

21. The actions taken by the Commission in the *Order* were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below we discuss actions we take in the *Order* to minimize any significant economic impact on small entities and some alternatives that were considered.

22. *High-Cost Area Benefit.* As discussed in section B of this FRFA, the Commission is constrained by the plain language of the statute to require a participating provider to make a showing of “particularized economic hardship” to offer the high-cost area benefit.⁴⁸ Such a showing inevitably involves a measure of a provider’s costs and revenues. We have, however, taken steps to minimize the burden on small entities. A provider will only need to submit an affidavit asserting it will incur a “particularized economic hardship” and supply an income statement, that businesses routinely keep in the normal course of business, to show the provider is operating at a loss. Only if the income statement includes costs and revenues for areas outside of the designated high-cost areas, would the provider need to submit information, in addition to the income statement and an affidavit, to allocate costs and revenues to the high-cost areas it intends to serve. These steps will greatly minimize the administrative burden on all providers that voluntarily seek to offer the high-cost area benefit, including small providers, by eliminating the need, in the first instance, to gather and submit specific cost and revenue information for review and analysis. The Commission did consider the proposal to define “particularized economic hardship” as the serving of less than a Commission-defined threshold of broadband subscribers across a smaller provider’s entire service area, but determined this approach was inconsistent with the statutory language, as discussed in section III.B. of the *Order*.

G. Report to Congress

23. The Commission will send a copy of this Sixth Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.⁴⁹ In addition, the Commission will send a copy of the Sixth Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁵⁰

⁴⁸ 47 U.S.C. § 1752(a)(7)(B).

⁴⁹ See 5 U.S.C. § 801(a)(1)(A).

⁵⁰ See *id.* § 604(b).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Affordable Connectivity Program*, WC Docket No. 21-450, Sixth Report and Order (Aug. 3, 2023).

Here at the FCC we have done something big. We built the Affordable Connectivity Program. It is the largest broadband affordability effort in our Nation's history. As a result, more than 19.8 million low-income households across the country are now getting the help they need to get online and stay online. That means that over 19.8 million families have the internet access they need for work, healthcare, school and so much more.

There are ACP subscribers in every state and every territory. That includes rural communities. In fact, more than 2.8 million ACP households are in rural counties. But that figure alone does not paint the full picture. Because, as one study has demonstrated, rural households are actually signing up at a higher rate than their urban peers.

That does not mean it is always easy. In many rural communities, it is still costly to deploy and maintain broadband service. In a nod to this reality, in the Bipartisan Infrastructure Law, Congress tasked us with developing a way for households in high-cost areas to receive more than just the standard up-to-\$30 a month ACP discount on internet service and, if needed, provide a larger discount of up-to-\$75 a month.

Today, we put this special discount for rural households in place. Consistent with the law, we make this support available strictly in the "high-cost areas" that the National Telecommunications and Information Administration is charged with identifying as part of their management of the Broadband Equity Access and Deployment Program. This is information we expect NTIA to make publicly available shortly. In addition, we offer it to providers only after they have demonstrated a "particularized economic hardship" under the law, meaning that they are unable to cover the costs of maintaining the operation of their network at the standard discount level.

One final note. We are laser focused on protecting the integrity and success of the Affordable Connectivity Program. That is why in implementing this aspect of the law today, we put in place safeguards recommended by the Office of Inspector General to ensure that the high-cost area benefit works the way Congress intended.

For today's effort, I want to thank Allison Baker, Cheryl Callahan, Jessica Campbell, Jodie Griffin, Travis Hahn, Trent Harkrader, Diane G. Holland, Felicity Keeley, Billy Layton, Benjamin Nashed, Terri Natoli, Hayley Steffen, Noah Stein, Kesha Woodward, and Eric Wu from the Wireline Competition Bureau; Bambi Kraus from the Consumer and Governmental Affairs Bureau; Mark Azic, Joanna Fister, Eugene Kiselev, Eric Ralph, and Maciej Wachala from the Office of Economics and Analytics; Malena Barzilai, Rick Mallen, Bill Richardson, and Chin Yoo from the Office of General Counsel; Georgina Feigen, Pamela Gallant, Kalun Lee, Mindy Littell, and Pam Slipakoff from the Enforcement Bureau; Cara Grayer and Joy Ragsdale from the Office of Communications Business Opportunities; Mindy Ginsburg from the Office of the Managing Director; and Barbara Esbin from the Wireless Telecommunications Bureau.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Affordable Connectivity Program*, WC Docket No. 21-450, Sixth Report and Order (Aug. 3, 2023).

As I've long stated, the Affordable Connectivity Program must connect Americans everywhere, including those living in rural areas. That's why I've been pleased to see ACP make inroads in rural communities across the nation. As of this week, all fifty states have at least 14,000 households enrolled, and 37 states have 100,000 enrolled. Several thousand rural zip codes, and more than 80 percent of non-metro counties, have at least one hundred households enrolled. In fact, a recent program performance model shows that [230,000 more rural households](#) have signed up than statistically predicted.

We need to bank and build on that progress. ACP's continued success in rural America will do more than help millions of rural families get and stay connected, as if that weren't enough. It also will spell good news for rural deployment efforts, chief among them the Broadband Equity Access and Deployment (BEAD) program. As I've noted before, Congress designed ACP and BEAD to work as a pair. By helping more users get and stay on the network, ACP reduces the size of the funding gap that states will have to bridge—by as much as [25 percent](#) according to a recent study. In that way, ACP makes each state's BEAD allocation travel much, much further.

As for the step we take here today, Congress instructed us to establish a Affordable Connectivity Program high-cost area benefit. Implementing the program that Congress established as Congress directed is important to me. So is making sure that the program is available to all who need it.

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Affordable Connectivity Program*, WC Docket No. 21-450, Sixth Report and Order (Aug. 3, 2023).

I am happy to approve this implementation of Congress's order to establish an ACP high-cost program. The point of the program is simple, to help tip the scales in favor of deploying and maintaining service in high-cost areas. But the devil is in the details. A poor implementation of this program could lead to substantial government waste and, paradoxically, undermine the incentives for providers to invest in high-cost areas.

Here is how. Imagine that you are a provider who runs a lean, efficient operation and turns a reasonable profit despite operating in an expensive and difficult-to-serve area. Because eligibility for this program is specific to each provider, not just for all providers in the high-cost area, a poor implementation would allow an inefficient, otherwise unprofitable, competitor to undercut you by qualifying for this benefit, a benefit that you cannot qualify for because you run your business so well. Surely, punishing you for running your business well, and rewarding your competitor for running his so poorly, is not what Congress intended.

Thankfully, the language in the statute is clear: a provider needs to have a particularized economic hardship, such that the provider may not be able to maintain the operation of part or all of its broadband network without the enhanced benefit, to qualify for the program. And as this order says, that means that the provider must show that it would not be *possible* for it to profitably serve the high-cost area without being eligible for this higher ACP benefit. The only reasonable interpretation of this language is that you cannot be suffering a genuine economic hardship if you have failed to do everything you *possibly* can to become more profitable. If you want this benefit, you first need to cut unnecessary costs, consider alternative technologies, reevaluate your prices, and make any other possible efficiencies. The statutory and regulatory language is clear. It is now up to the Wireline Competition Bureau and USAC to faithfully enforce the law.

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

In the Matter of	)	
	)	
Advancing Understanding of Non-Federal	)	WT Docket No. 23-232
Spectrum Usage	)	
	)	

NOTICE OF INQUIRY

Adopted: August 3, 2023

Released: August 4, 2023

Comment Date: October 3, 2023

Reply Comment Date: November 2, 2023

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND.....	4
A. Existing Commission Resources to Understand Spectrum Usage.....	4
B. USG, Industry, and Academic Efforts to Study Spectrum Usage.....	8
C. International Efforts to Monitor Spectrum Usage.....	13
III. DISCUSSION	15
A. Defining Spectrum Usage	16
B. Band-Specific Considerations.....	22
C. Data Considerations	25
1. Data-Related Challenges	28
2. Methods for Data Collection	34
D. Other Concerns	40
IV. NEXT STEPS.....	43
V. PROCEDURAL MATTERS	46
VI. ORDERING CLAUSES.....	51

I. INTRODUCTION

1. In this *Notice of Inquiry (NOI)*, we explore the exciting potential to advance our understanding of non-Federal spectrum usage by leveraging new data sources, technologies, and methods.¹ While academics, industry researchers, and regulatory bodies have devoted considerable attention to the topic, we have traditionally relied on third parties for metrics regarding actual spectrum usage rather than conduct our own studies. Spectrum usage information is generally non-public and made available infrequently. As the radiofrequency (RF) environment grows more congested, however, we anticipate a greater need to consider such data to improve spectrum management. That is especially true as the burgeoning growth of machine learning (ML) and artificial intelligence (AI) offer revolutionary insights into large and complex datasets. Leveraging today’s tools to understand tomorrow’s commercial

¹ Consistent with prior analyses in this area, this *NOI* uses the terms “usage,” “utilization,” and “occupancy” interchangeably. As discussed in section III.A., we seek comment on how best to define this concept.

spectrum usage can help identify new opportunities to facilitate more efficient spectrum use, including new spectrum sharing techniques and approaches to enable co-existence among users and services.

2. This *NOI* continues our efforts to bring next-generation techniques and data-driven analysis to our spectrum management toolkit. Most recently, our 2023 *Spectrum Policy Statement* outlined a refreshed set of forward-looking principles to govern the Commission's actions and stakeholder expectations regarding interference, including the responsibilities of receivers to operate resiliently in congested spectrum bands.² Our holistic framework seeks to keep pace with emerging technologies to maximize the efficient use of spectrum.

3. In the spirit of our recent efforts, this *NOI* represents a technical inquiry on how to better obtain more sophisticated knowledge of non-Federal spectrum usage—and how we could take advantage of modern capabilities for doing so in a cost-effective, accurate, scalable, and actionable manner. Given the technical nature of this proceeding, we do not invite comment on substantive changes to our underlying spectrum policies or service rules, including eligibility criteria, buildout requirements, band allocations, technical limitations, sharing regimes, or licensing frameworks. We also recognize, but do not seek comment on, the economic or social value created by operators' spectrum-based services.

II. BACKGROUND

A. Existing Commission Resources to Understand Spectrum Usage

4. While the Commission tracks static spectrum allocations, assignments, and other characteristics in multiple ways, our existing repositories provide limited, if any, real-time data on the extent of actual spectrum utilization, either on a nationwide, regional, or local basis.

5. *FCC databases.* The Commission maintains “snapshot-in-time” information on spectrum allocations and licensees in those allocations throughout multiple databases. As one example, the Universal Licensing System (ULS) maintains retrievable details on licensees and authorizations where the FCC issues individual licenses,³ including the radio service code, spectrum band, license size, applicant name, application purpose, and call sign. ULS also provides capability to download data in machine readable format, which mapping software can use to display the location of authorized services. ULS, however, does not contain real-time information regarding the use of licensed spectrum. The same is true of the Commission's other databases, including the International Communications Filing System (ICFS), Experimental Licensing System (ELS), and Licensing and Management System (LMS), among others.

6. *Spectrum sharing administrators.* The FCC authorizes administrators to track spectrum usage data to allow non-interfering use of shared spectrum bands. Spectrum Access Systems (SAS) are systems maintained by approved third parties to monitor spectrum utilization and to coordinate activity among disparate services in a single band.⁴ White Space Databases (WSDs) and Automated Frequency Coordination (AFC) systems track available spectrum for opportunistic, secondary use. However, unlike the SAS, the WSD and AFC do not track spectrum usage or assign users to specific channels.⁵

² *Principles for Promoting Efficient Use of Spectrum and Opportunities for New Services*, Policy Statement, FCC 23-27, ET Docket No. 23-122 (rel. Apr. 21, 2023) (2023 Spectrum Policy Statement).

³ ULS does not contain information on licensees that operate under the License by Rule construct. See, e.g., 47 CFR § 95.305(b).

⁴ See, e.g., 47 CFR § 96.53. While the Commission can get access to some of the data collected and maintained by the SAS administrators, the Commission must request such information. 47 CFR § 96.63(k). Additionally, much of the information collected and maintained by the SAS administrators is not publicly available without first being aggregated. 47 CFR § 96.55.

⁵ However, similarly to SAS, the Commission can request the data collected and maintained by both WSD and AFC administrators. See 47 CFR §§ 15.713(k), 15.407(k). Generally, the data collected and maintained by WSD administrators are also publicly available. See 47 CFR § 15.715(m).

7. *Speed and drive testing.* The Commission may periodically direct mobile operators to conduct speed and drive testing to measure network coverage and broadband speeds in various parts of the United States and report those results to the Commission. Speed tests collect information about the download speed, upload speed, and other measures affecting performance such as latency and signal strength. Drive tests are a subset of speed tests, involving testing while in a vehicle or through an externally mounted antenna, performed either in motion or stationary.⁶

B. USG, Industry, and Academic Efforts to Study Spectrum Usage

8. The United States government, industry, and academia have long studied ways to assess spectrum usage, well before the ubiquity of modern wireless services.⁷ Since 1973, the National Telecommunications and Information Administration (NTIA) has collected data on Federal use of the RF spectrum for its Spectrum Analysis Program.⁸ The Institute for Telecommunication Sciences (ITS) operates measurement systems to help support NTIA functions including spectrum resource assessments, analysis of electromagnetic compatibility problems, and interference resolution.⁹ The results of ITS surveys have been published in an ongoing series of NTIA Reports beginning in 1995.¹⁰

9. In 2013, the President directed NTIA to “design and conduct a pilot program to monitor spectrum usage in real time in selected communities throughout the country to determine whether a comprehensive monitoring program could disclose opportunities for more efficient spectrum access, including via sharing.”¹¹ In response to the Presidential Memorandum, the Wireless Spectrum Research and Development Senior Steering Group (WSRD) convened a workshop of policymakers, academics, and industry experts to “discuss how the use of spectrum data and monitoring can be used to better inform spectrum policy and management decisions, improve regulatory enforcement, and coordinate more efficient and dynamic spectrum usage.”¹² While the report found that monitoring could improve spectrum policy and enforcement, panelists identified many challenges, including cost, the diversity of band-specific considerations, and the need for uniform metrics and data collection requirements.¹³

10. Following the 2013 Presidential Memorandum, NTIA developed a plan to quantitatively assess spectrum usage based on data reported by Federal users and validated through real-time occupancy measurements.¹⁴ NTIA and NIST also established the Spectrum Monitoring Pilot Program. Among other things, the program sought to establish a distributed cluster of databases that collected occupancy data

⁶ See, e.g., 47 CFR § 1.7006(e)(4).

⁷ The efforts described in this section are not intended to be comprehensive. To the extent other governmental, industry, or academic studies may bear on the questions posed in this *NOI*, we invite commenters to discuss them.

⁸ United States Government Accountability Office, Report to Congressional Committees, Spectrum Management: NTIA Planning and Processes Need Strengthening to Promote the Efficient Use of Spectrum by Federal Agencies, GAO-11-352 at 16 (April 2011), <https://perma.cc/AGS9-3J26>.

⁹ ITS, *Spectrum Monitoring*, <https://perma.cc/98ZP-MNRU> (last visited July 7, 2023).

¹⁰ See, e.g., Frank H. Sanders, Measured Occupancy of 5850–5925 MHz and Adjacent 5-GHz Spectrum in the United States, NTIA Report 00-373 (1999), <https://perma.cc/PE5Q-Q9ML>.

¹¹ Memorandum for the Heads of Executive Departments and Agencies, Expanding America’s Leadership in Wireless Innovation (rel. June 14, 2013), 78 Fed. Reg. 37431 (June 20, 2013), <https://perma.cc/7VK9-WRWL>.

¹² NITRD, Understanding the Spectrum Environment: Data and Monitoring to Improve Spectrum Utilization, NITRD Wireless Spectrum R&D Senior Steering Group Workshop V Report (2014), <https://perma.cc/EW5E-QYQ9> (2014 NITRD Workshop Report).

¹³ See generally 2014 NITRD Workshop Report.

¹⁴ NTIA, Fourth Interim Progress Report on the Ten-Year Plan and Timetable and Plan for Quantitative Assessments of Spectrum Usage at Appendix A (June 5, 2014), <https://perma.cc/SHU7-AJ5G>.

from Federal users based on low-cost RF sensors developed by ITS.¹⁵ In 2016, NTIA summarized the results of its quantitative assessments in select Federal bands.¹⁶ This report also restated NTIA's methodology to quantitatively assess Federal spectrum occupancy.¹⁷

11. In 2016, NSF convened a workshop on spectrum measurements, which generated a report that featured a “high-level roadmap for a national spectrum measurement infrastructure, the architectural considerations, technical challenges involved in realizing such a vision and the identification of key areas of research needed to make this vision a reality.”¹⁸ Earlier this year, NIST held a WSRD workshop on obtaining better data for spectrum management, with particular focus on the challenges with obtaining, disseminating, and using these data for policymaking, operations, and research and development.¹⁹

12. Federal agencies have continued to monitor band occupancy based on intervening regulatory and social developments. As one example, NIST monitored spectrum usage across 21 bands in 16 locations throughout Colorado to better understand access to broadband infrastructure during the COVID-19 health emergency.²⁰ Most recently, an ITS study measured band utilization in CBRS by using quarterly operational data from SAS administrators to measure the growth of occupied CBRS channels and CBRS-authorized fixed stations and access points over a two-year period.²¹

C. International Efforts to Monitor Spectrum Usage

13. *International Telecommunication Union.* The International Telecommunication Union's (ITU) Radio Regulations require administrations to periodically check “the emissions of stations under their jurisdiction.”²² This monitoring, according to the ITU, serves the objectives of facilitating spectrum management, resolving interference, ensuring acceptable reception of public broadcasting, and identifying non-compliant emissions.²³ Article 16 establishes a framework and rules for monitoring spectrum utilization.²⁴ The ITU's International Monitoring System (IMS) consists of stations that collect data and send reports to the ITU.²⁵ As of 2022, more than 400 monitoring stations operated across 81 countries.²⁶

¹⁵ Michael Cotton, et al., *An Overview of the NTIA/NIST Spectrum Monitoring Pilot Program*, International Workshop on Smart Spectrum at IEEE WCNC 2015 (2015), <https://perma.cc/4BX6-H5NG> (NTIA/NIST Spectrum Monitoring Pilot Program).

¹⁶ NTIA, *Quantitative Assessments of Spectrum Usage* (2016), <https://perma.cc/9KQX-U9YH> (2016 NTIA Quantitative Assessments Report).

¹⁷ *Id.* at 12–21.

¹⁸ NSF Workshop on Spectrum Measurements Infrastructure, Workshop Report (2016), <https://perma.cc/RBZ9-DTCV> (2016 NSF Workshop Report).

¹⁹ NIST, *WSRD Workshop: Making Data Available for National Spectrum Management* (2023), <https://perma.cc/FS9X-CGZH>.

²⁰ NIST, *COVID-19 Spectrum Occupancy Project* (2020), <https://perma.cc/5GUT-FMQL>; see D. Keuster, et al., *Radio Spectrum Occupancy Measurements Amid COVID-19 Telework and Telehealth*, Technical Note (NIST TN), National Institute of Standards and Technology (2022), <https://perma.cc/JAQ7-ZP6V> (2022 NIST TN COVID-19 Telework and Telehealth).

²¹ NTIA, *An Analysis of Aggregate CBRS SAS Data from April 2021 and January 2023*, NTIA Report 23-567 (2023), <https://perma.cc/E6KK-M5PA> (2023 CBRS Usage Report).

²² See ITU, *Radio Regulations*, Vol. 1, Article 3, *Radio Regulations (RR) No. 13.14* (2020).

²³ ITU, *Spectrum Monitoring Handbook* at 4–5 (2011), <https://perma.cc/72UF-PJJZ> (ITU Spectrum Monitoring Handbook).

²⁴ ITU, *Radio Regulations*, Vol. 1, Article 16, *Radio Regulations (RR) Nos. 16.1–16.8* (2020).

²⁵ *Id.*

²⁶ ITU, *List IIIV, List of International Monitoring Stations 2022 Edition* (2022), <https://perma.cc/N6YF-HD55> (List IIIV). There are 14 such stations in the United States and Puerto Rico; however, these stations are limited to high
(continued....)

