

**Volume 38, No. 9, Pages 7262 to 8264,
August 10 – September 10, 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. 9, Pages 7262 to 8264, August 10 – September 10, 2023



FEDERAL COMMUNICATIONS COMMISSION

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PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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DA 23-661

Released: August 11, 2023

FCC TO ACCEPT APPLICATIONS FOR FALL 2024 ATTORNEY HONORS PROGRAM

Application Window Runs from August 14 to September 25, 2023; Submit Applications via USAJOBS

WASHINGTON, August 11, 2023 – The Federal Communications Commission today announced that it will begin accepting applications from graduating law students and current judicial clerks for its Fall 2024 Attorney Honors Program. The application window opens Monday, August 14, 2023, and closes Monday, September 25, 2023.

The Attorney Honors Program is the FCC's primary vehicle for hiring entry-level attorneys. Attorneys at the FCC work on cutting-edge legal and policy issues in the communications and technology arenas. They advance access to communications that are essential for all Americans, including Americans with disabilities, to learn and work remotely, receive healthcare, and engage in commerce; pave the way for a 5G future and advance rural broadband; protect the rights of consumers; review major mergers and acquisitions; and promote public safety.

Participants selected for the Attorney Honors Program will serve in a two-year employment and training program designed to introduce them to the field of communications law and policy and to provide a wide variety of learning experiences. The FCC encourages law students in their final year of study and current judicial clerks with superior academic credentials who are interested in public service and/or communications law to apply for the Fall 2024 class. Applications must be received by 11:59 p.m. EST on September 25, 2023. The deadline for other main U.S. time zones is: 10:59 p.m. Central Time, 9:59 p.m. Mountain Time, and 8:59 p.m. Pacific Time. Incomplete or late applications will not be considered.

Selection for the Attorney Honors Program is highly competitive. During the selection process, the FCC reviews many facets of a candidate's background, including academic achievement, writing skills, law review and/or moot court experience, clinic or extracurricular activities, and interest in government service and/or the communications industry.

For the Fall 2024 application cycle, the FCC will use the FCCJobs web-based recruitment system, which integrates with the Office of Personnel Management's USAJOBS website. Depending on experience, interested persons should apply via USAJOBS to either Vacancy Announcement [HonorsAtty-OGC-2023-001](#) (for graduating law students) or [HonorsAtty-OGC-2023-002](#) (for current judicial clerks). Submission of the following documents is required: a cover letter, resume, official or unofficial law school transcript, writing sample (of not more than 15 pages), and a list of three professional references. Please submit these documents as separate attachments to your online application. We recommend that you double check to ensure that all required parts of your application have been successfully uploaded in USAJOBS.

For further information, please visit the Attorney Honors Program webpage at www.fcc.gov/attorneyhonorsprogram or contact Shannon Hyatt in the Office of General Counsel, at Shannon.Hyatt@fcc.gov.

-FCC-

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

In the Matter of)	
)	
Request for Waiver by T-Mobile USA, Inc.)	
)	
Establishing Emergency Connectivity Fund to	)	WC Docket No. 21-93
Close the Homework Gap)	
)	

ORDER

Adopted: August 14, 2023

Released: August 14, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition for limited waiver of the Emergency Connectivity Fund (ECF) program's invoice filing deadline submitted by T-Mobile USA, Inc (T-Mobile).¹ Specifically, we waive section 54.1711(d) of the Federal Communications Commission's (Commission) rules to provide an automatic, one-time extension of the invoicing filing deadline to October 30, 2023 for any funding requests with an invoice filing deadline date occurring before October 30, 2023.² We recognize that many participants with a service delivery deadline of June 30, 2023 or a service delivery deadline that occurs shortly thereafter as a result of the Wireline Competition Bureau's (Bureau) *May 2023 Service Delivery Deadline Extension Order* may require additional time to complete the invoicing process for eligible equipment and services that have already been delivered and provided to students, school staff, and library patrons with unmet needs.³ We find that a one-time extension of the invoice filing deadline for applicants and service providers with an invoice filing deadline that falls before October 30, 2023 (Affected Participants) will provide them with sufficient flexibility to complete and submit their invoicing forms and necessary supporting documentation to the Universal Service Administrative Company (USAC), the Administrator of the ECF program, in order to receive their committed funding. Accordingly, we direct USAC to provide an automatic, one-time extension of the invoice filing deadline to October 30, 2023 for any funding requests with an invoice filing deadline occurring before October 30, 2023, and we modify section 54.1711(d) of the Commission's rules to provide 60 days to submit invoices from the date of the notification by USAC that a refund request is processed by USAC.⁴

¹ Petition of T-Mobile USA, Inc. for Waiver, WC Docket No. 21-93, at 1 (filed June 29, 2023), <https://www.fcc.gov/ecfs/filing/10629461312224> (T-Mobile Petition).