The ITU periodically publishes summaries based on the information it receives from these stations.²⁷ The ITU Spectrum Monitoring Handbook also outlines principles and procedures for monitoring spectrum usage, including permissible equipment, technical measurements, and other requirements. ITU-R Recommendations also provide guidance for monitoring systems, including their specified tasks, measurement techniques, and standard data formats.²⁸

14. *Other jurisdictions.* National governments, through their telecommunications regulators, may periodically monitor spectrum usage. In the United Kingdom, spectrum detectors are deployed throughout the country to aid in enforcement and to understand spectrum use in geographic areas.²⁹ Switzerland has deployed monitoring equipment to ensure compliance of telecommunications systems.³⁰ And the Communications Research Centre Canada has developed an advanced prototype system to create visualizations with spectrum monitoring data.³¹

III. DISCUSSION

15. In this *NOI*, we explore the feasibility, benefits, and limitations of techniques to understand non-Federal spectrum usage. First, we invite comment on various aspects of spectrum usage, including how spectrum usage should be defined, and whether its study could generate accurate and actionable insights. We then seek comment on best practices, operational considerations, and technical parameters that might correspond to different aspects of spectrum usage across different radio services. Next, we ask about the data necessary to study aspects of spectrum usage, and how such information could be obtained. We also seek comment on the practical, technical, and legal considerations associated with any potential study of spectrum usage.

A. Defining Spectrum Usage

16. We begin our inquiry by soliciting feedback on what definitions appropriately capture the extent to which a set of frequencies is being utilized. To that end, we seek comment on previous efforts, both domestically and abroad, to define spectrum usage and understand its dimensions. Are there best practices or consensus frameworks for assessing aspects of spectrum usage? What insights do different definitions of spectrum usage generate, and how could each inform the Commission's potential analysis of the RF environment? We encourage commenters to identify, with specificity, the benefits and drawbacks of previous initiatives to define, understand, and measure spectrum usage.

17. Spectrum usage has been defined in various ways. In one technical paper, for instance, NTIA and NIST defined "band occupancy" as "the percentage of frequencies or channels in the band with

(Continued from previous page) —————
frequency (HF) monitoring and minimal space monitoring. The stations' activities are confined to spectrum below 30 MHz to help public safety and federal agencies locate interference and to provide assistance during emergencies. See 47 CFR §§ 0.121, 1.924(c). See also FCC, *Over-the-Air Spectrum Observation Capabilities*, <https://www.fcc.gov/over-air-spectrum-observation-capabilities> (last visited July 10, 2023).

²⁷ ITU, *International monitoring*, <https://perma.cc/3MBA-RBLQ> (last visited June 13, 2023). Stations carry out frequency measurements, field strength or power-flux density measurements, and spectrum occupancy surveys among other types of measurements. List IIIV at Preface 4.

²⁸ ITU, *Recommendations related to Monitoring System (SM series)*, <https://perma.cc/R6NQ-2DKS> (last visited July 10, 2023).

²⁹ Ofcom, *Supporting the UK's wireless future: Our spectrum management strategy for the 2020s* at 5, 20 (2021), <https://perma.cc/BCC9-7Z5E>.

³⁰ Switzerland Federal Office of Communications, *Radio Monitoring and Equipment (RA)*, <https://perma.cc/BB32-5QZH> (last visited June 14, 2023).

³¹ Kelly Hill, *Sensors, big data fuel Canadian research on spectrum visibility*, RCR Wireless News, Aug. 14, 2017, <https://perma.cc/JM8Q-N5DL>.

a detected signal level that exceeds a default or user-defined threshold.”³² Likewise, in its 2020 study of CBRS, NTIA characterized occupancy “at any given time as the fraction of frequencies (or channels) with a detected signal level that exceeds a predetermined threshold.”³³ The ITU defines “spectrum occupancy” as “the probability that, at a randomly selected moment in time, a radio channel, frequency band or other frequency resource being analyzed will be in use for the transmission of information.”³⁴ In 2011, the Sharing Working Group of the FCC’s Technological Advisory Council (TAC) defined a taxonomy and metrics for assessing spectrum efficiency and occupancy for different services.³⁵ Do commenters find these definitions applicable for assessing the use of non-Federal bands? To what extent do these definitions obscure or limit greater comprehension of spectrum usage? Do any relevant differences in the Federal or international context make these definitions unsuitable here? Are there other definitions of spectrum usage that might be better suited to non-Federal spectrum? If utilization is defined as the exceedance of a power flux density (PFD), spectral occupancy, geographic, or other threshold, how should the threshold’s values be established? Should the threshold PFD value vary by service or frequency range? Commenters should provide details and justification regarding the factors that should be considered in developing evaluation PFDs and how those relate to different radio services or frequency bands.

18. Some studies have broken spectrum usage into discrete components, such as geographic usage, frequency usage, and time usage.³⁶ We invite comment on the utility of such an approach. We also seek comment on how to define these components for evaluating the intensity of spectrum use. For frequency usage, what is the appropriate size of a band segment for possible study? Should it correspond to authorized licenses or to an entire band or specific channels regardless of the number of licenses? For geographic usage, what principles should guide the appropriate area for study, considering differences in license size, population density, topology, climate, and other variables? When evaluating the geographic component, comments should consider that the Commission has licensed various services over varying geographic regions ranging from counties to partial economic areas to the contiguous United States, and regions in between. Moreover, for certain services the licensee can request to use the spectrum at the locations they choose.³⁷ With respect to time usage, could hourly, daily, or seasonal variations affect conclusions about spectrum usage?³⁸ How do network peak traffic busy hours factor into spectrum

³² NTIA/NIST Spectrum Monitoring Pilot Program at 3.

³³ Michael Cotton, et al., *3.45–3.65 GHz Spectrum Occupancy from Long-Term Measurements in 2018 and 2019 at Four Coastal Sites*, NTIA Report 20-548 (Apr. 2020), <https://perma.cc/X9R5-SJEV>.

³⁴ ITU, Spectrum occupancy measurements and evaluation: Report ITU-R SM.2256-1 at 37 (June 2016), <https://perma.cc/Q7ND-L6S3>.

³⁵ FCC Technical Advisory Council, Sharing Working Group, Spectrum Efficiency Metrics (December 20, 2011), <https://transition.fcc.gov/bureaus/oet/tac/tacdocs/SpectrumEfficiencyMetricsV1-12-20-11.docx> (2011 TAC Report).

³⁶ For example, the 2016 NTIA Quantitative Assessments Report required agencies to supply data for each system’s individual transmitting and receiving stations to develop an approximation of each system’s actual use of spectrum using parameters for frequency and bandwidth, geographic area, and estimated time of usage. Frequency usage refers to the number of frequency assignments that fall within a predefined band segment. Geographic usage refers to the percentage of the population impacted by the transmit and receive station spectrum usage contours and the percentage of the geographic area that is available. Time usage refers to the duration that a station is being used. 2016 NTIA Quantitative Assessments Report at 3.

³⁷ See generally 47 CFR pt 90.

³⁸ For example, in the context of AM stations, there are difficulties associated with attempting to determine the frequency and time usage reflected in the difference between an AM station’s 0.5 mV/m 50% Skywave Contour and its 0.5 mV/m Groundwave Contour hours. The same Class A AM station’s Groundwave Contour may extend over less than one-third of that population during the daytime hours. See, e.g., WABC(AM), New York, NY (Facility ID 70658).

usage?³⁹ We recognize that there are special considerations with regard to public safety and critical infrastructure spectrum needs. We seek comment on defining the most appropriate metric for evaluating public safety geographic, frequency, and time usage, including how to best collect data on public safety usage, who should collect these data, and how they should protect the data given the special public safety considerations.⁴⁰

19. We also seek comment on whether other components beyond geographic, frequency, and time usage could inform the intensity of spectrum use. We believe other RF engineering metrics beyond the mere presence of a signal at a particular strength could shed light on spectrum usage, such as: (1) throughput; (2) population actually or potentially served; and (3) the number or density of end-user devices or access points.⁴¹ Are there other metrics that could help evaluate spectrum use, such as power spectral density or modulation levels? If so, we ask commenters to describe how these metrics correspond to spectrum use. For example, should the “capacity” of a system or its ability to accommodate a high density of users factor into any study of spectrum utilization? What about the number of actual users compared to overall capacity, expressed as a percentage? How should we think about utilization in services where operators “spread” their capacity or “balance” their traffic dynamically across multiple bands and/or users? In addressing these questions, commenters should also consider the appropriate methods to collect such metrics, discussed below in Section III.C.

20. Our *Spectrum Policy Statement* also noted many design techniques to help satisfy performance and reliability expectations, including analog and digital filtering, antenna design, adaptive modulation and coding techniques with error correction, dynamic frequency selection, automatic gain control, intermodulation rejection, and countless other methods. How should these features affect spectrum usage evaluation? For example, how should we consider RF power at or above the sensitivity of receivers for a given band?⁴² How should we consider uplink and downlink transmissions, and should we distinguish between the occupancy of transmitters and receivers?

21. We also inquire whether metrics of spectrum usage can be combined to generate a holistic understanding of the RF landscape. We note, for example, that the NTIA’s *Plan for Quantitative Assessment of Spectrum Usage* derived a “Total Spectrum Usage” metric by aggregating components of frequency use, geographic use, and time of use.⁴³ The ITU uses what it calls the “spectrum utilization factor,” defined as the “product of frequency bandwidth, geometric (geographic) space, and the time

³⁹ FCC, Twelfth Measuring Broadband America Fixed Broadband Report 4.b (January 6, 2023), <https://www.fcc.gov/reports-research/reports/measuring-broadband-america/measuring-fixed-broadband-twelfth-report> (“[S]peeds experienced by a consumer may vary during the day if the aggregate user demand during busy hours causes network congestion. Unless stated otherwise, the data used in this report is based on measurements taken during peak usage periods, which we define as 7 p.m. to 11 p.m. local time.”).

⁴⁰ See, e.g., FCC, Emergency Communications during the Minneapolis Bridge Disaster: A Technical Case Study by the Federal Communications Commission’s Public Safety and Homeland Security Bureau’s Communications Systems Analysis Division (Nov. 13, 2008), <https://transition.fcc.gov/pshs/docs/clearinghouse/references/minneapolis-bridge-report.pdf>.

⁴¹ 2011 TAC Report at 3. Although the 2011 TAC Report acknowledges no single measure of spectrum efficiency applies across all services, it developed metrics for distinct service classes that allow efficiency comparisons across a variety of satellite and terrestrial based systems categories, all of which are generally defined based on throughput (bits per second) per bandwidth per geographic area or number of users simultaneously served.

⁴² As mentioned in the 2016 NSF Workshop, it is important that receivers are “fit for purpose” and appropriate filtering is designed into a spectrum usage monitoring system. 2016 NSF Workshop Report at 15.

⁴³ 2016 NTIA Quantitative Assessments Report at 3–6.

denied to other potential users.”⁴⁴ We seek comment on whether, and to what extent, this kind of aggregation can supply accurate and actionable insights.

B. Band-Specific Considerations

22. Spectrum bands do not have uniform service requirements, operational systems, or technical characteristics. Past efforts to study the issue have concluded that “[t]here is not a one-size-fits-all approach to measuring spectrum usage.”⁴⁵ Do commenters agree? We note, for example, that several bands may exhibit infrequent usage that are nonetheless mission critical for their intended uses, such as public safety.⁴⁶ If commenters agree that a band-agnostic approach will not work, how should the concept of spectrum usage vary by frequency, service, or other factors? For example, how should fixed point-to-point or fixed-to-multipoint services be evaluated differently from mobile services? Should radiolocation services (e.g., radar) be evaluated differently than systems that only transmit data or systems that use waveforms that can both transmit data and determine location?⁴⁷ Should subscriber-based services be evaluated differently from privately controlled systems? And should services, such as those associated with aeronautical or maritime use or assigned for public safety, be evaluated differently than other services? How should underlying reliability or service requirements inform how we consider usage? How is usage impacted by access model (i.e., shared access, point-to-point, point-to-multipoint, broadcast, etc.)? How should unlicensed use be factored in, if at all? Unlicensed users operate on a non-interference basis and in almost all cases, operate as an underlay to licensed or industrial, scientific, and medical equipment (ISM) use. Should usage metrics be adjusted based on the geographic area over which a license is issued? Given that licenses covering large geographic areas may vary between urban, suburban, and rural areas, would any metrics tend to over- or understate the intensity of usage?

23. We also solicit feedback on whether usage can or should be studied through representative sampling. Participants in the NSF Spectrum Measurement Infrastructure Workshop expressed reasonable support to focus on urban deployments and strong agreement that any system should have near continuous coverage over the deployment area.⁴⁸ Should observation efforts focus on those types of geographic areas? Should there be different analyses of urban, suburban, and rural environments?⁴⁹ Can specific urban, suburban, or rural areas serve as a reliable proxy for nationwide conclusions? Are there other appropriate metrics to prioritize studying spectrum usage?

24. We next seek comment on how to prioritize data collection when each issue or band has its own challenges. The 2016 NSF workshop surveyed dozens of stakeholders and experts across academia, industry, and federal agencies and found “strong support” for measuring traditional fixed and

⁴⁴ ITU, Definition of spectrum use and efficiency of a radio system: Recommendation ITU-R SM.1046-3 at 3 (Sept. 2017), <https://perma.cc/E66L-DT9B>.

⁴⁵ 2014 NITRD Workshop Report at 13; *accord* 2016 NSF Workshop Report at 5.

⁴⁶ We recognize that public safety has high reliability needs, particularly in emergencies and may require different considerations. *See generally* 2023 Spectrum Policy Statement.

⁴⁷ The TAC Report focused on seven broad classes of systems: (1) Satellite Broadcast Systems; (2) Point-to-Point Satellite Systems; (3) Terrestrial Broadcast Systems; (4) Terrestrial Personal Communication Systems; (5) Terrestrial Point-to-Point Systems; (6) Terrestrial Hybrid Systems – Public Safety / Utility; and (7) Radar Systems. However, the Working Group concluded at the time of writing the TAC Report that it was unable to identify or evaluate suitable spectrum efficiency metrics for radar systems. The Working Group noted in the TAC Report that it did not address spectrum efficiency metrics for “passive” (mostly scientific) uses of the resource or short range systems that typically operate on an unlicensed or “licensed by rule” basis. 2011 TAC Report at 8.

⁴⁸ 2016 NSF Workshop Report at 8.

⁴⁹ *See* 2023 CBRS Usage Report at 10 (distinguishing between urban and rural locations based on the 2020 Census-proposed criteria).

mobile terrestrial transmitters and “very strong support” for measuring bands below 6 GHz.⁵⁰ Do commenters agree with these conclusions? Have developments since 2016 shifted this priority?

C. Data Considerations

25. We seek comment on data sources that could facilitate greater understanding of spectrum usage. We invite commenters to describe with specificity information necessary to inform elements of spectrum usage, along with the kinds of insights that unique data elements might produce.

26. As a threshold matter, we first solicit feedback on our existing data sources.⁵¹ Recognizing that our databases were not built to observe spectrum usage or collect such data, do they nonetheless contain information that would be useful for such an exercise? What data do we lack? What additional data would be useful for the Commission to collect? Do the Commission’s existing databases and collection procedures provide opportunities to obtain better information? How should we weigh the benefits of collecting additional information against the burden of collecting such information?

27. To the extent we lack information on non-Federal spectrum usage, we seek comment below on various aspects of data collection. We start by considering challenges to data collection including cost and burden, standardization, and technical accuracy. We then turn to various methods for obtaining such data. Commenters should consider data-related questions alongside the definitional and band-specific issues discussed in the previous sections.

1. Data-Related Challenges

28. We foresee many potential challenges inherent to obtaining better data. They include cost and burden; standardization; and technical accuracy. We seek comment on these and other challenges, and whether the state of the art can offer solutions to overcome them.

29. *Cost and burden.* We are especially mindful of the cost and burden of collecting spectrum usage data. The 2014 NITRD Workshop Report noted, for instance, that the “[c]ost of sensors for monitoring and associated data systems need to be significantly reduced to enable wide spread deployment and use” to assess spectrum utilization.⁵² That report also stressed the need to identify resources to defray “the costs associated with monitoring,”⁵³ which was deemed “significant and will remain a barrier.”⁵⁴ The 2016 NSF Workshop Report, likewise, observed that “cost considerations” would prevent widespread “deployment of high quality, special purpose, trusted measurement platforms.”⁵⁵ Indeed, that report found that the “top research areas” were also significant cost drivers.⁵⁶ Researchers have also noted the significant cost of maintaining and curating vast amounts of usage data.⁵⁷

⁵⁰ 2016 NSF Workshop Report at 8.

⁵¹ In addition to ULS, the FCC also maintains several other databases including the International Communications Filing System (ICFS), which allows for electronic filing of the following types of applications and forms: space station, earth station, Section 214, cable landing license, accounting rate change, recognized operating agency, international signaling point code (ISPC), data network identification code (DNIC), foreign carrier affiliation notification filings, and milestone/bond filings. ICFS also provides users with a whole host of query and reporting options. See <https://licensing.fcc.gov/myibfs/>. The OET Experimental Licensing System (ELS) allows the public to electronically file Forms 442, 405, 702, 703, and requests for Special Temporary Authority (STA), including all necessary exhibits. See <https://apps.fcc.gov/oetcf/els/index.cfm>.

⁵² 2014 NITRD Workshop Report at 17.

⁵³ *Id.* at 16.

⁵⁴ *Id.* at 15.

⁵⁵ 2016 NSF Workshop Report at 19.

⁵⁶ *Id.* at 25.

⁵⁷ 2014 NITRD Workshop Report at 17.

30. We seek comment on these observations. What are the kinds of costs that might drive efforts to understand spectrum usage? Have these costs gone down in recent years due to improvements in technology? Is it possible to reduce costs by leveraging existing sources such as FCC databases, SAS administrators, or other existing data sources, or limiting scope by prioritizing certain bands? Would reviewing the number of applications filed for new facilities, applications filed for modified facilities, as well as the number and nature of interference complaints filed with respect to those facilities provide useful data? Would having licensees certify that their authorized facilities are operating with their licensed technical parameters help to verify the data the FCC already collects? Can the scope of data collection be limited to certain urban, rural, and suburban areas and serve as a proxy for the rest of the country? If so, which areas? How can we make use of resources across the country to measure, provide, and assess data? For example, can we leverage the NSF Spectrum Innovation Initiative and its connection to university researchers to conduct measurements and report back to us in some standard format or database? How should we view the costs of understanding spectrum usage relative to the benefits? Is there a less burdensome or costly approach than those implemented or proposed by NTIA, ITU, NSF, or other bodies that would generate comparable insights?

31. *Standardization.* Prior research initiatives have noted the need to standardize data sources, measurement methodologies, and equipment. The 2014 NITRD Workshop Report noted that “[m]easurements are not well defined and converting measurement data into useful information is difficult.”⁵⁸ Accordingly, “[r]egardless of how the data was collected and measured, the resulting information must mean the same thing to all stakeholders. This may require standardizing data, and data collection methodologies based on the desired use, such as: location information, comparing license/assignment data, aggregating bands, predicting interference events, etc.”⁵⁹ We seek comment on these views. In what ways are existing data sources not uniform? What challenges do non-standardized data sources pose for greater understanding of spectrum usage? Do standardized data formats and methodologies exist today? Can we feasibly evaluate spectrum usage if they do not? Are there open-source platforms or repositories that might be leveraged for cross-validation to allay standardization concerns? Should a standard reporting schema be implemented? If so, what are the data elements that are essential to fully evaluate spectrum usage? How many data are consistent across different radio services and what data elements are unique to various radio services? How should these differences be accounted for? We also seek comment on standardization as it pertains to measurement equipment, such as the calibration values for antenna height and gain.