² See 47 CFR § 54.1711(d) (requiring all invoices to be submitted within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later).

³ See *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405, 2023 WL 3579192, at *4 (WCB May 12, 2023) (*May 2023 Service Delivery Deadline Extension Order*) (providing varying extensions of the ECF program's service delivery deadline based on the date of a commitment decision).

⁴ There are certain circumstances where entities may find they need to submit refund requests to voluntarily return funding that has already been disbursed, such as to correct entity information that was provided on original invoices.
(continued....)

II. BACKGROUND

2. As part of the American Rescue Plan Act of 2021 (Act), Congress appropriated \$7.171 billion and directed the Commission to promulgate rules for distributing funding from the Emergency Connectivity Fund to eligible schools and libraries for the purchase of eligible equipment and/or advanced telecommunications and information services for use by students, school staff, and library patrons at locations that include locations other than a school or library.⁵ On May 10, 2021, the Commission adopted the *Emergency Connectivity Fund Report and Order* establishing rules for the ECF program to distribute the funding to eligible schools and libraries.⁶

3. The Commission and USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,⁷ and a second 15-day application filing window from September 28, 2021 to October 13, 2021, in which applicants requested a combined \$6.4 billion in support.⁸ During these two application filing windows, applicants could initially request funding for eligible equipment and services received or delivered between July 1, 2021 and June 30, 2022.⁹ The Bureau later opened a third 15-day application filing window from April 28, 2022 to May 13, 2022 to allow applicants to request eligible equipment and services purchased and delivered between July 1, 2022 and December 31, 2023. During the third filing window, the Commission received timely filed requests for over \$2.8 billion for purchases of eligible equipment and services.¹⁰ Because the total demand received during the third filing window exceeded the amount of support available, the Commission and USAC are prioritizing funding for the third window requests submitted by schools and libraries entitled to higher discount rates until the funds are exhausted.¹¹

4. The Commission also established an invoice filing deadline rule for the program in the *Emergency Connectivity Fund Report and Order*.¹² Section 54.1711(d) of the Commission's rules provides that "[i]nvoices must be submitted to the Administrator within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-

(Continued from previous page) _____

For the purposes of the ECF program, a refund request will be considered processed on the date that USAC is notified by the U.S. Department of Treasury (Treasury) that the debt (i.e., the full amount being returned by an entity) has been repaid in full. Upon notice of full debt satisfaction, USAC will update the ECF Portal and issue a notification that the refund has been processed to the entity. See *infra* n. 19.

⁵ American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117th Cong., tit. VII, § 7402(a)(1)-(2) (2021) (enacted), available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (American Rescue Plan Act) (enrolled bill).

⁶ See generally *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696 (2021) (*Emergency Connectivity Fund Report and Order*).

⁷ News Release, FCC, FCC Announces Emergency Connectivity Fund Application Window Will Open on June 29 (June 15, 2021), <https://www.fcc.gov/document/emergency-connectivity-fund-application-window-opens-june-29> (*First ECF Application Window News Release*).

⁸ News Release, FCC, FCC Announces Over \$5 Billion in Funding Requests Received in Emergency Connectivity Fund Program (Aug. 25, 2021), <https://www.fcc.gov/document/fcc-announces-over-5-billion-emergency-connectivity-fund-requests> (*Second Application Window News Release*).

⁹ See 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

¹⁰ *Wireline Competition Bureau Announces Third Application Filing Window for the Emergency Connectivity Fund Program*, WC Docket No. 21-93, Public Notice, 37 FCC Rcd 3985 (WCB 2022) (*Third ECF Application Window PN*).

¹¹ News Release, FCC, FCC Announces Over \$2.8 Billion in Funding Requests for Final Window in Ongoing Work to Close the Homework Gap (May 25, 2022), <https://docs.fcc.gov/public/attachments/DOC-383685A1.pdf> (*Third ECF Application Window News Release*).

¹² *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8743, para. 98; 47 CFR § 54.1711(d).

commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later.”¹³

5. In recognition of the emergency nature of the program and the evolving needs of participants, the Bureau has taken a number of steps to provide ECF program participants with additional time and flexibility to facilitate the full use of approved and committed ECF support for the eligible equipment and broadband services needed to connect students, school staff, and library patrons who otherwise would not be able to fully engage in remote learning. For example, to address instances where the service delivery date for equipment or other non-recurring services may not be known at the time of the funding request submission, on July 22, 2021, the Bureau issued a *Public Notice* and *Order* clarifying that applicants could use June 30, 2022 as the service delivery date for equipment and other non-recurring services for their ECF FCC Form 471 funding requests if the equipment or services have not been ordered or received at the time that the applicant submitted their funding request(s).¹⁴ Subsequently, the Bureau acted on a petition for waiver and extended the service delivery date for all ECF equipment, recurring, and non-recurring funding requests submitted during the first and second filing windows to June 30, 2023, but leaving the service delivery date for new construction services requests without change.¹⁵ On May 12, 2023, the Bureau issued another *Order* extending the service delivery date for certain first and second window applicants who received funding commitment decisions for services on or after July 1, 2022 and for equipment on or after January 1, 2023, and maintaining June 30, 2023 as the service delivery date for first and second window applicants that received funding commitments before those dates.¹⁶ The *May 2023 Service Delivery Deadline Extension Order* also extended the service delivery deadline for third window funding requests to allow applicants to purchase and receive eligible equipment and services before June 30, 2024, the statutorily required sunset date for the ECF program.¹⁷

¹³ 47 CFR § 54.1711(d).

¹⁴ *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, DA 21-881, 2021 WL 3128232, at *1-2 (WCB July 22, 2021) (*ECF Service Delivery Date Public Notice*) (extending the date for windows one and two if equipment or services have not been ordered or received at the time that the applicant submitted their funding requests); see *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, 36 FCC Rcd 16621, 16624, para. 10 (WCB 2021) (*ECF Service Delivery Date Clarification Order*) (extending the date for all recurring and non-recurring funding requests to reduce confusion and minimize administrative burdens for windows one and two).

¹⁵ *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, 37 FCC Rcd 1915 (WCB 2022).

¹⁶ See *May 2023 Service Delivery Deadline Extension Order* at *4, paras. 9-10.

¹⁷ See *id.* at *5, para. 12. For purposes of the Emergency Connectivity Fund, section 7402 of the Act defines the COVID-19 emergency period as beginning on the date the Secretary of Health and Human Services determined that a public health emergency exists as a result of COVID-19 pursuant to section 319 of the Public Health Service Act, and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists. See H.R. 1319, tit. VII, § 7402(d)(5)(A). The Secretary of Health and Human Services determined that a public health emergency has been in existence since January 27, 2020 as a result of COVID-19 pursuant to section 319 of the Public Health Service Act. 47 U.S.C. § 247d. The COVID-19 public health emergency expired at the end of the day on May 11, 2023. See News Release, Department of Health and Human Services (HHS), HHS Secretary Xavier Becerra Statement on End of the COVID-19 Public Health Emergency (May 11, 2023), <https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html>; Department of Health and Human Services (HHS), COVID-19 Public Health Emergency (PHE), <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html> (last visited Aug. 14, 2023). Therefore, ECF funding will only be available for purchases of eligible equipment and services made by June 30, 2024. See *Wireline Competition Bureau and Office of the Managing Director Provide Guidance on Emergency Connectivity Fund Program Upon Termination of the Emergency Period*, WC Docket No. 21-93, Public Notice, DA 23-406, 2023 WL 3579198 (WCB May 12, 2023).