32. *Technical accuracy.* Past reports have stressed that collected data must be sufficiently accurate to generate trust in spectrum usage conclusions.⁶⁰ These reports have observed, for example, that sensors should have very high sensitivity to distinguish between intended signals and out-of-band noise.⁶¹ In addition to accuracy, what are the technical challenges associated with collecting precise data given a particularly cluttered RF environment? Also, equipment should be calibrated to localize geographic accuracy within a specified distance, and power levels should be measured within a sufficiently small uncertainty. Do these technical challenges remain today? Could other factors complicate the accuracy of spectrum usage data? We note that for certain bands, such as spectrum licensed for flexible use, our rules generally do not require transmitter or receiver registration. Must we know the location of transmitters and receivers to properly measure spectrum usage? Is it possible to assess spectrum usage of unlicensed users or in licensed-by-rule bands? We also note that the 2014 NITRD Workshop Report observed that “[d]espite the low cost, ad hoc monitoring does not produce a

⁵⁸ *Id.*

⁵⁹ *Id.* at 5.

⁶⁰ *Id.* at 10.

⁶¹ 2016 NSF Workshop Report at 9.

great deal of value and fails to generate the necessary trust in measurements.”⁶² Do commenters agree? Is there an inherent tradeoff between accuracy and expense?

33. We also seek comment on the level of accuracy and granularity sufficient for effective measurements. We note that previous utilization analyses defined a range of technical parameters, such as reference signal received power (RSRP), minimum signal-to-noise ratio, and noise-figure, as inputs for their models.⁶³ What values should spectrum utilization analyses consider and how should they be defined? What are the right analytical models, such as propagation or network traffic models, to translate data into actionable information? Can the data required for these models be passively collected or are there some values that will require an active network connection to help assess spectrum utilization? To what extent should backhaul capacity or other network and infrastructure-related considerations factor in? How can we leverage AI/ML to reliably extrapolate limited quantities of data?

2. Methods for Data Collection

34. Given the challenges of cost and burden, standardization, and technical accuracy, we seek comment on the benefits and drawbacks of various methods to gather more robust data. In past reports, stakeholders have identified different approaches, including: (1) crowdsourcing, (2) external data sources, (3) modeling, and (4) direct observation. We seek comment on the feasibility, benefits, and drawbacks of these and other techniques to understand spectrum usage.

35. *Crowdsourcing.* The 2014 NITRD Workshop Report recommended greater reliance on crowdsourcing techniques to measure utilization.⁶⁴ How, if at all, can we leverage crowdsourcing to gain greater visibility into utilization? Can crowdsourcing promise sufficient accuracy and data uniformity? Could the Commission leverage or extend commercially available apps to monitor occupancy through smartphones,⁶⁵ particularly as such equipment is widely available for consumer use? Should we consider embedded “receiver monitoring and reporting” features, such as those in handheld devices, that do not require user activation, to minimize separate and costly receiver monitoring infrastructure? Additionally, a NIST study on usage during COVID-19 found that, due to the lockdowns in place at the time, researchers could develop techniques for tuning sensors when precision laboratory calibration was not available, as well as calibration methods for assembled SDRs, and assessments of the performance of spectrum sensors in the field.⁶⁶ These techniques made it possible for non-experts to manage occupancy measurements in their own homes using commercial off-the-shelf devices. Could consumers use such equipment to study spectrum utilization in an at-home environment?

36. *External data sources.* Participants of the 2014 NITRD Workshop acknowledged that an “enormous amount of spectrum monitoring information” is “currently being collected by cellular providers, wireless tower companies, satellite providers, wireless research organizations, the federal government, and even universities.”⁶⁷ Many private companies have also described their own current data collection efforts.⁶⁸ What non-public data exist from these efforts? Are such data useful or standardized? How, if at all, are private entities leveraging spectrum usage data to optimize network traffic management or use spectrum more efficiently? How can we better understand the non-public sources available? How can we encourage or incentivize access to these data? What can we do on a

⁶² 2014 NITRD Workshop Report at 17.

⁶³ 2016 NTIA Quantitative Assessments Report at 3.

⁶⁴ 2014 NITRD Workshop Report at 19.

⁶⁵ Note that this would limit such assessments to the specific bands built into the phone, and depending on implementation, may impact device battery life.

⁶⁶ 2022 NIST TN COVID-19 Telework and Telehealth.

⁶⁷ 2014 NITRD Workshop Report at 9–10.

⁶⁸ *Id.* at 10–12.

going-forward basis to attain greater visibility? Can we take action to make these data more open source? Are there particular technologies or approaches to facilitate data sharing? Who should be responsible for establishing and maintaining a data sharing mechanism? Additionally, do current licensees have sufficient data to facilitate their understanding of utilization? What data do operators have that could be made available to the FCC for spectrum utilization assessment? How can we leverage shared access frameworks (e.g., SAS) to measure utilization? To that end, we invite commenters to discuss whether prior United States government efforts to assess spectrum usage, such as those outlined in Section II.B above, have resulted in greater spectrum efficiency or sharing opportunities.

37. *Data modeling and simulation.* Spectrum consumption models (SCMs) identify how devices or systems use spectrum resources in a particular environment by capturing spectral, spatial, and temporal characteristics of spectrum usage for any specific transmitter, receiver, system, or collection of systems.⁶⁹ Using a defined set of constructs, an SCM then translates the inputs from the various constructs into a model that can be used to predict the utilization of specific frequency bands. A 2013 MITRE report outlines 12 constructs typically used to understand propagation, coverage, and interference to build an SCM.⁷⁰ These constructs are then combined for the final spectrum consumption model. We seek comment on the SCM approach to spectrum utilization modeling. Are there other algorithms to model spectrum usage? Could data modeling and simulations allow for cost-effective spectrum usage studies? To what extent could modeling be used to accurately reflect spectrum utilization?

38. *Direct observation.* Several approaches taken over the past twenty years seek to directly observe the spectrum environment.⁷¹ We seek comment on whether these frameworks are suitable for studying non-Federal spectrum usage.⁷² For example, the NSF 2016 Workshop report recommended a “System of Systems” hierarchy of at least three classes of sensors: (1) high cost / high trust sensors at

⁶⁹ Carlos E. Caicedo Bastidas et al., *A Standard Method for Modeling Spectrum Consumption*, 2017 IEEE International Symposium on Dynamic Spectrum Access Networks (DySPAN) (2017).

⁷⁰ The 12 constructs include (1) total power (i.e., power at the transceiver to which values of the spectrum mask, underlay mask, and power map refer); (2) spectrum mask (i.e., relative spectral power density of emissions by frequency); (3) underlay mask (i.e., relative spectral power density of allowed interference by frequency); (4) power map (i.e., relative power flux density per solid angle); (5) propagation map (i.e., pathloss model per solid angle); (6) intermodulation mask (i.e., propensity of co-located signals to combine in nonlinear components of an RF system and be emitted by a transmitter or be received in the later stages of a receiver); (7) platform name (i.e., list of names of platforms on which a particular system is located); (8) location (i.e., where system components may be used); (9) start time (i.e., when the model takes effect); (10) end time (i.e., when the model no longer applies); (11) minimum power spectral flux density (i.e., power spectral flux density that when used as part of a transmitter model implies the geographical area in which receivers in the system are protected); and (12) protocol or policy (i.e., documentation accounting for system behaviors that allow different systems to be co-located and to coexist in the same spectrum). MITRE, *Model-Based Spectrum Management, Part 1: Modeling and Computation Manual Version 2.0*, MITRE Technical Report at 3-1 (2013), https://www.mitre.org/sites/default/files/publications/13-4541-MBSM_Modeling_Manual_v2%25200.pdf (2013 MITRE Technical Report).

⁷¹ To that end, we seek comment on methods to determine whether detected signals are bona fide (i.e., transmissions relating to a request by an end user) as opposed to test signals that do not provide service to an end user.

⁷² 2016 NSF Workshop Report at 9. The meeting illustrated that there are a very wide range of possible and in many cases deployed (at least at the prototype level) spectrum measurement architectures and the fact that no single architecture is likely to cover the full range of signal types that need to be measured. See also Report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives, available at <https://www.fcc.gov/sites/default/files/report-congress-usps-broadband-data-collection-feasibility-05242021.pdf>, which describes a program set up by the Commission to “test[] the feasibility of partnering with Federal agencies that operate delivery fleet vehicles, including the United States Postal Service (USPS or Postal Service), to facilitate the collection and submission of mobile wireless broadband data for the purposes of supplementing and verifying wireless broadband coverage maps collected by the Commission pursuant to the Broadband DATA Act.”

fixed locations; (2) mid-cost / mid trust sensors more widely deployed geographically between the first class of installations; and (3) crowd sourced sensors occupying the bottom tier of the structure.⁷³ In another example, NTIA used a system of sensors to measure Federal spectrum occupancy in the 3.45–3.65 GHz band to understand the potential for sharing.⁷⁴ After we adopted our CBRS rules, NTIA collected data from SAS administrators to quantify utilization in that bands.⁷⁵ The ITU recommends that countries establish centralized offices to report data collected by designated monitoring stations, which the ITU then aggregates and summarizes for periodic reports.⁷⁶ We seek comment on these various frameworks, mindful of the costs associated with each. Do formal monitoring efforts like those described above offer superior accuracy compared to crowdsourcing, modeling, and third-party data?

39. We are particularly interested in the current state of spectrum measurement tools, ranging from sophisticated and costly instruments to widely deployable and low-cost devices. We also invite comment on the direction for emerging and future tools. We seek comment on monitoring and sensing technologies available in the market today, with special attention to cost and scale. Can cost-effective, commercially available sensors be deployed to measure utilization? Is specialized equipment needed? Does spectrum monitoring technology exist today that is interoperable, low-cost, high-resolution, and privacy-preserving? Are there bands or measurements that might require custom-built monitoring equipment? How would these tools differ by band allocation? For example, how should bands with highly directional signals, such as in the fixed service, be monitored differently than mobile bands?⁷⁷ How should services that use new advanced antenna systems that do not blanket an area with energy be evaluated compared to similarly situated licensees that use traditional broad beamwidth antennas? Where might gaps exist due to lack of equipment for specific bands? What limitations are there with currently available spectrum monitoring technology particularly with monitoring short duration, ultra-wideband, and spread spectrum signals?

D. Other Concerns

40. *Data Protection, Privacy and Security.* How should data protection, privacy, cybersecurity, or physical security be taken into account and inform any study of spectrum utilization? What role do commercial sensitivities play? Do current privacy laws limit the Commission's ability to obtain useful spectrum utilization information? Would aggregating, coarsening, sampling, or anonymizing data allay privacy concerns?⁷⁸ We invite comment specifically on any limitations to our ability to obtain such information that might result from (1) Electronic Communications Privacy Act (ECPA),⁷⁹ including provisions that prohibit the installation of pen register and trap and trace devices

⁷³ 2016 NSF Workshop Report at 5.

⁷⁴ Michael Cotton, et al., *3.45–3.65 GHz Spectrum Occupancy from Long-Term Measurements in 2018 and 2019 at Four Coastal Sites*, NTIA Report 20-548 (Apr. 2020), <https://perma.cc/DV8N-WQ88>.

⁷⁵ See 2023 CBRS Usage Report.

⁷⁶ ITU Spectrum Monitoring Handbook at 10, 15–18.

⁷⁷ 2013 MITRE Technical Report at Table 3-1, defines both the Power Map and Propagation Map modeling constructs on a per solid angle basis, implying directionality, “where the values associated with solid angles are the pathloss model and power pairs.” 2013 MITRE Technical Report also notes at 5–15: “Although the directional vector of propagation maps provides an unlimited ability to divide directions into different solid angles and therefore to fit a model to observations, doing so is usually not helpful. Increasing the number of directions and exponents used in a model increases the complexity of the computations of compatible reuse and decreases the efficiency of communicating the model. Modelers must weigh the benefit of having a higher resolution model against these costs.”

⁷⁸ For examples of anonymized and aggregated data see the 2023 CBRS Usage Report.

⁷⁹ “ECPA” commonly refers to three chapters of title 18, United States Code: 18 U.S.C. §§ 2510–2523, commonly referred to as the Wiretap Act; §§ 2701–2713, commonly referred to as the Stored Communications Act; and §§ 3121–3127, the Pen Register Act.

without a court order;⁸⁰ and (2) section 222 of the Communications Act and the Commission's implementing rules,⁸¹ which govern the circumstances under which a telecommunications carrier can use, disclose, or permit access to proprietary information about other carriers and their customers, including customer proprietary network information. Do these or other laws restrict our ability to collect spectrum use information, whether or not through direct observation, or to gather it from third parties? Separate from privacy legal requirements, are there any privacy public policy considerations that should inform the Commission's approach to studying spectrum usage?

41. *Legal Authority.* The Commission believes that it has necessary statutory authority to study the usage of non-Federal spectrum under sections 4(i), 301, 302(a), 303(e), (f), and (r), and 403 of the Communications Act, as amended. We seek comment on any opportunities or limitations that our statutory authority under the Communications Act or any other source of authority may impose on our ability to assess utilization.

42. *Promoting Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,⁸² 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 considerations⁸³ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how these issues may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

IV. NEXT STEPS

43. We seek comment on what steps the Commission might take to further this inquiry. For example, how might we consider other means to better understand spectrum usage? Should the Commission consider different techniques for studying spectrum utilization based on the licensing and usage characteristics of a particular band? Would it be advisable to consider seeking usage data held by third parties? What steps might we take to encourage or incentivize data sharing? How would we develop a specification that would allow the exchange of data via a specific format (e.g., JSON, xml, SigMF,⁸⁴ SCOS,⁸⁵ etc.)? What data exchanges might help facilitate greater understanding of spectrum usage? Should our data specifications match other databases, such as those maintained by NTIA? Where can data be used most effectively to improve policy decisions?

⁸⁰ 18 U.S.C. § 3121.

⁸¹ 47 U.S.C. § 222; 47 CFR §§ 64.2001–2011.

⁸² 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.

⁸³ 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).

⁸⁴ SigMF, *The Signal Metadata Format Specification*, <https://perma.cc/Y59X-FQK9> (last visited July 10, 2023).

⁸⁵ IEEE, *IEEE Standard for Spectrum Characterization and Occupancy Sensing* (2020), <https://perma.cc/2VL6-UAK7>.

44. We also invite comment on efforts that we could consider in the near term. Should we consider a field monitoring pilot program, followed by a report describing results? If so, how should we define the bands, geographic areas, and technical parameters of any such trial? Should we prioritize specific bands for initial study? Would it be advisable for this pilot to be conducted in concert with other agencies, universities, or private entities?

45. Longer term, could we consider non-binding guidance, such as a Policy Statement or data specifications outlining best practices and recommended data definitions, structure, and formatting, to set forth our approach to evaluating spectrum usage? Should such guidance define clear problem statements, use cases, and the methodology for monitoring or taking measurements in a specific band? Should such guidance outline the role of utilization data in band-specific proceedings? If we were to consider non-binding guidance, how should we frame the benefits and limitations of utilization data?

V. PROCEDURAL MATTERS

46. *Ex Parte Rules.* This Notice of Inquiry commences an exempt proceeding under the Commission's *ex parte* rules.⁸⁶ *Ex parte* presentations are permitted and need not be disclosed, except during a Sunshine Agenda period.⁸⁷ Participants in this proceeding may choose to submit written *ex parte* presentations or written summaries of oral *ex parte* presentations in the record, as described in the next paragraph.

47. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Electronic Filers: Comments may be filed electronically by accessing ECFS at <https://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any 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-19.⁸⁸
 - 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.

48. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, when FCC Headquarters reopen to the public.

49. *People with Disabilities.* To request materials in accessible formats for people with

⁸⁶ See 47 CFR §§ 1.1200(a), 1.1204(b).

⁸⁷ See 47 CFR § 1.1203(a).

⁸⁸ See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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).

50. *Further Information.* For additional information on this proceeding, contact Arpan Sura of the Wireless Telecommunications Bureau, at arpan.sura@fcc.gov or (202) 418-0964, or Madelaine Maier of the Broadband Division of the Wireless Telecommunications Bureau, at madelaine.maier@fcc.gov or (202) 418-1466.

VI. ORDERING CLAUSES

51. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 301, 302(a), 303(e), 303(f), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 302(a), 303(e), 303(f), 303(r), 403, this Notice of Inquiry IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Advancing Understanding of Non-Federal Spectrum Usage*, Notice of Inquiry, WT Docket No. 23-232 (August 3, 2023)

Right now there are so many conversations about artificial intelligence in Washington, including right here at the Federal Communications Commission. Just last month we held a joint workshop with the National Science Foundation to consider what AI means for communications networks.

Let me put my cards on the table: I am much more hopeful about AI than pessimistic. A big reason why is that I am an optimist by nature. But that is not all. After all, where you stand has a lot to do with where you sit. From my perch as the head of our Nation's expert agency on communications, I can't help but be an optimist about the future of AI.

That might sound contrarian. So much of the news about AI is dark. How do we rein in this technology? What does it mean for the future of work? What will it mean for democracy and elections? What happens when AI models inherit the prejudices of the systems they are trained on and determine who gets a loan and who gets a job? What does it mean for competition? And does generative AI pose an existential risk to humanity that could lead to our extinction?

These are big questions. So let me get back to what at this agency we know best—communications. What we understand is that the airwaves around us are invisible infrastructure. How we allocate this resource supports—and constrains—what we can do with it.

Right now, so many of our commercial spectrum bands are growing crowded. Hundreds of millions of wireless connections—from smartphones to medical sensors—are using this invisible infrastructure. And that number is growing fast. But congestion can make it harder to make room in our skies for new technologies and new services. Yet we have to find a way, because no one wants innovation to grind to a halt. To do this we need smarter policies, like efforts that facilitate more efficient use of this scarce resource. I think of it as an abundance agenda.

Now enter AI. A large wireless provider's network can generate several million performance measurements every minute. Using those measurements, machine learning can provide insights that help better understand network usage, support greater spectrum efficiency, and improve resiliency by making it possible to heal networks on their own.

Today's inquiry is a way to understand this kind of potential and help ensure it develops here in the United States first. We start by focusing on spectrum utilization. For decades in this country, we have licensed large slices of our airwaves and come up with unlicensed policies for joint use in others. This scheme is not truly dynamic. But with demands on our airwaves growing with the internet of things, we want to better understand spectrum utilization in geography, frequency, and time. This is the kind of data that could help make our policies smarter and more effective. It could also help support new cognitive abilities that could teach our wireless devices to manage transmissions and avoid harmful interference on their own. In other words, smarter radios using AI can work with each other without a central authority dictating the best of use of spectrum in every environment.

If that sounds far off, it's not. Take a look at the work that the Defense Advanced Research Projects Agency and National Science Foundation have been doing for years on this subject. In particular, take a look at DARPA's Colosseum network emulator, designed to support the development of new radio network technologies, and DARPA's Spectrum Collaboration Challenge, which invited innovators to design new wireless networks using AI. The final round of this challenge was held a few years back in Los Angeles. Teams used AI-enabled radios to go head-to-head against each other demonstrating how machine learning can support real-time dynamic spectrum decision-making, increasing efficiency and decreasing interference. It was held in a dark auditorium in Los Angeles, but it was a bright look at our wireless future—I know, because I was there.

DARPA's Colosseum network emulator is now hosted by Northeastern University in Boston, in partnership with the National Science Foundation. At the FCC, we've supported these efforts by establishing special wireless Innovation Zones in Boston to support continued work with the emulator and in Salt Lake City, where the National Science Foundation has set up outdoor, city-scale wireless test beds. But I believe we can do more to increase our understanding of spectrum utilization and support the development of AI tools in wireless networks. That is what today's inquiry is all about. I look forward to the record that develops because I believe if we do this right, we can help turn spectrum scarcity into abundance.