6. On June 29, 2023, T-Mobile requested a limited waiver of section 54.1711(d) of the Commission's rules to provide a one-time extension of the invoice filing deadline until October 30, 2023 or 60 days after USAC processes a refund request submitted.¹⁸ T-Mobile asserts that an extension is warranted due to complexities in the emergency program related to the invoicing process. Specifically, T-Mobile explains that additional time is needed for USAC to process returned funds and allow applicants and service providers time to submit new and revised invoices.¹⁹ T-Mobile further explains that an extension is necessary to address what it describes as the time-consuming process of submitting and reviewing large, complicated invoices with extensive documentation,²⁰ particularly in light of the Bureau's recent extensions of ECF program service delivery dates that required T-Mobile to implement new internal processes to account for the newly adjusted time periods and to ensure that all administrative changes are accurately reflected for school and library participants.²¹ On August 1, 2023, T-Mobile's concerns were echoed in a filing submitted by a coalition comprised of the National Rural Education Association, United States Hispanic Leadership Institute, Kollab Youth Workforce Development Education, and Parents Institute for Quality, who emphasized that the timing of issuing refunds and challenges associated with changing service delivery deadlines for complex invoices have "essentially reduced the amount of time available to submit an invoice."²²

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.²³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁵

8. To ensure ECF program participants can seek reimbursement for all of their approved ECF funding used to connect students, school staff, and library patrons with unmet needs, we find good cause exists to waive and extend the invoice filing deadline until October 30, 2023 for applicants and service providers with invoice filing deadlines occurring before that date. In addition, we also modify section 54.1711(d) of the Commission's rules to allow invoices to be submitted within 60 days from the date that USAC issues a notification that a refund request submitted by an ECF participant has been processed.²⁶ In particular, we recognize that due to the evolving and emergent nature of this program, complexities in the invoicing process, and the impact of recent service delivery deadline extensions provided by the Bureau, some program participants may have difficulty timely submitting invoices by their current invoice filing deadlines that fall before October 30, 2023 despite every attempt to comply with the program's rules. We also understand that at times, ECF funds must be returned (e.g., to correct entity information) and USAC must process the refund request first, before the party is able to submit a

¹⁸ T-Mobile Petition at 1, 2.

¹⁹ *Id.* at 7-8. In the ECF Portal, requests to return funding that has already been disbursed must be processed by USAC before an entity will be able to submit a new or revised invoice to draw on that funding.

²⁰ *Id.* at 8-10.

²¹ *Id.* at 9.

²² Letter from Allen Pratt, Ed.D, Executive Director, National Rural Education Association, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 1-2 (filed Aug. 1, 2023) (Coalition Letter).

²³ 47 CFR § 1.3.

²⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁶ *See supra* n.4. Please note that USAC will only issue notifications to entities whose voluntarily returned funds have been repaid in full. To the extent there is any debt remaining, a notification will not be sent and therefore, the invoice filing deadline will not be impacted in the event a debt is still owed.

corrected invoice for a funding request.²⁷ Furthermore, although the Commission leveraged existing E-Rate processes and forms in the ECF program, including invoicing,²⁸ we understand that the ECF program has a shorter invoice filing period than the E-Rate program and that this is the first time some applicants and service providers are submitting invoices using USAC's system, the ECF Portal, altogether.²⁹ We also acknowledge the coinciding timing of the invoicing process for Affected Participants with many schools' summer vacations and start of the school year. Taken together, we find that such factors have contributed to the need for additional time to file invoices and present compelling and unique circumstances that merit a waiver and modification of section 54.1711(d) of the Commission's rules.

9. Moreover, we find that a waiver and modification of section 54.1711(d) will not lead to any undue advantage in funding as the Affected Participants will not receive more funding than allowed under the ECF program rules, and their equipment and services have already been received and delivered. In addition, we find that the public interest would not be served were these otherwise eligible ECF participants to lose ECF funding for eligible equipment and services needed to connect students, school staff, and library patrons with unmet needs who otherwise are not able to fully engage in remote learning because of their inability to submit invoices by their current invoice filing deadline or because of the delay in the processing of their refund request. Thus, we find that providing an automatic, one-time extension of the invoice filing deadline to October 30, 2023 for Affected Participants and a modification of section 54.1711(d) to account for the processing of refund requests strikes the right balance between the need for efficient administration of the ECF program and allowing applicants and service providers adequate time to receive their approved and committed ECF funding pursuant to the Commission's rules. We therefore grant T-Mobile's request for limited waiver and modification of section 54.1711(d) of the Commission's rules, and direct USAC to provide Affected Participants with an automatic, one-time extension to submit their invoices to USAC no later than October 30, 2023.