I want to thank the staff who worked on this effort, including Jack Detiveaux, A. Cameron Duncan, Madelaine Maior, Roger Noel, Blaise Scinto, Arpan Sura, Joel Taubenblatt, and Andrew Ware from the Wireless Telecommunications Bureau; Chrysanthos Chrysanthou, Michael Davis, Martin Doczkat, Ira Keltz, Jonathan Lu, Robert Pavlak, Barbara Pavon, Ronald Repasi, and Sean Yun from the Office of Engineering and Technology; Deborah Broderson, William Dever, Douglas Klein, Anjali Singh, Elliot Tarloff, and Chin Yoo from the Office of General Counsel; Judith Dempsey, Catherine Matraves, and Giulia McHenry from the Office of Economics and Analytics; Thomas Eng, John Evanoff, David Furth, Debra Jordan, Brian Marengo, Roberto Mussenden, Renee Roland, and Rasoul Safavian from the Public Safety and Homeland Security Bureau; Shannon Lipp, Jeremy Marcus, David Marks, and Michael Rhodes from the Enforcement Bureau; and Jared Carlson, Nese Guendelsberger, Dante Ibarra, Ethan Lucarelli, Olga Madruga-Forti, Roxanne McElvane-Webber, Tom Sullivan, and Michele Wu-Bailey from the Office of International Affairs.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Advancing Understanding of Non-Federal Spectrum Usage*, Notice of Inquiry, WT Docket No. 23-232 (August 3, 2023)

As many of you know, I've been a consistent advocate for enhancing data-driven decision-making. For example, leading up to the passage of the Broadband DATA Act, I proudly championed the need to improve our mapping capabilities so that we can succeed in extending connectivity everywhere. In addition, I've called for the periodic evaluation of FCC programs, including initiatives focused on expanding spectrum availability like the Enhanced Competition Incentive Program. And I also voiced concerns about the quality of data used to determine support amounts for rural hospitals and clinics—concerns that are now steering us toward new rules that do not leave rural patients behind in the age of telehealth and connected medicine.

Whether we're deciding which way to go in a complex proceeding, or simply looking back to see what we've done well and where there's room for improvement, having the right information at our fingertips can help us better serve the public and promote accountability. And where we embrace the use of data already, we should continue to search for ways to enhance its accuracy, reliability, and completeness for the many important tasks before us.

Which brings us to today, and the important task before us. Expanding spectrum access is particularly ripe for data-driven enhancements. Even though the resource is fixed, unused amounts are generally falling—all while demand only continues to build. Though the task often seems impossible, finding new ways to make more spectrum available is vital to our economic success and national security. As it turns out, developing accurate information about how we're using spectrum today may be one of the best ways to ensure we have enough of it available for use tomorrow. Better data can help us identify opportunities for greater usage, develop and enforce more efficient technical and service rules, and learn from past spectrum decisions.

Perhaps most importantly, these benefits propagate well beyond FCC walls. Researchers across industry, academia, and government regularly query our licensing databases. With greater visibility into how spectrum is used, they'll be even more able to unlock opportunities for coordination and efficient spectrum transactions and develop and deploy new wireless technologies. As I mentioned in June, advancements in AI could be part of this story.

Of course, there are significant and longstanding questions to be considered in this endeavor. I look forward to seeing a robust record, and how best to move forward.

I thank the staff for their hard work on this item. It has my full support.

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

In the Matter of	)	
	)	
	)	File No.: EB-TCD-21-00031913
	)	NAL/Acct. No.: 202332170013
	)	
Sumco Panama SA,	)	FRN: 0033206608
	)	
Sumco Panama USA,	)	FRN: 0033206681
	)	
Virtual Telecom kft,	)	FRN: 0033206699
	)	
Virtual Telecom Inc.,	)	FRN: 0033206715
	)	
Davis Telecom Inc.,	)	FRN: 0033206731
	)	
Geist Telecom LLC,	)	FRN: 0030277859
	)	
Fugle Telecom LLC,	)	FRN: 0030562086
	)	
Tech Direct LLC,	)	FRN: 0033206764
	)	
Mobi Telecom LLC, and	)	FRN: 0029886611
	)	
Posting Express Inc.	)	FRN: 0033206780

FORFEITURE ORDER

Adopted: August 3, 2023

Released: August 3, 2023

By the Commission: Chairwoman Rosenworcel issuing a statement.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	4
A. Legal Framework	4
1. Prohibited Prerecorded Telemarketing Calls	4
2. Prohibited Caller ID Practices	8
B. Factual Background	12
C. Enforcement Bureau Actions	21
III. DISCUSSION	25
A. The Enterprise Calls Lacked Consumer Consent	26
B. The Enterprise Calls Lacked Requisite Disclosures	27
C. The Enterprise Calls Included Consumers on the National Do Not Call Registry	29

D. The Enterprise Violated the TCPA with Intent.....	30
E. The Enterprise Calls Used Misleading Caller ID.....	31
1. The Caller ID Was Misleading.....	32
2. The Enterprise Knowingly Used Misleading Caller ID Information	35
3. The Enterprise Intended to Defraud, Cause Harm, and Wrongfully Obtain Something of Value	38
a. The Enterprise Intended to Defraud Consumers.....	38
b. The Enterprise Intended to Cause Harm to Consumers, the General Public, and Service Providers	41
c. The Enterprise Intended to Wrongfully Obtain Something of Value	46
IV. ENTERPRISE LIABILITY.....	48
A. Each Entity Is Liable Under the Enterprise Liability Doctrine.....	48
V. FORFEITURE.....	57
VI. ORDERING CLAUSES.....	58

I. INTRODUCTION

1. We impose a penalty of \$299,997,000 against Sumco Panama SA, Sumco Panama USA, Virtual Telecom kft, Virtual Telecom Inc., Davis Telecom Inc., Geist Telecom LLC, Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, and Posting Express Inc. (collectively, the Enterprise or Entities) jointly and severally, which placed over five billion auto warranty robocalls to consumers between January 2021 and March 2021 in violation of the Telephone Consumer Protection Act (TCPA) and Truth in Caller ID Act. The Enterprise devised and executed a complex auto warranty robocall sales lead generation scheme, which placed spoofed calls to consumers without their consent. The Enterprise's activities were orchestrated by numerous individuals, including Roy M. Cox Jr., Aaron Michael Jones, and Stacey E. Yim.

2. On December 23, 2022, the Federal Communications Commission (Commission or FCC) issued a Notice of Apparent Liability for Forfeiture (*Notice*) proposing a \$299,997,000 forfeiture against the Entities for violations of its rules.¹ We proposed to hold the Entities jointly and severally liable for the proposed forfeiture,² and ordered payment or a written response seeking reduction or cancellation within 30 days.³ The Commission never received payment or a response to the *Notice*. Therefore, we affirm the proposed forfeiture.

3. This fine is calculated based on a randomly selected subset of 33,333 calls the Enterprise placed and is appropriate in light of the number of violations, scope, and nature of the unlawful calling campaign. We hold all Entities named in the *Notice* jointly and severally liable.

¹ *Sumco Panama SA, Sumco Panama USA, Virtual Telecom kft, Virtual Telecom Inc., Davis Telecom Inc., Geist Telecom LLC, Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, and Posting Express Inc.*, Notice of Apparent Liability for Forfeiture, FCC 22-99, 2022 WL 17958841 (2022) (*Notice*). The *Notice* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference.

² *Id.* at paras. 82-96.

³ *Id.* at para. 98.

II. BACKGROUND

A. Legal Framework

1. Prohibited Prerecorded Telemarketing Calls

4. Congress passed the TCPA in the wake of “pervasive” telemarketing that constituted a “nuisance and an invasion of privacy.”⁴ The Commission has made combatting unlawful robocalls a top consumer protection priority.⁵

5. Under the Commission’s TCPA rules, it is unlawful to “[i]nitiate, or cause to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using . . . an artificial or prerecorded voice” to cell phones, absent “prior express written consent.”⁶ It is also unlawful to “[i]nitiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without [] prior express written consent” unless the call is not made for a commercial purpose or is made for a commercial purpose but does not include or introduce an advertisement or constitute telemarketing.⁷ It is also not permitted to initiate any telephone solicitation to residential telephone or cell phone subscribers who have registered their numbers on the National Do Not Call Registry.⁸ While some narrow exceptions apply to the aforementioned prohibitions, none are applicable here.⁹

6. “Prior express written consent” means “an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called, advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice.”¹⁰ This written agreement must specify the phone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered and must include the called party’s written or electronic signature.¹¹ Additionally, this written agreement must include a “clear and conspicuous disclosure” informing the person signing that (a) by signing the consent agreement the person authorizes the “seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice,” and (b) “the person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.”¹² “Clear and conspicuous” means “a notice that would be apparent to the reasonable consumer, separate and distinguishable from the advertising copy or other disclosures.”¹³

⁴ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 § 2.

⁵ FCC, *Robocall Response Team: Combating Scam Robocalls & Robotexts*, <https://www.fcc.gov/spoofed-robocalls> (last visited June 20, 2023).

⁶ 47 CFR § 64.1200(a)(2); *see also id.* § 64.1200(f)(1) (“The term ‘advertisement’ means any material advertising the commercial availability or quality of any property, goods, or services.”); *id.* § 64.1200(f)(13) (“The term ‘telemarketing’ means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.”).

⁷ *See id.* § 64.1200(a)(3); 47 U.S.C. § 227(b)(1)(B).

⁸ 47 CFR § 64.1200(c)(2), (e); *see also* 47 U.S.C. § 227(c).

⁹ *See, e.g.*, 47 CFR §§ 64.1200(a)(1)(iii), 64.1200(a)(3)(i-v); 47 U.S.C. § 227(b)(1)(A)(i-iii).

¹⁰ 47 CFR § 64.1200(f)(9); 47 U.S.C. § 227(b)(2)(D)(i). For the purposes of this Forfeiture Order, the Enterprise is considered the seller under 47 CFR § 64.1200(f)(9).

¹¹ 47 CFR § 64.1200(f)(9).

¹² *Id.*

¹³ *Id.* § 64.1200(f)(3).

7. Artificial or prerecorded messages must also include certain disclosures and must comply with telephone solicitation methods prescribed by the Commission.¹⁴ The message must “state clearly the identity” of the party calling at the beginning of the message.¹⁵ Where such calls include advertisements or telemarketing, within two seconds of providing identification information, the artificial or prerecorded voice messages must “provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request.”¹⁶

2. Prohibited Caller ID Practices

8. Congress has recognized that consumers have embraced caller ID as a vital part of voice telephone service, which helps them decide whether to answer the phone.¹⁷ The Commission has stated that “[a]ccurate caller ID also allows the phone companies and law enforcement to detect and combat unlawful calls, such as unlawful telemarketing calls.”¹⁸ Caller ID is only valuable if it is accurate.¹⁹ The Commission has acknowledged that “[a]s technology has advanced, the dangerous combination of spoofing and illegal telemarketing calls has become much more pervasive and harder to stop.”²⁰

9. Accordingly, it is unlawful to “knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.”²¹

10. *Inaccurate or Misleading Caller ID Information.* It is prohibited “to transmit or display misleading or inaccurate caller identification information.”²² Caller ID is misleading if it is used in a “manner calculated to obscure its identity, evade detection, and prevent consumers from opting out of future calls.”²³

11. *Unlawful Intent.* “Intent” can be demonstrated where the consequences of the actions are “desired” or “substantially certain.”²⁴ “Harm” is a “broad concept that encompasses financial, physical,

¹⁴ *Id.* § 64.1200(b); 47 U.S.C. § 227(b).

¹⁵ 47 CFR § 64.1200(b)(1); 47 U.S.C. § 227(d)(3)(A).

¹⁶ 47 CFR § 64.1200(b)(3).

¹⁷ 153 Cong. Rec. S2357, S2361 (2007) (Remarks of Sen. Nelson).

¹⁸ *See Affordable Enterprises of Arizona, LLC*, Forfeiture Order, 35 FCC Rcd 12142, 12143, para. 1 (2020) (*Affordable Enterprises of Arizona Forfeiture Order*).

¹⁹ *See* 156 Cong. Rec. H2522, H2524 (2010) (Remarks of Rep. Engel) (“Now, if you see a caller ID and you see it has a phone number, most people think that it’s ironclad that that’s the actual phone number that’s calling them when in truth it’s not.”); 155 Cong. Rec. S170-02, S173 (2009) (Remarks of Sen. Nelson) (“Consumers expect caller I.D. to be accurate because it helps them decide whether to answer a phone call and trust the person on the other end of the line.”).

²⁰ *See Affordable Enterprises of Arizona Forfeiture Order* at 12143, para. 1.

²¹ 47 U.S.C. § 227(e)(1); *see also* 47 CFR § 64.1604(a)-(b). There are exceptions for investigative, protective, or intelligence activities, which do not apply here. *See, e.g.,* 47 CFR § 64.1604(d).

²² 47 CFR § 64.1604(a); 47 U.S.C. § 227(e).

²³ *Affordable Enterprises of Arizona Forfeiture Order*, 35 FCC Rcd at 12152, para. 25.

²⁴ *See Staub v. Proctor Hosp.*, 562 U.S. 411, 422 n.3 (2011) (“‘intent’ . . . denote[s] that the actor desires to cause consequences of his act, or that he believes that the consequences are substantially certain to result from it.”); *John C. Spiller*; *Jakob A. Mears*; *Rising Eagle Capital Group LLC*; *JSquared Telecom LLC*; *Only Web Leads LLC*; *Rising Phoenix Group*; *Rising Phoenix Holdings*; *RPG Leads*; and *Rising Eagle Capital Group – Cayman*, Forfeiture Order, 36 FCC Rcd 6225, 6237, para. 25 (2021) (*Rising Eagle Forfeiture Order*).

and emotional harm.”²⁵ Actual harm is not required.²⁶ “[A]nything of value” is not limited to monetary value or tangible assets.²⁷ For example, evading legal liability constitutes a thing of value.²⁸ Common law fraud requires the following: “(1) a false representation (2) in reference to a material fact (3) made with knowledge of its falsity (4) and with the intent to deceive”²⁹ While reliance on the misrepresentation is required under common law, only “a showing of *intent* to defraud rather than actual reliance and harm” is required under the Truth in Caller ID Act.³⁰

B. Factual Background

12. Since at least July 2018, the Enterprise has operated an unlawful robocall operation that generated billions of robocalls for the purpose of generating leads for vehicle service contract sellers. Cox and Jones, key participants in the Enterprise, are currently banned from any form of telemarketing, and have been since 2013 and 2017, respectively.³¹ However, they have continued illegal telemarketing practices by using an international network of companies to conceal their involvement.

13. *Lead Generation Contracts.* Three of the Entities, Davis Telecom Inc. (Davis Telecom), Virtual Telecom Inc., and Tech Direct LLC (Tech Direct), contracted with vehicle service contract sellers (Clients) to identify potential purchasers for the Clients’ vehicle service contracts.³² The Clients paid the

²⁵ See *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, Report and Order, 26 FCC Rcd 9114, 9122, para. 22 (2011) (*Truth in Caller ID Order*).

²⁶ See 47 CFR § 64.1604(a); 47 U.S.C. § 227(e) (requiring “intent” only).

²⁷ See *United States v. Picquet*, 963 F.2d 54, 55-56 (5th Cir. 1992) (a sales tax payment constitutes “a thing of value” for the purposes of 18 U.S.C. § 1029(a)(2)); see also *United States v. Singleton*, 144 F.3d 1343, 1349-50 (10th Cir. 1998) (“We agree with those circuits which have held that the test of value is whether the recipient subjectively attaches value to the thing received.”), *rev’d on other grounds*, 165 F.3d 1297 (10th Cir. 1999); *United States v. Draves*, 103 F.3d 1328, 1332 (7th Cir. 1997) (applying expansive interpretation of the phrase “anything of value”); *United States v. Schwartz*, 785 F.2d 673, 680 (9th Cir. 1986) (noting the broad range of intangibles that have been found to be “things of value” by prior courts); *United States v. Sheker*, 618 F.2d 607, 609-10 (9th Cir. 1980) (holding that “value” includes anything recognized or appreciated by others).

²⁸ See *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, Forfeiture Order, 33 FCC Rcd 9204, 9212, para. 22 (2018) (*Roesel Forfeiture Order*).

²⁹ *Pence v. United States*, 316 U.S. 332, 338 (1942).

³⁰ See *Rising Eagle Forfeiture Order*, *supra* note 24, at 6235, para. 20 (emphasis included).

³¹ See Stipulated Judgement and Order for Permanent Injunction at 4-5, *United States v. Cox et al*, No. 8:11-cv-01910 (C.D. Cal. Feb. 4, 2013), ECF No. 22 (“It is therefore ordered that Individual Defendant, whether acting directly or through any person, trust, corporation, partnership limited liability company, subsidiary, division, or other device, or any of them, is hereby permanently restrained and enjoined from telemarketing, or assisting others engaged in telemarketing.”); see also Entry of Default Judgment and Final Order for Permanent Injunction at 4, *Fed. Trade Comm’n v. Jones, et al.*, No. 17-cv-00058 (C.D. Cal. May 31, 2017), ECF No. 88 (“It is ordered that Defendant Jones, whether acting directly or through an intermediary, is permanently restrained and enjoined from: (A) Engaging in, or assisting others to engage in Telemarketing, which includes, without limitation, providing others with access to automated dialing systems, providing others with Caller ID numbers, and providing others with data lists containing consumer information; (B) Initiating, causing others to initiate, or assisting others in initiating any telephone call that plays or delivers a prerecorded message; (C) Initiating, causing others to initiate, or assisting others in initiating any telephone call to any telephone number listed on the National Do Not Call Registry; and (D) Holding any ownership interest, share, or stock in any business that engages in any of the acts and practices listed in paragraphs A–C of this Section.”).

³² See Vendor Services Agreement, Affordable Automotive Solutions-Tech Direct (Jan. 1, 2020) on file at EB-TCD-21-00031913; see also Vendor Services Agreement, Affordable Automotive Solutions-Virtual Telecom (Jan. 1, 2020) (Virtual Telecom signed a one-year contract to provide “billable leads” and also signed a 2018 contract with A&E Services to generate sales leads); see also Vendor Services Agreement, Affordable Automotive Services-Davis Telecom on file at EB-TCD-21-00031913 (Oct. 19, 2020) (Davis Telecom Inc. contracted with a Florida-based

Enterprise a commission to identify individuals—targets—that may be interested in purchasing vehicle service contracts.³³ The Clients are not subject to liability in this proceeding.

14. *Robocalls Without Consent.* To identify potential purchasers for the Clients, five of the Entities (Dialers) placed approximately 5,187,677,000 prerecorded calls to 550,138,650 wireless and residential phones between January 2021 and March 2021.³⁴ The calls played seven substantially similar prerecorded messages that all purported to offer consumers the opportunity to extend their existing car warranties.³⁵ Some of the recipients of the calls were on the National Do Not Call Registry.³⁶ None of the Dialers or other Entities have demonstrated to the Commission that they had prior express written consent from the call recipients to make the calls. The Dialers included: Virtual Telecom Inc. and its Hungarian counterpart, Virtual Telecom kft (collectively, Virtual Telecom), Sumco Panama USA, and its counterpart in Panama, Sumco Panama SA (collectively, Sumco Panama), and Mobi Telecom LLC (Mobi Telecom) (collectively, Dialers); and at least as early as April 2021, Fugle Telecom LLC (Fugle Telecom) also began dialing calls on behalf of the Enterprise.³⁷

15. *The Deception.* The Dialers generated robocalls that encouraged call recipients to follow prompts to speak with a “warranty specialist” about extending or reinstating their car’s warranty.³⁸ Some of the calls contained the following pre-recorded message:

We’ve been trying to reach you concerning your car’s extended warranty. You should have received something in the mail about your car’s extended warranty. Since we have not gotten a response, we are giving you a final courtesy call before we close out your file. Press 2 to be removed and put on our do-not-call list. Press 1 to speak with someone about extending or reinstating your car’s warranty. Again, press 1 to speak with a warranty specialist. (Pause) Or call our 800 number at 833-304-1447.³⁹

If the consumer pressed “1” they would hear a 10 second pause before being connected to a live operator, who would confirm that the call recipient wanted to purchase an auto warranty and ask questions about

company, Affordable Automotive Solutions, to generate “vehicle service coverage calls” in which a call with an interested call recipient (“Billable Lead”) lasts past the buffer time.).

³³ See, e.g., Vendor Services Agreement, Affordable Automotive Solutions-Tech Direct on file at EB-TCD-21-00031913 (Jan. 1, 2020).

³⁴ A complete spreadsheet identifying each apparently unlawful call placed to a consumer was provided to each party identified in the Notice. A copy of this spread sheet is available in the Commission’s electronic file at EB-21-00031913 (Call Detail Records); compare List of DID’s purchased from G4 Telecom on file at EB-TCD-21-00031913 with ITG Subpoena Response on file at EB-TCD-21-00031913 (Dec. 22, 2021) (ITG Subpoena Response).

³⁵ See ITG Subpoena Response.

³⁶ See, e.g., FCC Complaint #4466560 (Jan. 4, 2021) (“Auto Warranty Services continues to call my cell phone from different numbers all day. I am on the Do Not Call registry. I have opted out and they still continue. I want them to stop.”); FCC Complaint #4475666 (Jan. 8, 2021) (“I am on the do not call [sic] registry and receive robo calls that i [sic] have not consented to.”); FCC Complaint #4471642 (Jan. 6, 2021) (“Continue to get robo calls from { [REDACTED] } trying to sell extended car warranties. I have already put my number on the do not call list over 3 years ago. What else can I do to stop these calls?”); FCC Complaint #4471901 (“I have filed previous complaints with FTC and [the Better Business Bureau]. I am on the do not call registry. I get calls all the time.”). Material set off by double brackets { [] } is confidential and is redacted from the public version of this document.

³⁷ See ITG Subpoena Response; see also Affidavit of { [REDACTED] }, Director, Policy & ITG Traceback, USTelecom – The Broadband Association on file at EB-TCD-21-00031913 (Feb. 11, 2022).

³⁸ See ITG Subpoena Response.

³⁹ See id.

the consumer's vehicle.⁴⁰ The operator would then transfer the call to a Client's sales agent, who would attempt to sell the consumer a vehicle service contract.⁴¹ Variations of this message stated that the caller's name was "Susie" and she was calling from "vehicle service."⁴² Though there were six other variations of this message, the messages were substantially similar.⁴³

16. The messages were false in almost all respects. The Dialers were not calling about the consumer's "extended warranty," they were attempting to sell new vehicle service contracts.⁴⁴ Neither the Dialers nor Clients had the capability of extending a consumer's existing car warranty, to the extent a consumer had one in the first place. And pressing 2 did not add the consumer to the Enterprise's internal do-not-call list.⁴⁵

17. *Neighbor Spoofing.* The calls displayed 1,051,461 unique caller IDs.⁴⁶ The foreign Dialers, Sumco Panama, Virtual Telecom, and Mobi Telecom, used Direct Inward Dial (DID) numbers⁴⁷ with U.S. area codes from VoIP providers as U.S. caller IDs.⁴⁸ The Enterprise selected and used numbers with area codes that matched the area code of the called party so that the call appeared local, a practice known as "neighbor spoofing."⁴⁹

18. *The Magnitude.* The Enterprise was able to generate a large volume of calls by using Session Initiation Protocol (SIP) Trunking.⁵⁰ Using G4 Telecom's service, the Enterprise generated more

⁴⁰ See Affidavit of {[REDACTED]} at 1 on file at EB-TCD-21-00031913 {[REDACTED]} (Apr. 30, 2021).

⁴¹ See *id.*

⁴² See FCC Complaint #4556779 ("Susie" from "Vehicle Service Department" calls with a recorded message on occasion.); FCC Complaint #4673299 (Mar. 29, 2021); FCC Complaint #4469369 (Jan. 5, 2021) (all of the aforementioned EB-TCD-21-00031913).

⁴³ See ITG Subpoena Response, *supra* note 34.

⁴⁴ See FCC Complaint #4471642 (Jan. 6, 2021) ("Continue to get robo calls from {[REDACTED]} trying to sell extended car warranties.); see FCC Complaint #4547338 (Feb. 9, 2021) (a consumer who spoke to a live agent reported that the agent sold Omega Auto Care policies on behalf of Affordable Automotive Solutions.).

⁴⁵ See FCC Complaint #4475488 (Jan. 8, 2021) ("The pre-recorded message said to press 2 to stop the calls. I pressed 2 and the call hung up on me."); see also FCC #4470983 (Jan. 6, 2021) ("At the end of the recording it says I can press '2' to stop the calls and be placed on the Do-Not-Call list. Despite me doing this multiple times now, I still continue to receive the calls.").

⁴⁶ Call Detail Records on file at EB-TCD-21-00031913.

⁴⁷ See *Direct Inward Dialing (DID)*, Twilio Docs, <https://www.twilio.com/docs/glossary/what-direct-inward-dialing-did> (last visited June 15, 2023) ("Direct Inward Dialing (DID) is a telephone service that allows a phone number to ring through directly to a specific phone at a business instead of going to a menu or a queue and needing to dial an extension. A phone number that is used like this is often called a 'DID' (and multiple numbers are called 'DIDs').")

⁴⁸ See North Dakota Attorney General Subpoena Response from Mash Telecom on file at EB-TCD-21-00031913 (Feb. 10, 2021); G4 Skype Conversations on file at EB-TCD-21-00031913 (Nov. 3, 2020).

⁴⁹ See G4 Telecom Skype Conversations (Nov. 2, 2020) (G4 Telecom: "Are the numbers On. [sic] the list [of DIDs] important or can Teli just give us any numbers?" Virtual Telecom: "needs to be in the same area code."); see, e.g., FCC Complaint #4466838 (Jan. 4, 2021) ("I frequently am bothered by robocalls offering vehicle warranties. They are almost always from the same area code as my cell number, even though I live on the other side of the country. I do not have a car warranty and do not consent to these calls."); see also *Cyber Aware*, AT&T, <https://about.att.com/pages/cyberaware/ni/neighbor> (last visited May 26, 2023) ("Neighbor spoofing is when you get a call from an unknown number that looks a lot like the numbers where you live. The incoming call will have the same area code and maybe the same prefix (the three numbers after the area code) as your number. Bad guys do this hoping you'll think it's a 'neighbor.'").

⁵⁰ See *What is SIP Trunking? How it Works, Benefits & How to Get It*, Nextiva (Dec. 9, 2022),

than 15,000 calls at once.⁵¹ The Enterprise connected at least 2,000 phones to a cloud-based service provider that transmitted calls to VoIP service providers.⁵² The VoIP providers also sold blocks of DID numbers to Geist,⁵³ which the Enterprise used.⁵⁴ This eliminated the need for separate lines for each phone⁵⁵ and allowed the Enterprise to generate substantial amounts of robocalls with relatively few phone lines. The Enterprise transmitted robocall traffic through at least eight providers that offered an array of services to assist a robocalling campaign.⁵⁶ For example, Great Choice Telecom and Avid Telecom offered DID number rotation, which would permit the dialing entities to change the caller ID after each call.⁵⁷ This feature would render consumers' call blocking efforts futile. G4 Telecom assisted the Enterprise with the purchase of 500,000 numbers from other providers and told Mobi Telecom that it had "unlimited capacity" to handle the volume of traffic being generated.⁵⁸ Mash Telecom also provided DID numbers to the Enterprise.⁵⁹

19. *The Money Trail.* The Enterprise distributed the financial gains from the illegal robocalling campaign among the Entities. The Clients routed funds to Posting Express Inc. (Posting

<https://www.nextiva.com/blog/what-is-sip-trunking.html> ("SIP, short for Session Initiation Protocol, is an application layer protocol that lets you run your phone system over an internet connection instead of traditional phone lines. Trunking refers to the backbone of phone lines used by multiple users that connects to a telephone network. SIP Trunks provision Voice over Internet Protocol (VoIP) connectivity between an on-premise phone system and the public switched telephone network, also known as PSTN.").

⁵¹ See G4 Telecom Skype Conversations, Screenshot of Real Time Statistics, (Nov. 6, 2020) (showing Virtual Telecom with 15,663 active calls).

⁵² The Enterprise maintained at least one server with Vultr, a company that provides private servers. This server was connected to 2,000 phone lines. See E-mail from [REDACTED] to Vultr customer service representative (Feb. 27, 2021).

⁵³ See North Dakota Attorney General Subpoena Response from Mash Telecom on file at EB-TCD-21-00031913 (showing the Enterprise obtained almost 500,000 numbers in November 2020, as well as a substantial volume of numbers a month earlier); see also G4 Telecom Skype Conversations with Mobi Telecom on file at EB-TCD-21-00031913 (Dec. 7, 2020) (email from Jason Ritter (Blitz) to Adam Radimiri (Geist Telecom) stating that Blitz will send the MSA for the DIDs and looks forward to working with Geist Telecom).

⁵⁴ See *Direct Inward Dialing (DID)*, Twilio Docs, <https://www.twilio.com/docs/glossary/what-direct-inward-dialing-did> (last visited June 15, 2023) ("Direct Inward Dialing (DID) is a telephone service that allows a phone number to ring through directly to a specific phone at a business instead of going to a menu or a queue and needing to dial an extension.").

⁵⁵ *Id.*; AT&T Services, Inc., *Call Blocking NPRM and NOI* Comments, CG Docket No.17-59, at 6 (Sept. 24, 2018) ("In AT&T's experience, many high-volume illegal robocallers purchase direct inward dialing ('DID') service from one provider (typically a competitive local exchange carrier) and rely on and a separate provider (typically a small VoIP provider) for outbound dialing service. These robocallers typically then spoof the DIDs supplied by the inbound service provider and, using SIP trunks supplied by the outbound service provider, place tens of thousands (sometimes millions) of illegal calls in a brief period of time. This practice helps the fraudsters avoid detection.").

⁵⁶ See ITG Subpoena Response, *supra* note 34.

⁵⁷ See DIDs, Avid Telecom, (Jan. 23, 2021, 3:37:37), <https://web.archive.org/web/20210123033737/https://avidtelecom.net/> ("We can offer you fresh numbers on a regular rotation or port your existing inventory."); Great Choice Telecom, Our Services, (Mar. 13, 2021, 6:22:12), <https://web.archive.org/web/20210313061728/https://greatchoice telecom.com/> ("Built in automatic DID rotator that will provide you a hands free system for Caller ID's to change after every call made, engineered to help have more connected calls as well as stay away from scam likely.").

⁵⁸ See G4 Telecom Subpoena Response, Skype Conversations (Nov. 10, 2020) (G4 Telecom: "we are implementing the 404 block system for your calls to disconnected DIDs. . . . Mobi Telecom: Ok great . . . G4 Telecom: yes really great news as it will coincide [sic] with the 500K block of new DIDs and the traffic increase as well.").

⁵⁹ North Dakota Attorney General Subpoena Response from Mash Telecom on file at EB-TCD-21-00031913 (Feb. 10, 2021).

Express), which is owned by Yim,⁶⁰ Jones's wife.⁶¹ The Clients also paid Virtual Telecom, Tech Direct, and Davis Telecom.⁶² In turn, Virtual Telecom sent payments to Tech Direct,⁶³ Davis Telecom,⁶⁴ and Sumco.⁶⁵ Tech Direct sent funds to Cox⁶⁶ and Sumco.⁶⁷ Tech Direct also made payments towards Jones's customized "voice-prompted software," which the Enterprise used to answer consumer call backs.⁶⁸ Davis Telecom sent payments to Tech Direct⁶⁹ and Virtual Telecom.⁷⁰

20. *Participants.* Cox recruited numerous individuals to assist with the daily affairs of the robocalling scheme (collectively, Participants):

⁶⁰ See Bank of America Subpoena Response on file at EB-TCD-21-00031913 (June 8, 2021) (Business Signature Card with Substitute Form W-9 shows Stacey Yim as the owner of the Posting Express Account); Bank of America Deposits and Withdrawals, Posting Express on file at EB-TCD-21-00031913 (June 8, 2021) (showing payments from Dialers and Clients).

⁶¹ See *Stacey Yim and Mike Jones Wedding Registry*, The Knot Registry, <https://registry.theknot.com/stacey-yim-mike-jones-july-2017-ca/19021073> (last visited June 16, 2023).

⁶² See, e.g., Wells Fargo Subpoena Response, Virtual Telecom Business Choice Checking Statement on file at EB-TCD-21-00031913 (Oct. 31, 2020) (showing six payments from Affordable Automotive Holdings, LLC in the month of October 2020); Wells Fargo Subpoena Response, Tech Direct Simple Business Checking Statement on file at EB-TCD-21-00031913 (Aug. 31, 2020) (showing eight payments from Affordable Automotive Holdings, LLC in the month of August 2020); JP Morgan Chase Subpoena Response, Davis Telecom Chase Performance Business Checking Statement on file at EB-TCD-21-00031913 (Jan. 31, 2021) (showing a payment of \$27,560 from Affordable Automotive Holdings, LLC).

⁶³ See, e.g., Wells Fargo Subpoena Response, Virtual Telecom Business Choice Checking Statement on file at EB-TCD-21-00031913 (July 31, 2020) (showing payment of \$24,500 to Tech Direct).

⁶⁴ See, e.g., Wells Fargo Subpoena Response, Virtual Telecom Business Choice Checking Statement on file at EB-TCD-21-00031913 (Sept. 30, 2020) (showing payment of \$14,000 to Davis Telecom).

⁶⁵ See, e.g., Wells Fargo Subpoena Response, Virtual Telecom Business Choice Checking Statement on file at EB-TCD-21-00031913 (Feb. 29, 2020) (showing four payments to Sumco Panama in the month of February 2020).

⁶⁶ See, e.g., Wells Fargo Subpoena Response, Tech Direct Simple Business Checking Statement on file at EB-TCD-21-00031913 (Aug. 31, 2020) (showing five payments to "Cox Roy" throughout the month of August 2020).

⁶⁷ See, e.g., Wells Fargo Subpoena Response, Tech Direct Simple Business Checking Statement on file at EB-TCD-21-00031913 (Feb. 29, 2020) (showing a payment of \$3,290.00 to Sumco Panama SA).

⁶⁸ Declaration of [REDACTED] at 1 ([REDACTED]) ("The payments sent from Tech Direct, LLC were for payments to the Maxim account set up by Mike Jones" for a customized a voice-prompted software.); compare Wells Fargo Wire Full Transaction Report, Tech Direct (Mar. 31, 2020) (showing a payment in the amount of \$5,261.89 to Vocinity Inc.), with Invoice to Jones #1038 (Mar. 30, 2020) (showing invoice in the same amount); compare Wells Fargo Wire Full Transaction Report, Tech Direct (Apr. 6, 2020) (showing payment of \$1,396.90 to Vocinity Inc.), with Invoice to Jones #1041 (Apr. 1, 2020) (showing invoice in the same amount) (all of the foregoing on file at EB-TCD-21-00031913).

⁶⁹ See, e.g., Wells Fargo Subpoena Response, Tech Direct Simple Business Checking Statement on file at EB-TCD-21-00031913 (Oct. 31, 2020) (showing a deposit from Davis Telecom labeled "Commission Payment").

⁷⁰ See, e.g., Wells Fargo Subpoena Response, Virtual Telecom Business Choice Checking Statement on file at EB-TCD-21-00031913 (July 31, 2020) (showing \$120,000 payment from Davis Telecom).

PARTICIPANTS		
Name	Location	Role
Jovita Luna Migdaris Cedenó	Panama	Officer of Sumco Panama SA. ⁷¹ Signatory on Sumco Panama USA's Wells Fargo account. ⁷² Managed daily calling operations for Sumco Panama SA, Virtual Telecom, and Mobi Telecom and ensured that the operators placed a large volume of calls daily. ⁷³ Coordinated with service providers to acquire numbers and VoIP services and to pay invoices for Sumco Panama and Virtual Telecom. ⁷⁴
Livia Szuromi	Hungary	Officer at Davis Telecom Inc. and Sumco Panama SA. ⁷⁵ Signatory on Davis Telecom's Wells Fargo account. ⁷⁶
Julie Kathryn Bridge	California	Signatory on Davis Telecom's JP Morgan Chase account and Wells Fargo account, and Virtual Telecom's Wells Fargo account. ⁷⁷ Performed clerical tasks such as conducting banking transactions and filing corporate registration paperwork. ⁷⁸ Paid Virtual Telecom's and Mobi Telecom's invoices from service providers and conducted banking transactions on their behalf. ⁷⁹

⁷¹ Sumco Panama SA, Anonymous Society, Registration, Public Registry of Panama (Dec. 5, 2019).

⁷² See, e.g., Wells Fargo Subpoena Response, Sumco Panama USA Business Account Application on file at EB-TCD-21-00031913 (Feb. 18, 2020) (showing Jovita Cedenó Luna as the signer for the account and describing her business relationship with the Entity as "Owner with Control of the Entity").

⁷³ See E-mail from [REDACTED] to Vultr customer service representative (Feb. 27, 2021); see also G4 Telecom Skype Conversations on file at EB-TCD-21-00031913 (Nov. 2, 2020) ("G4 Telecom: why is traffic so low? Mobi Telecom: DID's. Trying not to burn. The DID's [sic]. G4 Telecom: Ok. I'll get the rest [no problem].").

⁷⁴ See Vultr Subpoena Response at 95 on file at EB-TCD-21-00031913 (Apr. 3, 2021) (showing communications of Sumco Panama SA with Vultr in which Szuromi and Migdaris Cedenó submit forms of identification to gain the call center access to the cloud platform).

⁷⁵ See Davis Telecom, Profit Corporation Articles of Dissolution by Incorporators or Initial Directors, Wyoming Secretary of State (Apr. 9, 2021); Sumco Panama SA, Anonymous Society, Registration, Public Registry of Panama (Dec. 5, 2019) (all of the foregoing on file at EB-TCD-21-00031913).

⁷⁶ See Wells Fargo Subpoena Response, Davis Telecom Business Account Application on file at EB-TCD-21-00031913 (Nov. 19, 2018) (showing Bridge and Szuromi as authorized signer).

⁷⁷ See JP Morgan Chase Subpoena Response, Davis Telecom Business Signature Card (July 25, 2019); Wells Fargo Subpoena Response, Davis Telecom Business Account Application, (Nov. 19, 2018) (showing Bridge and Szuromi as authorized signer); Wells Fargo Subpoena Response, Virtual Telecom Addendum to Certificate of Authority (May 25, 2019) (removing Cox as an account signatory, making Bridge the sole authorized signer); Wells Fargo Subpoena Response, Virtual Telecom Business Account Application (May 25, 2019) (showing Bridge as the sole authorized signer) (all of the foregoing on file at EB-TCD-21-00031913).

⁷⁸ See Response of Julie Bridge to FCC Subpoena (Bridge Resp.) at 2-3; see also Cox Deposition Transcript (Cox Dep.) at 75 (all of the foregoing on file at EB-TCD-21-00031913).

⁷⁹ See Bridge Resp. at 2-3; see also Cox Dep. at 75 (all of the foregoing on file at EB-TCD-21-00031913).

PARTICIPANTS		
Name	Location	Role
June Batista	California	Signatory on Tech Direct's Wells Fargo account and JP Morgan Chase account. ⁸⁰ Performed clerical tasks such as conducting banking transactions and filing corporate registration paperwork. ⁸¹ Paid Virtual Telecom's, Sumco Panama's, and Mobi Telecom's invoices from service providers and conducted banking transactions on their behalf. ⁸²
Andrea Horvath	Hungary	Officer at Virtual Telecom. ⁸³

Cox coordinated with these individuals through messaging apps and in-person meetings.⁸⁴

C. Enforcement Bureau Actions

21. In February 2021, the Ohio State Attorney General's Office (OHAG) informed the Bureau that it was investigating the Enterprise for making billions of suspected illegal robocalls.⁸⁵ Upon receipt of the OHAG's information, the Bureau initiated its own investigation. The investigation confirmed the existence of the robocall campaign and confirmed that the Enterprise was initiating the calls.

22. On July 7, 2022, the Bureau issued a Public Notice alerting all U.S.-based voice service providers to a substantial number of unlawful calls originating from the Enterprise and authorizing service providers to cease carrying any traffic originating from eight originating providers, including four providers within the Enterprise.⁸⁶ The Bureau also sent cease-and-desist letters to the originating voice service providers.⁸⁷ The cease-and-desist letters warned the originating voice service providers to stop transmitting this suspected illegal robocall traffic within 48 hours and ordered that they report the steps taken to mitigate the traffic to the FCC and continue to mitigate illegal traffic on their networks.⁸⁸ The letters warned that failure to respond assuring compliance with these requests could result in the Bureau

⁸⁰ See JP Morgan Chase Subpoena Response, Davis Telecom Business Signature Card (Mar. 15, 2019); Wells Fargo Subpoena Response, Tech Direct Business Account Application, (Mar. 26, 2019) (all of the foregoing on file at EB-TCD-21-00031913).