10. In granting the requested relief, we emphasize that this Order does not extend ECF program participants' service delivery deadlines,³⁰ nor does it alter the obligation of participants to comply with the other program requirements set out in the Commission's rules, including their obligation to certify to receipt of eligible equipment and/or services and that they are not willfully or knowingly requesting reimbursement for equipment or services that are not being used on their ECF FCC Forms 472 and 474 (i.e., the requests for reimbursement).³¹ As such, we remind applicants that all eligible equipment and services, including funding requests for special construction, must be delivered by their service delivery date.³² We also remind applicants that, unlike E-Rate program rules, ECF program rules do not permit any invoice filing extensions.³³ For this reason, any ECF program participant that requires

²⁷ See T-Mobile Petition at 7-8.

²⁸ See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740, para. 90 (leveraging E-Rate processes and forms in the ECF program because schools and libraries are already familiar with the processes and forms).

²⁹ Compare 47 CFR § 54.1711(d) with 47 CFR § 54.514(a) (requiring E-Rate participants to submit invoices within 120 days of receiving service, the FCC Form 486 Notification letter, or a revised funding commitment decision letter approving a post-commitment request or appeal).

³⁰ 47 CFR § 54.1711(e) (establishing the service delivery dates for equipment, other non-recurring services, and recurring services purchased with ECF support).

³¹ See 47 CFR §§ 54.1700-1718; see also 47 CFR § 54.1711(a)(1)(iv), (viii), (a)(2)(iv) (vi).

³² See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8717, para. 41 (providing requests for construction or datacasting one year from the date of the funding commitment decision letter to demonstrate that construction is completed and the services have been provided).

³³ Compare 47 CFR § 54.1711(d) with 47 CFR § 54.514(b) (allowing E-Rate participants to request a one-time extension of the invoice filing deadline).

additional time to submit their requests for reimbursement beyond the relief granted herein must file a request for waiver directly with the Commission and demonstrate good cause.

11. We also modify section 54.1711(d) of the Commission's rules as reflected in Appendix A to reflect the updated invoice filing deadline rule adopted herein. We make this change without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules.³⁴ The updated rule will become effective upon publication of this Order in the Federal Register.³⁵

12. Finally, waiving the invoice filing deadline does not increase the risk of waste, fraud, or abuse. We emphasize that the Commission is committed to protecting the integrity of the ECF program and ensuring that funds disbursed through the program are used for their intended purposes to provide broadband connectivity and connected devices to students, school staff, and library patrons with unmet needs. Although we grant a limited waiver of the Commission's invoice filing deadline for certain ECF funding requests, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with ECF program rules and requirements.³⁶ The Commission is also required to recover funds determined to be disbursed in violation of statutory and/or rule requirements.³⁷

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 54.1711(d) of the Commission's rules, 47 CFR § 54.1711(d), IS WAIVED and AMENDED to the extent provided herein.

14. 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.

15. The amended rule adopted in this Order and contained in Appendix A constitutes a rule of agency organization, procedure and practice and is not subject to the Administrative Procedure Act requirements.³⁸ Accordingly, this amended rule is EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

³⁴ 5 U.S.C. § 553(b)(3)(A). This amended rule is not subject to the APA requirements because it is a procedural rule setting an invoice filing deadline for the ECF program.

³⁵ 47 CFR § 1.427(b) (allowing procedural rules to take effect upon publication in the Federal Register). The APA's requirement that rules must be published in the Federal Register at least 30 days before their effective date, subject to certain exceptions, applies only to "substantive rules." See 5 U.S.C. § 553(d); see also *Neighborhood TV Co. v. Federal Commc'ns Comm'n.*, 742 F.2d 629, 637 (D.C. Cir. 1984) (recognizing that "[t]he FCC has maintained . . . that its interim processing procedures are procedural rules, and therefore are not subject to the APA's notice and comment, or advance publication requirements.").

³⁶ 47 CFR § 54.1714.

³⁷ 31 U.S.C. § 3711(a)(1); see also 31 CFR § 901.1 (requiring aggressive collection actions).

³⁸ 5 U.S.C. § 553(b)(3)(A).

APPENDIX A**Final Rule**

For the reasons set forth 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 § 54.1711 by revising paragraph (d) to read as follows:

§ 54.1711 Emergency Connectivity Fund requests for reimbursement.