⁸¹ See Bridge Resp. at 2-3; see also Cox Dep. at 75 (all of the foregoing on file at EB-TCD-21-00031913).

⁸² See Bridge Resp. at 2-3; see also Cox Dep. at 75 (all of the foregoing on file at EB-TCD-21-00031913).

⁸³ Virtual Telecom Profit Corporation Annual Report, Wyoming Secretary of State, (July 1, 2019) (Andrea Horvath signing as the secretary and treasurer of Virtual Telecom).

⁸⁴ See Cox Dep. at 16, 20-21, 49, 61 on file at EB-21-00031913; see also Notice, *supra* note 1 at *7-8, paras. 17-20.

⁸⁵ Email from Erin Leahy-Connolly, Senior Assistant Attorney General, Ohio Attorney General's Office on file at EB-21-00031913 (Feb. 10, 2021).

⁸⁶ *FCC Enforcement Bureau Notifies all U.S.-Based Telecommunications Providers They May Block Auto Warranty Robocalls Originating From Certain Providers*, Public Notice, DA 22-727, 2022 WL 2664189 (EB July 7, 2022).

⁸⁷ See Letter from Loyaan A. Egal, Acting Chief, FCC Enforcement Bureau, to James Ryan, Fugle Telecom LLC (July 7, 2022); Letter from Loyaan A. Egal, Acting Chief, FCC Enforcement Bureau, to Adam Radimiri, CEO, Geist Telecom LLC (July 7, 2022); Letter from Loyaan A. Egal, Acting Chief, FCC Enforcement Bureau, to Davinder Singh, President, Mobi Telecom LLC (July 7, 2022); Letter from Loyaan A. Egal, Acting Chief, FCC Enforcement Bureau, to Maria Alejandra Gonzalez, Virtual Telecom Inc., and Andrea Horvath, CEO, Virtual Telecom kft (July 7, 2022). These letters are available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

⁸⁸ *Id.*

directing other providers to cease transmitting traffic from these companies.⁸⁹ None of the Entities that received letters responded.

23. On July 21, 2022, the Bureau issued an Order directing all U.S.-based voice service providers to take immediate steps to effectively mitigate suspected illegal robocall traffic made by or on behalf of Cox, Jones, their individual associates and the originating providers that received letters.⁹⁰ The Order further warned that the Commission might deem any voice service provider that failed to comply with the Order to have knowingly and willfully engaged in transmitting unlawful robocalls.⁹¹

24. As a result of the Commission's actions, auto warranty calls declined sharply. According to YouMail, a third-party robocall monitoring platform, by July 20, 2022, auto warranty robocalls dropped by about 80 percent.⁹² Robokiller, another robocall monitoring platform, found that the number of car warranty robocalls plunged from nearly one billion in June 2022 to fewer than seven million just three months later.⁹³

III. DISCUSSION

25. We find that the Enterprise intentionally violated the TCPA and our implementing rules by placing more than five billion prerecorded voice message telemarketing calls without the requisite consent of the called parties, including by reaching consumers on the National Do Not Call Registry. In addition to lacking consent, the prerecorded messages did not contain the requisite disclosures. The Enterprise also violated the Truth In Caller ID Act and our implementing rules by transmitting misleading caller ID that mimicked the called party's own area code to induce consumers to answer the phone.

A. The Enterprise Calls Lacked Consumer Consent

26. It is unlawful to initiate prerecorded telemarketing or advertising calls to cell phones, absent that consumer's prior express written consent.⁹⁴ It is also unlawful to initiate prerecorded telemarketing calls to a residential line absent that consumer's prior express written consent.⁹⁵ At least

⁸⁹ *Id.*

⁹⁰ See FCC Enforcement Bureau Warns All U.S.-Based Voice Service Providers to Avoid or Cease Carriage of Auto Warranty Robocall Traffic from Sumco Panama Operation, EB Docket No. 21-31913, Report and Order, DA 22-784, 2022 WL 2903941 (EB July 21, 2022).

⁹¹ *Id.* Also on July 7, 2022, the Ohio Attorney General's Office filed a complaint in the Southern District of Ohio targeting many of the same individuals and entities identified in the *Notice* for allegedly initiating over 77 million deceptive robocalls per day linked to the sale of Vehicle Service Contracts. *Ohio v. Jones et al.*, No. 2:2022cv02700, (S.D. Ohio July 7, 2022).

⁹² See Karl Bode, *July Enforcement Achieve Success in Escalating the War on Robocalls*, YouMail (July 20, 2022), <https://blog.youmail.com/2022/07/july-enforcement-achieve-success-in-escalating-the-war-on-robocalls/> ("There are still warranty robocalls out there but they are relatively minor in terms of overall volume . . . We have gone from nearly 30 million warranty calls per day that were defeating network filtering down to under 1 million warranty calls per day now being received by consumers."); see also Karl Bode, *FCC, State Action Nets an Amazing 80% Reduction in Auto Warranty Scam Robocalls*, TechDirt (Aug. 25, 2022, 5:28 AM), <https://www.techdirt.com/2022/08/25/fcc-state-action-nets-an-amazing-80-reduction-in-auto-warranty-scam-robocalls/>.

⁹³ *Car Warranty Robocalls Plummeted in Late 2022: Here's Why*, Robokiller (Nov. 16, 2022), <https://www.robokiller.com/blog/2022-car-warranty-call-trends> ("The steep decline in car warranty robocalls can be traced back to July 7, 2022. That day, the Federal Communications Commission (FCC) announced a series of actions designed to mitigate these scams.").

⁹⁴ 47 CFR § 64.1200(a)(2); see also *id.* § 64.1200(f)(1) ("The term 'advertisement' means any material advertising the commercial availability or quality of any property, goods, or services."); *id.* § 64.1200(f)(13) ("The term 'telemarketing' means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.").

⁹⁵ 47 CFR § 64.1200(a)(3); 47 U.S.C. § 227(b).

33,333 of the calls placed by the Enterprise between January 1, 2021 and March 31, 2021 to both residential lines and cell phones contained prerecorded messages.⁹⁶ The calls advertised auto warranties and constitute telemarketing or advertising calls.⁹⁷ Consumers who received the calls and filed complaints with the Commission stated that they never gave the Enterprise permission to call them.⁹⁸ The Enterprise did not respond to the *Notice* with evidence to the contrary. Without “prior express written consent,” *i.e.*, “an agreement, in writing, bearing the signature of the person” and which complies with our rules, such prerecorded calls were unlawful.⁹⁹

B. The Enterprise Calls Lacked Requisite Disclosures

27. Prerecorded messages must identify the caller at the beginning of the message.¹⁰⁰ Telemarketing calls must also, within two seconds of providing identification information, provide a mechanism by which the called party can make a “do-not-call request.”¹⁰¹

28. Calls from the Enterprise did not comply with these requirements. Voicemail recordings of the messages revealed that the Enterprise’s messages did not identify the caller at the beginning of the message.¹⁰² While the recorded message purported to provide consumers with an option to be included on the Enterprise’s do not call list,¹⁰³ this option did not work.¹⁰⁴ Pressing the specified opt-out key did not result in removal.¹⁰⁵ The Enterprise did not respond to the *Notice* with evidence disputing the calls’ lack of required disclosures.

C. The Enterprise Calls Included Consumers on the National Do Not Call Registry

29. It is unlawful to call residential or wireless telephone subscribers who have included their phone numbers on the National Do Not Call Registry, subject to a narrow set of exceptions that do not apply here.¹⁰⁶ The Commission reviewed a sample of 33,333 calls and found that the Enterprise placed 11,982 calls (36 percent of sampled calls) to numbers on the National Do Not Call Registry.¹⁰⁷ The

⁹⁶ The Bureau analyzed the Call Detail Records using Interactive Marketing Solutions, EasyID, <https://www.ims-dm.com/mvc/page/easyid/> (last visited May 5, 2022). EasyID is Interactive Marketing Solutions’ software that allows clients to eliminate wireless numbers from calling lists. *Id.* Interactive Marketing Solutions, Inc. is a member of the Direct Marketing Association and bills itself as “the country’s largest single-source supplier” of data identifying telephone numbers that have been assigned or ported to wireless devices, “to help businesses comply with state and federal legislation.” Interactive Marketing Solutions – Do Not Contact List Solutions, <https://www.ims-dm.com/mvc/index.php> (last visited May 5, 2022); *see also, e.g.*, FCC Complaint #4475666 (Jan. 8, 2021) (“I am on the do not call [sic] registry and receive robo calls that i [sic] have not consented to.”).

⁹⁷ *See* ITG Subpoena Response, *supra* note 34.

⁹⁸ *See, e.g.*, FCC Complaint #4466838 (Jan. 4, 2021) (“I frequently am bothered by robocalls offering vehicle warranties. They are almost always from the same area code as my cell number, even though I live on the other side of the country. I do not have a car warranty and do not consent to these calls.”); FCC Complaint #4467180 (Jan. 4, 2021); FCC Complaint #4475666 (Jan. 8, 2021) (all of the foregoing on file at EB-TCD-21-00031913).

⁹⁹ 47 CFR § 64.1200(a)(2)-(3), (f)(9).

¹⁰⁰ *Id.* § 64.1200(b)(1); 47 U.S.C. § 227(d)(3)(A).

¹⁰¹ 47 CFR § 64.1200(b)(3).

¹⁰² *See* ITG Subpoena Response, *supra* note 34.

¹⁰³ *Id.*

¹⁰⁴ *See* FCC Complaint #4469369 on file at EB-TCD-21-00031913 (Jan. 5, 2021) (explaining that the call stated the recipient could “press 9” to be removed from the calling list, however, despite the consumer “press[ing] 9 many times the previous times they called” the consumer continued to receive message).

¹⁰⁵ *Id.*

¹⁰⁶ 47 CFR § 64.1200(c)(2), (c).

¹⁰⁷ *See supra* note 96.

Enterprise did not respond to the *Notice* with evidence disputing that it called numbers on the National Do Not Call Registry, or that its calls were otherwise permissible under any of the excepted grounds.

D. The Enterprise Violated the TCPA with Intent

30. Both Cox and Jones—who were key participants in the operations of the Enterprise¹⁰⁸—were aware of telemarketing regulations, having been the subjects of robocall enforcement actions concerning similar requirements under the Telemarketing Sales Rule.¹⁰⁹ Cox was the subject of a Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) enforcement action for abusive robocall telemarketing practices.¹¹⁰ In three separate cases, the FTC and the state of Texas sued Jones for making illegal prerecorded message calls to people who were listed on the National Do Not Call Registry and transmitting inaccurate caller ID information.¹¹¹ As a result of the collective lawsuits against them, both Cox and Jones are prohibited from engaging in telemarketing.¹¹² Because of these prior enforcement actions, Cox and Jones had actual knowledge of telemarketing regulations.¹¹³ These facts persuade us that the Enterprise intentionally violated the TCPA. The Enterprise did not respond to the *Notice* with evidence to the contrary.

E. The Enterprise Calls Used Misleading Caller ID

31. The Truth in Caller ID Act prohibits “knowingly transmit[ing] misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.”¹¹⁴ Between January 1 through March 31, 2021, the Enterprise placed more than five billion calls to wireless and residential phones, collectively displaying more than one million telephone numbers that could not easily be linked to the Enterprise, and did so with unlawful intent. The Enterprise did not respond to the *Notice* with evidence to the contrary.

¹⁰⁸ See *supra* para. 20; see also *infra* paras. 50, 52-53.

¹⁰⁹ See *United States v. Cox et al.*, 8:11-cv-01910 (C.D. Cal. 2011); *Federal Trade Comm’n v. Jones et al.*, 8:17-cv-00058 (C.D. Cal. 2017).

¹¹⁰ See *United States v. Cox et al.*, 8:11-cv-01910 (C.D. Cal. 2011); *United States v. Cox et al.*, No. 8:11-cv-01910 (C.D. Cal. 2014).

¹¹¹ See Compl. at 2, *Fed. Trade Comm’n v. Jones, et al.*, No. 8:17-cv-00058 (C.D. Cal. Jan. 11, 2017) ECF No. 1; see also Default Final Order of Permanent Injunction and Monetary Judgment at 8, *Federal Trade Comm’n v. Pointbreak Media, LLC*, 0:18-cv-61017 (S.D. Fla. Apr. 25, 2019) ECF No. 265 (enjoining and restraining Jones from telemarketing after Jones was found to have participated in illegal telemarketing); Stipulated Order for Permanent Injunction and Monetary Judgment at 8-10, *Texas v. Scm Media, Inc. et al.*, No. 1:09-cv-00387 (W.D. Tex. Apr. 6, 2011) ECF No. 83 (ordering Jones to comply with federal and Texas telemarketing statutes and not to initiate calls to consumers who request otherwise).

¹¹² Stipulated Judgement and Order for Permanent Injunction at 4-5, *United States v. Cox et al.*, No. 8:11-cv-01910 (C.D. Cal. Feb. 4, 2013), ECF No. 22; Entry of Default Judgment and Final Order for Permanent Injunction at 4, *Fed. Trade Comm’n v. Jones, et al.*, No. 17-cv-00058 (C.D. Cal. May 31, 2017), ECF No. 88.

¹¹³ The DOJ litigation alleged violations of the section 5(a) of the Federal Trade Commission Act and the FTC’s Telemarketing Sales Rule (TSR), which contain requirements almost identical to those in the TCPA. For example, the TSR prohibits telemarketing calls to anyone listed on the National Do Not Call Registry unless the telemarketer has the express written consent that the called party is willing to receive the calls. 16 CFR § 310.4(b)(1)(v)(A). The TSR requires telemarketers to transmit the telemarketer’s telephone number and other identifying information. *Id.* § 310.4(a)(8). Thus, even if the Enterprise was not aware that the TCPA imposed such restrictions and disclosures, it was aware that making telemarketing calls without prior consent and without disclosing the identity of the caller violated federal law and regulations.

¹¹⁴ 47 U.S.C. § 227(e)(1); see also 47 CFR § 64.1604(a). There are exceptions for investigative, protective, or intelligence activities, but those exceptions do not apply here.

1. The Caller ID Was Misleading

32. It is misleading to use caller ID information in a “manner calculated to obscure [the caller’s] identity, evade detection, and prevent consumers from opting out of future calls.”¹¹⁵ The Enterprise displayed Direct Inward Dial numbers as its caller ID, which was misleading in two ways.

33. First, the Enterprise used area codes that matched the call recipients’ area codes in order to mislead the recipients into believing a local party was trying to contact them.¹¹⁶ The Enterprise, through Geist Telecom LLC (Geist Telecom),¹¹⁷ purchased over one million DID numbers from 297 area codes.¹¹⁸ This allowed the Enterprise to place multiple calls to the same recipient using a different caller ID each time, and thereby evade any block the consumer had set up.¹¹⁹ Consumers reported believing that the calls originated locally because the numbers matched their own telephone area code.¹²⁰ This practice also prevented consumers and regulatory enforcement entities from easily determining the owner of the number or the source of the calls. For these reasons, the Enterprise’s use of DID numbers constituted a display of misleading caller ID.

34. Second, the number displayed did not always permit a consumer to call back. Failing to provide a means to contact the telemarketer using the number displayed in the caller ID constitutes misleading caller ID.¹²¹ Consumers who called the number displayed in the caller ID reported several results, including hearing that the number is no longer in service,¹²² hearing the same pre-recorded message as the consumer had heard during the initial call,¹²³ or reaching a telemarketer who terminated the call when asked to provide identifying information.¹²⁴ Accordingly, the caller ID was misleading because consumers were unable to call back and request to be placed on a do-not-call list.

¹¹⁵ *Affordable Enterprises of Arizona Forfeiture Order*, *supra* note 18, at 12152, para. 25.

¹¹⁶ See G4 Telecom Skype Conversations on file at EB-TCD-21-00031913 (Nov. 2, 2020) (insisting that the acquired numbers “need[] to be in the same area code.”); *see, e.g.*, FCC Complaint #4466838 (Jan. 4, 2021) (“I frequently am bothered by robocalls offering vehicle warranties. They are almost always from the same area code as my cell number, even though I live on the other side of the country.”).

¹¹⁷ See G4 Telecom Skype Conversations on file at EB-TCD-21-00031913 (Dec. 8, 2020).

¹¹⁸ See North Dakota Attorney General Subpoena Response from Mash Telecom on file at EB-TCD-21-00031913 (showing the Enterprise obtained almost 500,000 numbers in November 2020, as well as a substantial volume of numbers a month earlier).

¹¹⁹ See Call Detail Records on file at on file at EB-TCD-21-00031913 (reflecting no number dialed the same consumer twice).

¹²⁰ See, *e.g.*, FCC Complaint #4669075 (Mar. 26, 2021) (“I think I got scammed . . . So I got a call today Friday March 26th, from a local number. . . I just bought a car a month ago, and they offered me a warranty for 100,000 miles.. and I was reluctant at first because of the price, then afterwards she gave me a cheaper price, so I was sold.. my card was charged 150\$ [sic] I didn’t receive a receipt.” (emphasis added)).

¹²¹ See *Affordable Enterprises of Arizona Forfeiture Order*, *supra* note 18, at 12155, para. 33 (finding that even if the caller ID did, in some instances, reflect phone numbers associated with the telemarketer, because the telemarketer “either did not answer those phones or, if it did answer, it did not respond to callers in a meaningful way” – for example, the telemarketer hung up on the caller – the caller ID was misleading).

¹²² See FCC Complaint #4471642 (Jan. 6, 2021) (“looks like a spoofed phone number as the call back number is disconnected or no longer in service, despite calling it back within minutes of receiving the call.”).

¹²³ See { [REDACTED] } Aff. at 1 (consumer reported hearing the same message as the one he heard when the Enterprise picked up); FCC Complaint #4515248 (Jan. 26, 2021) (“They call themselves ‘Dealer Services’ when I press the number to be connected, and when I ask additional questions, they hang up on me.”); OHAG Recording on file at EB-21-00031913 (Mar. 11, 2021).

¹²⁴ See, *e.g.*, FCC Complaint #4470373 (Jan. 6, 2021) (“they continue to harrass [sic] me trying to provoke me into buying a warranty. I talk to a rep and ask them to take me off their list and they hang Up! Then call again tomorrow.

2. The Enterprise Knowingly Used Misleading Caller ID Information

35. *The Enterprise intentionally selected misleading area codes.* The Dialers, located in Panama and Hungary, intentionally selected caller IDs that would appear to originate from the vicinity of the called party in the United States. In November and December 2020, G4 Telecom facilitated the purchase of DID numbers from Blitz Telecom and Teli Communications.¹²⁵ G4 Telecom allowed Virtual Telecom and Mobi Telecom to customize the order by specifying the number of DID numbers and the area codes of the DID numbers to be purchased.¹²⁶ Migdaris Ceden, acting on behalf of Virtual Telecom and Mobi Telecom, executed the sale using funds from Davis Telecom,¹²⁷ then requested that the numbers be assigned to Geist Telecom.¹²⁸

36. After Geist Telecom purchased the numbers, Virtual Telecom dialed consumers using those DID numbers with area codes that were similar to the area codes of the destination numbers.¹²⁹ As a result, approximately 75 percent of caller IDs in related Commission complaints contained area codes that (a) matched the consumer's area code, (b) belonged to area codes adjacent to the consumer's area code, or (c) belonged to an area code in the same state.¹³⁰ The result of selecting caller IDs in this manner is "neighbor spoofing."¹³¹

37. The Enterprise's decision to purchase over one million numbers for the purpose of creating caller IDs that would lead consumers to wrongly believe that they were receiving a local call and then answer the phone, indicates it knowingly used inaccurate caller ID. The Enterprise has offered no evidence to the contrary.

Please help[.]"); FCC Complaint #4475632 (Jan. 8, 2021); FCC Complaint #4475721 (Jan. 8, 2021); *see also* {█} Aff. At 1 (consumer reported hearing the same message as the one he heard when the Enterprise picked up); FCC Complaint #4515248 (Jan. 26, 2021); OHAG Recording on file at EB-21-00031913 (Mar. 11, 2021).

¹²⁵ *See* G4 Telecom Skype Conversations with Mobi Telecom (Nov. 3, 2020) ("G4 Telecom: Just indicate what area codes you want and tell them to get as many as they can. Pick 10 and ask for 20 numbers each. Virtual Telecom: but they already sent the 3xx k DID's. I need to check what they sent already and deduct them. . . . I need to verify what was fulfilled. It's not an easy process. You have the list of what we got already. Correct. Virtual Telecom: some area we need more DID than others.").

¹²⁶ *See id.*

¹²⁷ *See* JP Morgan Chase Bank Records for Davis Telecom on file at EB-TCD-21-00031913 (reflecting payment to G4 Telecom on Nov. 4, 2020 for Teli DIDs in the amount of 13,313.35); *see* JP Morgan Chase Bank Records for Davis Telecom on file at EB-TCD-21-00031913 (reflecting payment to G4 Telecom on Dec. 4, 2020 for Blitz DIDs in the amount of 13,006.40).

¹²⁸ *See* G4 Telecom Skype Conversations with Mobi Telecom on file at EB-TCD-21-00031913 (Dec. 7, 2020) (email from Jason Ritter (Blitz) to Adam Radimiri (Geist Telecom) stating that Blitz will send the MSA for the DIDs and looks forward to working with Geist Telecom).

¹²⁹ *See* G4 Telecom Skype Conversations with Mobi Telecom (Nov. 3, 2020) ("G4 Telecom: Just indicate what area codes you want and tell them to get as many as they can. Pick 10 and ask for 20 numbers each.").

¹³⁰ *See, e.g.,* FCC Complaint #4475448 (Jan. 8, 2021) ("I have been receiving automatic calls about a 'vehicle warranty' from the state I used to live in for many months. I moved from Colorado to Texas in 2015, but have been getting continuously called about a nonexistent vehicle warranty from numbers that are always different.); Call Detail Records on file at EB-TCD-21-00031913 (over 62 percent of calls were to and from the same area codes and an additional over 12 percent of calls were to and from area codes that were contiguous or within the same state); Phone and Area Code Search, www.allareacodes.com.

¹³¹ *See* USTelecom – The Broadband Association, *Numbering Policies for Modern Communications* Comments, WC Docket No. 13-97, at 2 (Oct. 14, 2021) ("Some sophisticated bad actor robocallers already are moving from spoofing fake numbers to using valid numbers in their schemes In addition, with access to local numbers from across the country, they rely on a next-generation version of 'neighbor spoofing,' using those local numbers as the calling number when making calls to the same or neighboring area codes – just using their own allocated or assigned numbers rather than spoofed ones.").

3. The Enterprise Intended to Defraud, Cause Harm, and Wrongfully Obtain Something of Value

a. The Enterprise Intended to Defraud Consumers

38. Fraud requires (a) a false representation; (b) in reference to a material fact; (c) with knowledge of its falsity; and (d) with the intent to deceive.¹³² The factual representation is material if a “reasonable person” would consider the matter to be of importance regarding the transaction.¹³³ “Intent can be inferred from the totality of the circumstances rather than direct evidence.”¹³⁴ The Enterprise’s conduct satisfies each of these elements.

39. The messages to consumers were riddled with materially false statements. The Enterprise attempted to persuade consumers that the caller had an existing relationship with the consumer and a warranty for their vehicle.¹³⁵ The caller did not have an existing relationship with the consumer or a warranty covering the consumer’s car.¹³⁶ The Enterprise tried to create a false sense of urgency by claiming the consumer had missed previous attempts to be contacted and that the consumer’s “file” would be closed imminently if they did not act.¹³⁷ There was no “file” associated with a pre-existing warranty.¹³⁸ The Enterprise claimed to offer means by which to extend an existing warranty.¹³⁹ Ultimately, however, the consumer could only purchase a new vehicle service contract.¹⁴⁰ These falsehoods would have convinced many consumers to continue to engage with the Enterprise under the false belief that they were renewing or extending a warranty, making them material.¹⁴¹

40. The Enterprise delivered the messages to consumers with full knowledge of the falsehoods contained therein in order to deceive consumers. The lead generation contracts between the Clients and the Enterprise do not reflect that the Clients had a preexisting relationship with consumers.¹⁴²

¹³² *Pence*, *supra* note 29, 316 U.S. at 338. Common law fraud requires a fifth element, action taken in reliance on the misrepresentation. *Id.* This element is inapplicable because the Truth in Caller ID Act only demands a showing of intent to defraud, not that the attempt was successful. 47 U.S.C. § 227(e); *see also Rising Eagle Forfeiture Order*, *supra* note 24, at 6234, para. 20.

¹³³ *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1122 (D.C. Cir. 2009).

¹³⁴ *See Rising Eagle Forfeiture Order*, *supra* note 24, at 6235, para. 20 (citing *United States v. Alston*, 609 F.2d 531, 538 (D.C. Cir. 1979), cert. denied, 445 U.S. 918 (1980)).

¹³⁵ *See* ITG Subpoena Response, *supra* note 34.

¹³⁶ *See, e.g.*, FCC Complaint #4469369 on file at EB-TCD-21-00031913 (Jan 5, 2021) (“... This is NOT the dealer, and our warranty is not passed factory, and we have not received any mail.”).

¹³⁷ *See* ITG Subpoena Response, *supra* note 34.

¹³⁸ *See, e.g.*, FCC Complaint #4469369 on file at EB-TCD-21-00031913 (Jan 5, 2021) (“... This is NOT the dealer, and our warranty is not passed factory, and we have not received any mail.”).

¹³⁹ *See* ITG Subpoena Response, *supra* note 34.

¹⁴⁰ *See, e.g.*, { [REDACTED] } Aff. at 1 and accompanying FCC Complaint #4547338 (Feb. 9, 2021) (all of the foregoing on file at EB-TCD-21-00031913).

¹⁴¹ *See, e.g.*, FCC Complaint #4669075 (Mar. 26, 2021) (“I think I got scammed...So I got a call today Friday March 26th, from a local number... I just bought a car a month ago, and they offered me a warranty for 100,000 miles.. and I was reluctant at first because of the price, then afterwards she gave me a cheaper price, so I was sold.. my card was charged 150\$ [sic] I didn’t receive a receipt.”).

¹⁴² *See* Vendor Services Agreement, Affordable Automotive Solutions-Tech Direct (Jan. 1, 2020) on file at EB-TCD-21-00031913 (Vendor Services Agreement Tech Direct); Vendor Services Agreement, Affordable Automotive Solutions-Virtual Telecom on file at EB-TCD-21-00031913 (Jan. 1, 2020) (Vendor Services Agreement Virtual Telecom); Vendor Services Agreement, Affordable Automotive Services-Davis Telecom on file at EB-TCD-21-00031913 (Oct. 19, 2020) (Vendor Services Agreement Davis Telecom).

Nor do the contracts reflect that the Clients had “files” on each consumer that would close imminently.¹⁴³ Nor do the contracts reflect that the Clients could extend a consumer’s existing warranty.¹⁴⁴ The false statements in the messages to the contrary were intentionally made to trick consumers into becoming “leads” for the Clients.¹⁴⁵ The Enterprise’s use of neighbor spoofing further suggests an intent to deceive the called parties.¹⁴⁶

b. The Enterprise Intended to Cause Harm to Consumers, the General Public, and Service Providers

41. “Harm” encompasses “financial, physical, and emotional harm.”¹⁴⁷ Actual harm is not required to prove intent to harm.¹⁴⁸ We find that the Enterprise intended to cause harm to: (1) consumers (emotionally), (2) the general public (physically), and (3) voice service providers (financially).

42. *The Enterprise intended to cause emotional harm to consumers.* The Enterprise called consumers incessantly—over five billion times in three months.¹⁴⁹ Both Congress and the Commission have long recognized that the placement of illegal robocalls causes consumers significant harm, including that such calls are a nuisance and invasion of privacy.¹⁵⁰ Consumers could not avoid the harmful calls because the Enterprise used misleading caller ID and did not allow consumers to opt out of the calls.¹⁵¹ Consumers could not easily use a third-party blocking service, because the Enterprise used an ever-

¹⁴³ See Vendor Services Agreement Tech Direct; Vendor Services Agreement Virtual Telecom; Vendor Services Agreement Davis Telecom.

¹⁴⁴ See Vendor Services Agreement Tech Direct; Vendor Services Agreement Virtual Telecom; Vendor Services Agreement Davis Telecom.

¹⁴⁵ See, e.g., FCC Complaint #4547338 (Feb. 9, 2021) (consumer spoke with Omega Auto Care sales agents, appeared to be interested in the product, and obtained copies of contracts and the name of the obligor on the contract, Palmer Administrative Services); see also FCC Complaint #4669075 (Mar. 26, 2021) (“I think I got scammed... So I got a call today Friday March 26th, from a local number... I just bought a car a month ago, and they offered me a warranty for 100,000 miles.. and I was reluctant at first because of the price, then afterwards she gave me a cheaper price, so I was sold.. my card was charged 150\$ [sic] I didn’t receive a receipt.”).

¹⁴⁶ See *Rising Eagle Forfeiture Order*, *supra* note 24, at 6235, para. 20; *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4668, para. 15 (2017) (*Abramovich Forfeiture Order*); see also *United States v. Rogers*, 321 F.3d 1226, 1230 (9th Cir. 2003) (“It is settled law that intent to defraud may be established by circumstantial evidence.”).

¹⁴⁷ See *Truth in Caller ID Order*, *supra* note 25, at 9122, para. 22.

¹⁴⁸ See *Rising Eagle Forfeiture Order*, *supra* note 24, at 6242, para. 35.

¹⁴⁹ See Call Detail Records on file at EB-TCD-21-00031913.

¹⁵⁰ See S. Rep. No. 102-178, at 2 (1991); Pub. L. No. 102-243, § 2(10), 105 Stat. 2394, 2394 (1991); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752, 8753, para. 2 (1992); see also *Roesel Forfeiture Order*, *supra* note 28, at 9218, para. 40; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012) (recognizing Congress’s finding that robocalls are an invasion of privacy); *Frisby v. Schultz*, 487 U.S. 474, 484 (1988); *Van Patten v. Vertical Fitness Enter., LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017); *LaVigne v. First Cmty. Bancshares, Inc.*, 215 F. Supp. 3d 1138, 1146-47 (D.N.M. 2016).

¹⁵¹ See FCC Complaint #4475660 (Jan. 8, 2021) (“I keep receiving calls from Auto Warranty services from [REDACTED] [REDACTED]}. I have contacted them multiple times and asked to stop being called, and have supposedly opted out in their system, but I keep receiving their calls. I have even blocked many of the calling numbers that they use, but they keep calling. I want them to stop calling me.”); FCC Complaint #4475510 (Jan. 8, 2021) (all of the foregoing on file at EB-TCD-21-00031913).

shifting supply of phone numbers as caller ID.¹⁵² It was substantially certain that transmitting inaccurate caller ID information for the volume of calls at issue here would cause harm.

43. *The Enterprise intended to cause physical harm to the public.* The transmission of inaccurate caller ID information also posed a threat to public safety by disturbing healthcare workers and hospitals.¹⁵³ For example, the Bureau received a complaint from a surgeon who received an auto warranty robocall on his hospital-issued phone during a procedure.¹⁵⁴ The calls used the area code and central office code of the hospital's emergency room which caused him to interrupt the procedure to answer the call.¹⁵⁵ It cannot be disputed that placing harassing phone calls to medical providers while they are providing medical services is substantially certain to endanger those receiving medical care.

44. *The Enterprise intended to cause financial harm to voice service providers.* Large-scale illegal robocalling campaigns harm the service providers that have to transmit the calls by placing undue burdens on network and financial resources.¹⁵⁶ A large volume of calls, such as what the Dialers generated, can overwhelm a network's capacity, and using misleading or inaccurate caller ID makes it harder for carriers to detect those calls and take remedial action.¹⁵⁷

45. Additionally, the Enterprise caused harm by depleting the supply of available DID numbers for service providers and legitimate businesses trying to obtain them. The Enterprise rendered the purchased numbers toxic by associating them with illegal robocalling.¹⁵⁸ Once a phone number has been tainted by association with a robocall campaign, it can have a long lasting, negative impact on that number.¹⁵⁹ Number scarcity forces legitimate businesses to scour the market for available telephone numbers.¹⁶⁰ The Enterprise repeatedly ordered large quantities of DID numbers, which providers

¹⁵² See, e.g., FCC Complaint #4475492 (Jan. 8, 2021) ("I have been receiving many calls over the past few months regarding a 'vehicle warranty renewal'. I have been blocking the numbers, but the automated calls change the source number often."); FCC Complaint #4483308 (Jan. 12, 2021); FCC Complaint #4466560 (Jan. 4, 2021).

¹⁵³ See FCC Complaint #4680700 (Mar. 31, 2021) (all of the foregoing on file at EB-TCD-21-00031913).

¹⁵⁴ See {[REDACTED]} Aff. at 1 on file at EB-TCD-21-00031913.

¹⁵⁵ *Id.*

¹⁵⁶ See *Abramovich Forfeiture Order*, *supra* note 146, at 4668, para. 17.

¹⁵⁷ See *id.* at 4671, para. 27.

¹⁵⁸ See, e.g., FCC Complaint #4475660 (Jan. 8, 2021) ("I keep receiving calls from Auto Warranty services from {[REDACTED]}. I have contacted them multiple times and asked to stop being called, and have supposedly opted out in their system, but I keep receiving their calls. I have even blocked many of the calling numbers that they use, but they keep calling. I want them to stop calling me."); FCC Complaint #4475510 (Jan. 8, 2021) ("I have had dozens of calls from various numbers for auto warranty renewal. I have blocked the number, tried to opt out and nothing changes. I have also talked to a person who just hangs up on me.").

¹⁵⁹ See *Scott Rhodes A.K.A. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek*, Forfeiture Order, 36 FCC Rcd 705, 723, para. 44 (2021) ("[S]poofing can cause caller identification services to flag the number as untrustworthy. Any service provider that allocates the previously unassigned phone number to a subscriber in the future risks saddling that subscriber with a toxic phone number.").

¹⁶⁰ See *Numbering Resource Optimization*, CC Docket Nos. 99-200 and 92-237, Order, 33 FCC Rcd 6866, 6866, para. 1 (2018) ("Telephone numbers are a valuable resource for the American public, and the effective, efficient management of this resource is essential to facilitating communications and maintaining a modern telecommunications network."); see also Wireline Competition Bureau, *Numbering Resources*, <https://www.fcc.gov/general/numbering-resources> (last visited June 16, 2023) ("[objectives of the Bureau include] [e]xtending the life of the 10-digit number system, known as the North American Numbering Plan" and "preventing premature exhaustion of numbers.").

struggled to fulfill.¹⁶¹ Because of the negative impact on telephone networks and numbering resources, we find that the Enterprise intended to harm service providers financially.

c. The Enterprise Intended to Wrongfully Obtain Something of Value

46. The Enterprise intended to make a large number of spoofed phone calls to wrongfully obtain something of value in the form of (1) money and (2) evasion of liability. The Enterprise received compensation for generating sales leads for the Clients and dispersed it among the Entities.¹⁶² Because the calls were made pursuant to an unlawful robocalling scheme, we find that the Enterprise knowingly used misleading caller ID to wrongfully obtain financial compensation.

47. The Enterprise was also able to evade accountability for the illegal robocalls—temporarily—by using misleading and inaccurate caller ID. Evading, or at least delaying, liability constitutes a thing of value.¹⁶³ In this case, an attempt to evade TCPA liability and an avoidance of culpability has a specific, ascertainable dollar value—namely, up to \$22,021 per unlawful robocall in a forfeiture action brought by the FCC for violation of section 227(b) of the Communications Act of 1934, as amended (the Act).¹⁶⁴ Additionally, in a private action, the potential liability is up to \$1,500 per illegal robocall.¹⁶⁵ Thus, the Enterprise used misleading caller ID to wrongfully obtain things of value.

IV. ENTERPRISE LIABILITY

A. Each Entity Is Liable Under the Enterprise Liability Doctrine

48. The Entities are jointly and severally liable under the enterprise liability doctrine. In cases where the enforcement action is targeted at conduct which is orchestrated by a common enterprise, each corporate entity within that enterprise may be held liable for the actions of the enterprise.¹⁶⁶ “Where the statutory purpose could . . . be easily frustrated through the use of separate entities,” the enterprise liability doctrine allows the Commission “to look through the corporate form and treat the separate entities as one and the same for the purposes of regulation.”¹⁶⁷ The Commission has applied the

¹⁶¹ See G4 Telecom Skype Conversations (Nov. 2, 2020) (“G4 Telecom: it does take a bit [to complete the order for DIDs] because of quantity and having to use bulk processing procedure.”); see also *id.* (G4 Telecom: “why is traffic so low?” Mobi Telecom: “DID’s. Trying not to burn. The DID’s [sic].” G4 Telecom: “Ok. I’ll get the rest np.”).

¹⁶² See, e.g., Bank of America Account Statement for Posting Express on file at EB-TCD-21-00031913 (June 8, 2021) (showing payments from Clients to Posting Express); Vendor Services Agreement, Affordable Automotive Services-Davis Telecom (Oct. 19, 2020) (all of the foregoing on file EB-TCD-21-00031913).

¹⁶³ See *Rising Eagle Forfeiture Order*, *supra* note 24, at 6243, para. 38 (“The Commission has recognized that ‘[a]voidance of culpability is a benefit that qualifies as a thing of value.’”); see also *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, Notice of Apparent Liability, 32 FCC Rcd 6403 at 6413, para. 27 (2017); *Roesel Forfeiture Order*, *supra* note 28, at 9212, para. 22.

¹⁶⁴ See 47 CFR § 1.80(b)(9); see also *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 22-1356 (EB Dec. 23, 2022).

¹⁶⁵ See 47 U.S.C. § 227(b)(3).

¹⁶⁶ See *Gen. Tel. Co. of the S.W. v. United States*, 449 F.2d 846, 855 (5th Cir. 1971); see also *Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 737-39 (D.C. Cir. 1974) (Commission correctly treated individual and company he controlled as the same entity); *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973); *Delaware Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2d Cir. 1964); *F.T.C. v. PayDay Financial LLC*, 989 F. Supp. 2d 799, 809 (D.S.D. 2013).

¹⁶⁷ *Improving Public Safety Communications in the 800 MHz Band*, Declaratory Ruling, 25 FCC Rcd 13874, 13887-888, para. 33 (2010) (*Improving Public Safety Declaratory Ruling*).

enterprise liability doctrine in other enforcement actions where parties engaged in illegal conduct as a common enterprise.¹⁶⁸ In such cases each party may be held liable for the actions of the enterprise.¹⁶⁹

49. We find that the enterprise liability analysis set forth in the *Notice* was correct and therefore find the Entities jointly and severally liable under that doctrine.¹⁷⁰ Among other things, as stated in the *Notice*, the Commission notes the existence of the following factors support the conclusion that parties are acting jointly and should be held liable under the enterprise liability doctrine: (1) members of the alleged enterprise acted for or on behalf of one another in furtherance of a common regulatory or business goal; (2) different members held different assets and provided different services necessary to or helpful in achieving the unified goal; (3) the parent company directed or coordinated the interrelationship between or the operation of the subsidiaries to facilitate the unified regulatory or business goal; and (4) the Entities presented themselves to the Commission and the public as a unified entity.¹⁷¹

50. *Members working towards a common goal.* The Enterprise's common goal was to generate leads for the Clients and make money. The Participants acted as signatories for the Tech Direct, Davis Telecom, Sumco Panama USA, and Virtual Telecom, Inc. accounts with U.S. banks¹⁷² and made payments to service providers on behalf of Sumco Panama, Virtual Telecom, and Mobi Telecom.¹⁷³ Cox also made payments to service providers from his personal account on behalf of Sumco Panama.¹⁷⁴ Migdaris Cedenro transferred funds to U.S. banks¹⁷⁵ and authorized cryptocurrency payments to some providers on behalf of Sumco Panama.¹⁷⁶

¹⁶⁸ See *Thomas Dorsher; ChariTel Inc; OnTel Inc; and ScammerBlaster Inc.*, Notice of Apparent Liability, FCC 22-57, 2022 WL 2805894, *15-16, para. 33; *Rising Eagle Forfeiture Order*, *supra* note 24, at 6254, para. 55; see also *Improving Public Safety Declaratory Ruling*, 25 FCC Rcd at 13889, para. 34.

¹⁶⁹ See *Gen. Tel. Co. of the S.W. v. United States*, 449 F.2d 846, 855 (5th Cir. 1971); see also *Capital Tel. Co., Inc. v. Fed. Comm'n Comm'n*, 498 F.2d 734, 737-39 (D.C. Cir. 1974) (Commission correctly treated individual and company he controlled as the same entity and granted only one license).

¹⁷⁰ See *Notice*, *supra* note 1, at *36-41, paras. 82-96.

¹⁷¹ *Improving Public Safety Declaratory Ruling*, 25 FCC Rcd at 13887-90, paras. 33-36.

¹⁷² See Wells Fargo Subpoena Response, Virtual Telecom Business Application (May 25, 2019) (showing Bridge and Cox as signatories); see also Wells Fargo Subpoena Response, Virtual Telecom Business Account Application (Jan. 31, 2017) (showing Bridge and Cox as signatories); Wells Fargo Subpoena Response, Addendum to Certificate of Authority (May 25, 2019) (showing Bridge and Cox as signatories); see also Wells Fargo Subpoena Response, Tech Direct Business Account Application (Mar. 26, 2019) (showing Batista as signatory); see also JP Morgan Chase Subpoena Response (Mar. 15, 2019) (reflecting Batista opened a Business Signature Card for Tech Direct as a "member" and provided her personal email address) (all of the foregoing on file at EB-TCD-21-00031913).

¹⁷³ See, e.g., G4 Telecom conversations (Feb. 15, 2021) (showing payment from Julie Bridge on behalf of Virtual Telecom to G4 Telecom for \$30,000); see Email from [REDACTED] to [REDACTED] (Apr. 27, 2020) (thanking Sumco Panama SA for \$3,000 payment); Wells Fargo Simple Business Checking, Tech Direct (Apr. 27, 2020) (payment to Talkie Communications in the amount of \$3,000); Email from [REDACTED] to [REDACTED] (May 8, 2020) (thanking Sumco for \$14,000 payment); Wells Fargo Simple Business Checking, Tech Direct (May 8, 2020) (showing a payment to Talkie Communications in the amount of \$14,000); Wells Fargo Simple Business Checking, Tech Direct (July 3, 2020) (showing a payment to Talkie Communications in the amount of \$7,000); Email from [REDACTED] to [REDACTED] (July 3, 2020) (thanking Mobi Telecom LLC for a payment in the amount of \$7,000) (all of the foregoing on file at EB-TCD-21-00031913).

¹⁷⁴ See Vultr Subpoena Response on file at EB-TCD-21-00031913 (Apr. 3, 2021) (showing payments to the Sumco Panama account from Cox via PayPal and using his Citibank Mastercard on Feb. 20, 2020).

¹⁷⁵ See, e.g., Wells Fargo Subpoena Response on file at EB-TCD-21-00031913 (Apr. 13, 2021) (showing a transfer between a Sumco Panama SA account at a Panamanian bank to Sumco Panama USA's Wells Fargo account).

¹⁷⁶ See Vultr Subpoena Response on file at EB-TCD-21-00031913 (Apr. 3, 2021) (showing nearly all payments made to the Sumco Panama account were in bitcoin).

51. *Members provided different services to advance the common goal.* Davis Telecom, Virtual Telecom, and Tech Direct contracted with Clients.¹⁷⁷ The Dialers initiated the illegal calls through their call centers.¹⁷⁸ Geist Telecom obtained DID numbers for the Dialers.¹⁷⁹ Virtual Telecom and Tech Direct paid invoices from service providers used to make the calls.¹⁸⁰ Tech Direct made payments to Posting Express to pay invoices from the software company that provided software to enable the calls.¹⁸¹

52. Tech Direct funded the Enterprise's use of an interactive voice software,¹⁸² which customers heard when returning the calls.¹⁸³ Jones directed Vocinity, Inc. to develop the software.¹⁸⁴ The software included a prerecorded message similar to the one that the consumers initially heard and asked preliminary screening questions.¹⁸⁵

53. *Cox facilitated the relationships among the Entities.* Cox met Szuromi in 2008 after she responded to an ad he placed on Craigslist seeking a bilingual liaison to work with employees at an emergency notification call center in Argentina.¹⁸⁶ Cox met Migdaris Ceden¹⁸⁷ at a social event in Panama City around 2019.¹⁸⁸ Cox met Migdaris Ceden¹⁸⁹ the following evening for dinner and wine.¹⁸⁹

¹⁷⁷ See Vendor Services Agreement, Affordable Automotive Solutions-Tech Direct (Jan. 1, 2020); see also Vendor Services Agreement, Affordable Automotive Solutions-Virtual Telecom (Jan. 1, 2020) (Virtual Telecom signed a one-year contract to provide "billable leads" and also signed a 2018 contract with A&E Services to generate sales leads); see also Vendor Services Agreement, Affordable Automotive Services-Davis Telecom on file at EB-TCD-21-00031913 (Oct. 19, 2020) (Davis Telecom Inc. contracted with a Florida-based company, Affordable Automotive Solutions, to generate "vehicle service coverage calls" in which a call with an interested call recipient ("Billable Lead") lasts past the buffer time) (all of the foregoing on file at EB-TCD-21-00031913).

¹⁷⁸ See ITG Subpoena Response on file at EB-TCD-21-00031913 (Nov. 23, 2021).

¹⁷⁹ See G4 Telecom Skype Conversations with Mobi Telecom on file at EB-TCD-21-00031913 (Dec. 7, 2020) (email from Jason Ritter (Blitz) to Adam Radimiri (Geist Telecom) stating that Blitz will send the MSA for the DIDs and looks forward to working with Geist Telecom).

¹⁸⁰ See JP Morgan Chase Subpoena Response (Davis Telecom bank statements from January 2021 showing withdrawals to providers G4 Telecom, Great Choice Telecom, Avid Telecom, Talkie Communications, Sumco Panama, and Virtual Telecom.); see also G4 Telecom Subpoena Response (showing a payment on Feb. 16, 2021 from Julie Bridge on behalf of the Virtual Telecom bank account in the amount of \$30,000; see also G4 Telecom Subpoena Response (showing a payment on Aug. 8, 2020 from June Batista on behalf of the Tech Direct bank account in the amount of \$6,000) (all of the foregoing on file at EB-TCD-21-00031913).

¹⁸¹ See Bank of America Records for Posting Express on file at EB-TCD-21-00031913 (June 8, 2021).

¹⁸² { [REDACTED] } Declaration, *supra* note 68, at 1 on file at EB-TCD-21-00031913 (July 2, 2021) (stating the payments from Tech Direct paid balances of an account owned by Mike Jones, who purchased the "bot" and invested in Vocinity); see also, e.g., Wells Fargo Wire Full Transaction Report, Tech Direct (Mar. 31, 2020) (showing a payment in the amount of \$5,261.89 to Vocinity Inc).

¹⁸³ See Affidavit of { [REDACTED] } at 1; see also Call Detail Records on file at EB-TCD-21-00031913 (showing Sumco Panama routed some of its incoming calls to Jones's software). Vultr is an online cloud hosting service. The IP address associated with Jones's software belonged to Sumco Panama's Vultr account.

¹⁸⁴ { [REDACTED] } Declaration, *supra* note 68, at 1 on file at EB-TCD-21-00031913 (July 2, 2021) ("[Mike Jones] wanted Vocinity, Inc. to develop a voice-prompted bot to answer inbound calls without the use of a live operator, prescreen callers regarding their interest in a vehicle warranty and then transfer interested callers to a live operator.").

¹⁸⁵ *Id.*

¹⁸⁶ Cox Dep., *supra* note 78, at 49.

¹⁸⁷ *Id.* at 55.

¹⁸⁸ *Id.* at 55-56.

¹⁸⁹ *Id.* at 58.

Following their dinner, he provided Migdaris Cedenó's contact information to Szuromi, who contacted her¹⁹⁰ and the two began working together.¹⁹¹ Szuromi and Migdaris Cedenó formed Sumco Panama together.¹⁹² In 2017, Cox sold his interest in Virtual Telecom to Szuromi and Horvath.¹⁹³ Szuromi and Horvath later partnered with Migdaris Cedenó.¹⁹⁴ Thus, Cox was the nexus between many of the individuals and Dialers and facilitated relationships between the Entities.

54. The Entities had common officers or employees who controlled the companies.¹⁹⁵ Migdaris Cedenó is a manager whose name is on the account for Sumco Panama's server.¹⁹⁶ She also manages daily calling operations¹⁹⁷ and the Skype account shared by Mobi Telecom and Virtual Telecom used to interact with providers.¹⁹⁸ Similarly, Szuromi is listed as an owner of Sumco Panama's server account, the President of Davis Telecom,¹⁹⁹ and the Director and Secretary of Sumco Panama SA.²⁰⁰ Alejandra Gonzalez is the President of Tech Direct²⁰¹ and uses a Virtual Telecom email address in that capacity.²⁰²

55. *The Entities present as one entity.* The Dialers, Sumco Panama, Virtual Telecom, Fugle Telecom, and Mobi Telecom, presented themselves as the same entity to voice service providers and the ITG.²⁰³ Migdaris Cedenó's Skype account was named Migdaris Virtual Telecom.²⁰⁴ This account corresponded with G4 Telecom and facilitated the purchase of services needed to support the call

¹⁹⁰ *Id.* at 58.

¹⁹¹ *Id.* at 58.

¹⁹² *Id.* at 69; *see also* Sumco Panama S.A., Anonymous Society, Registration, Public Registry of Panama (Dec. 5, 2019).

¹⁹³ Cox Dep., *supra* note 78, at 68 (stating that he sold his 90 percent interest in the company to Szuromi and Horvath for \$1.00).

¹⁹⁴ *See* Bridge Resp, *supra* note 79, at 2.

¹⁹⁵ *E.g., compare* Davis Telecom, Profit Corporation Articles of Dissolution by Incorporators or Initial Directors, Wyoming Secretary of State (Apr. 9, 2021) *with* Sumco Panama S.A., Anonymous Society, Registration, Public Registry of Panama (Dec. 5, 2019) (showing Szuromi as an officer or president within both Entities) (all of the foregoing on file at EB-TCD-21-00031913).

¹⁹⁶ *See* Vultr Subpoena Response on file at EB-TCD-21-00031913 (Apr. 3, 2021).

¹⁹⁷ *See* E-mail from {[REDACTED]} to Vultr customer service representative on file at EB-TCD-21-00031913 (Feb. 27, 2021).

¹⁹⁸ *See* G4 Telecom Skype Conversation on file at EB-TCD-21-00031913.

¹⁹⁹ *See* Davis Telecom, Profit Corporation Articles of Dissolution by Incorporators or Initial Directors, Wyoming Secretary of State on file at EB-TCD-21-00031913 (Apr. 9, 2021).

²⁰⁰ *See* Sumco Panama SA, Anonymous Society, Registration, Public Registry of Panama on file at EB-TCD-21-00031913 (Dec. 5, 2019).

²⁰¹ *See* Vendor Services Agreement, Affordable Automotive Solutions-Tech Direct on file at EB-TCD-21-00031913 (Jan. 1, 2020).

²⁰² *Id.*

²⁰³ *See* G4 Telecom Skype Conversation on file at EB-TCD-21-00031913 (Dec. 3, 2020) (The "Migdaris Virtual Telecom 15K Ports" account provided opt-in information in response to a traceback for Mobi Telecom and provided contact information for Mobi Telecom to the ITG).

²⁰⁴ *See* G4 Telecom Conversations on file at EB-TCD-21-00031913.

centers.²⁰⁵ This account also executed transactions on behalf of Mobi Telecom.²⁰⁶ Additionally, the Enterprise's account with Talkie Communications used the names of multiple Entities.²⁰⁷ The account was named "Davis," then "virtual Sumco," then "Mobi Telecom" in 2020.²⁰⁸ An individual who opened a credit card on behalf of Fugle Telecom listed email addresses associated with Geist Telecom and Mobi Telecom on the account; the same account was also used in late 2020 and early 2021 to pay legal fees associated with the preparation of Fugle Telecom's FCC 499 Form.²⁰⁹ Fugle Telecom began generating calls once the other Dialers began winding down operations in early 2021.²¹⁰ The fact that the Enterprise used names of the Entities interchangeably demonstrates that it presented itself as a cohesive singular enterprise.

56. The evidence shows that the Enterprise acted as a singular entity with a unified business goal. Thus, each Entity should be held liable for the illegal robocalls under the enterprise liability doctrine.

V. FORFEITURE

57. In the *Notice* we proposed a forfeiture in the amount of \$299,997,000. We calculated the proposed forfeiture by assessing a base forfeiture of \$4,500 per each of the 33,333 unlawful robocalls that we verified were made without prior express written consent, and without the requisite disclosures, in violation of the TCPA. Additional factors also warranted an upward adjustment. Many of the verified calls were made in violation of the National Do Not Call Registry requirements.²¹¹ We also find that the Enterprise egregiously violated the Truth in Caller ID Act, warranting an upward adjustment of 100 percent. Our base forfeiture for the 33,333 verified calls is \$149,998,500. The 100 percent upward adjustment to the base penalty yields a total forfeiture amount of \$299,997,000. The Enterprise did not challenge the forfeiture proposed in the NAL. We affirm the amount of the forfeiture and hold the parties jointly and severally liable for the sum.

VI. ORDERING CLAUSES

58. 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, Sumco Panama SA, Sumco Panama USA, Virtual Telecom kft, Virtual Telecom Inc., Davis Telecom Inc., Geist Telecom LLC, Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, and Posting Express Inc. are **JOINTLY AND SEVERALLY LIABLE FOR A MONETARY FORFEITURE** in the amount of two hundred ninety-

²⁰⁵ *Id.*

²⁰⁶ *Id.* (Jan. 8, 2021) (showing the name, account balance, and number of transactions for Mobi Telecom in the Migdaris Virtual Telecom Skype chat).

²⁰⁷ Talkie Communications Invoice to Mobi Telecom and Sumco Panama SA-USA on file on file at EB-TCD-21-00031913 (June 22, 2020); *see also* Wells Fargo Bank Records for Virtual Telecom (showing that payment from Virtual Telecom to Talkie Communications) (all of the foregoing on file at EB-TCD-21-00031913).

²⁰⁸ *See* Email from { } to { } on file at EB-TCD-21-00031913 (June 3, 2019); Email from { } to { } on file at EB-TCD-21-00031913 (Apr. 27, 2020); Email from { } to { } on file at EB-TCD-21-00031913 (Nov. 4, 2020).

²⁰⁹ *See* PayPal Account Information for { } (showing cc statement name "Fugle Telecom" along with three email addresses: fugletelecom@protonmail.com, info@geisttelecom.net, and mobitelecom@protonmail.com); PayPal Transaction Log (showing payments on August 12, 2020, October 17, 2020, December 8, 2020, and February 8, 2021 to a telecommunications law firm for FCC 499 registration and filing preparation).

²¹⁰ *See* Affidavit of { } Director, Policy & ITG Traceback, USTelecom – The Broadband Association on file at EB-TCD-21-00031913 (Feb. 11, 2022). Fugle Telecom first appeared in tracebacks for auto warranty robocalls on April 26, 2021. *Id.*

²¹¹ *See supra* para. 29.

nine million nine hundred ninety-seven thousand dollars (\$299,997,000) for willful and repeated violations of section 227(b) of the Act, 47 U.S.C. 227(b), and sections 64.1200(a)(2) and 64.1200(a)(3) of the Commission's rules, 47 CFR § 64.1200(a)(2)-(3), with an upward adjustment for violations of section 227(e) of the Act, 47 U.S.C. § 227(e), and section 64.1604(a) of the Commission's rules, 47 CFR § 64.1604(a).

59. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days after the release of this Forfeiture Order. Sumco Panama SA, Sumco Panama USA, Virtual Telecom kft, Virtual Telecom Inc., Davis Telecom Inc., Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, Geist Telecom LLC, and Posting Express Inc. shall send electronic notification of payment to Lisa Ford, Enforcement Bureau, Federal Communications Commission, at Lisa.Ford@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act 47 U.S.C. § 504(a).

60. In order for Sumco Panama SA, Sumco Panama USA, Virtual Telecom kft, Virtual Telecom Inc., Davis Telecom Inc., Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, Geist Telecom LLC, and Posting Express Inc. to pay the forfeiture, Sumco Panama SA, Sumco Panama USA, Virtual Telecom kft, Virtual Telecom Inc., Davis Telecom Inc., Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, Geist Telecom LLC, and Posting Express Inc. shall notify Lisa Ford at Lisa.Ford@fcc.gov of their intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://fcc.gov/core/userLogin.do>. Payment of the forfeiture must be made by credit card using the Commission's Registration System (CORES) at <https://fcc.gov/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:²¹²

- 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 159²¹³ or printed CORES form²¹⁴ 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.²¹⁵ 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://fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No.

²¹² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #1).

²¹³ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

²¹⁴ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://fcc.gov/core/userLogin.do>.

²¹⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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

61. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.²¹⁶ 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.

62. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to: Virtual Telecom kft, Sumco Panama SA, Virtual Telecom Inc., and Davis Telecom Inc. at {{[REDACTED]}}; Sumco Panama USA and Mobi Telecom LLC, c/o Cloud Peak Law Group, {{[REDACTED]}}; Geist Telecom LLC and Fugle Telecom LLC at Cloud Peak Law Group, {{[REDACTED]}}; Tech Direct LLC at {{[REDACTED]}}; and Posting Express Inc. c/o United States Corporation Agents Inc., {{[REDACTED]}}.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²¹⁶ See 47 CFR § 1.1914.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Sumco Panama SA, Sumco Panama USA, Virtual Telecom kft, Virtual Telecom Inc., Davis Telecom Inc., Geist Telecom LLC, Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, and Posting Express Inc.*, File No.: EB-TCD-21-00031913, Forfeiture Order (August 3, 2023)

Not that long ago you may have received a call from someone desperately trying to reach you about extending your auto warranty. I know I did. At one point, it seemed like these calls were everywhere. They were more than just a nuisance. That's because this scheme flooding our lines marketing fake car warranties was part of a scam to gain access to our personal and financial information.

So the Federal Communications Commission kicked into high gear. We worked to identify who was sending these junk calls—more than five billion of them!—and then armed with the facts gave phone companies permission to cut off this traffic before going one step further and directing them to block it outright. We got results. Following our action, the number of auto warranty calls fell by 99 percent.

We were able to stop these illegal robocalls because we had a terrific colleague working alongside us—the Ohio Attorney General's Office. The Forfeiture Order we adopt here is a testament to our joint efforts. At nearly \$300 million, it is also the largest fine in FCC history.

But the Ohio Attorney General is not the only authority we are working with to address fraudulent robocalls. We now have signed agreements to work with Attorneys General in 46 states because today we welcome our two newest signatories, Hawaii and New Mexico. These partnerships matter. There are many more scammers out there; we know there is more work to do. But we also know that combining our understanding of networks with state experts in fraud can yield results. Today's action is proof.

What happens next? Under the law we will refer this Forfeiture Order to the Department of Justice to collect payment. I hope, however, that Congress will consider giving the FCC authority to go to court and collect these fines ourselves. In the meantime, we will keep using the tools we have to hold those behind fraudulent calling schemes accountable. In fact, just this week the Enforcement Bureau identified another source of illegal robocalls and we have put all phone companies on notice they can block these calls. We know the scam artists behind these calls are relentless—but we are coming for them and won't stop until we get this junk off the line.

Thank you to the Robocall Response Team for this order, including Caitlin Barbas, Jessica Manuel, Daniel Stepanicich, Jane van Benten, Kristi Thompson, Victoria Randazzo, Rakesh Patel, and Loyaan Egal from the Enforcement Bureau; Elizabeth Drogula, Zachary Ross, Hayley Steffen, Callie Coker, and Edward Krachmer from the Wireline Competition Bureau; Kristi Thornton from the Consumer and Governmental Affairs Bureau; Ed Cureg, Alex Simmons, and Ramesh Vishnubhotla from the Office of Economics and Analytics; and Valerie Hill, Richard Mallen, Wisam Naoum, and Chin Yoo from the Office of General Counsel.