* * * * *

(d) ***Invoice filing deadline.*** Invoices must be submitted to the Administrator within 60 days from the date of a funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of a previously denied or reduced funding; notification by the Administrator of a processed returned funds (or refund) request; or service delivery date, whichever is later.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-675

Released: August 10, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES THE PROPOSED NORTH AMERICAN NUMBERING PLAN ADMINISTRATION FUND SIZE ESTIMATE AND CONTRIBUTION FACTOR FOR OCTOBER 2023 THROUGH SEPTEMBER 2024

CC Docket No. 92-237

In this Public Notice, the Wireline Competition Bureau announces the proposed North American Numbering Plan (NANP) administration fund size estimate and contribution factor for the fiscal year October 1, 2023 through September 30, 2024 (Fiscal Year 2024). Proper funding of NANP administration ensures that consumers will continue to have access to the numbering resources essential to the provision of new services and technologies.

A. Calculating the NANP Administration Fund Size Estimate and Contribution Factor

Pursuant to its contract with the Commission and section 52.16(a) of the Commission's rules, the NANP Billing and Collection Agent, Welch LLP (the B&C Agent), is responsible for calculating, assessing, billing, and collecting payments for numbering administration functions, and for distributing funds to the entities that support these functions (for example, the North American Numbering Plan Administrator (NANPA)).¹ Consistent with this function, the B&C Agent annually develops the projected numbering administration costs and fund size estimate for the upcoming fiscal year.

The B&C Agent allocates a portion of the funding requirement to all NANP member countries² for overall administration of the NANP, and also accounts for additional numbering administration services provided by the NANPA to certain member countries, such as the United States,³ and recovers the costs for such additional services from those countries.

For the funding required from the United States, section 52.17 of the Commission's rules requires that all telecommunications carriers in the United States contribute on a competitively neutral basis to pay such costs,⁴ and the B&C Agent collects such payments directly from U.S. carriers.⁵ Each year the B&C

¹ 47 CFR § 52.16(a).

² The NANP member countries are Anguilla, Antigua and Barbuda, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, Sint Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and the United States (including American Samoa, Puerto Rico, U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands). 47 CFR § 52.5(d).

³ For the United States, such additional services include administration of central office codes, thousands-block number pooling, and routing numbers (pseudo-Automatic Numbering Identification numbers). See 47 CFR §§ 52.15, 52.20.

⁴ 47 CFR § 52.17. For purposes of this rule, the term "telecommunications carrier" or "carrier" includes interconnected Voice over Internet Protocol (VoIP) providers as that term is defined in section 52.5(b) of the Commission's rules. 47 CFR § 52.5(b), (i).

Agent develops a contribution factor for U.S. telecommunications carriers designed to collect the projected United States contribution for the upcoming fiscal year. The Commission's rules provide that contributions shall be the product of the carriers' end-user telecommunications revenues for the prior calendar year and the contribution factor, and such contributions shall be no less than \$25.⁶

B. Billing and Collection Agent Projection of the Fund Size Estimate and Contribution Factor

On July 5, 2023, the B&C Agent filed a fund size estimate and contribution factor for recovering the cost of NANP Administration for Fiscal Year 2024, in accordance with section 52.16(a) of the Commission's rules.⁷ The B&C Agent proposes a funding requirement of \$8,680,044 for Fiscal Year 2024, and a contribution factor of 0.0001047 for the collection from U.S. carriers.⁸ As detailed in the Filing, the proposed contribution factor is higher than the contribution factor for the prior fiscal year (0.0000853) because of lower surplus carried over from the prior year, and because of a lower projected revenue contribution base for this year.⁹ This year's contingency fund is \$1,000,000, the same as last year.¹⁰ The funding requirement contemplates a contribution from U.S. carriers totaling \$8,265,905, a contribution from Canada of \$150,285, contributions from the other member countries totaling \$29,356, and application of a \$234,498 accumulated surplus anticipated from last year.¹¹ Additional detail about the factors considered by the B&C Agent in establishing the fund size estimate, contribution factor, and contingency fund may be found in the B&C Agent's monthly fund reports.¹²

C. Effective Date of the Fund Size Estimate and Contribution Factor

If the Commission takes no action regarding the proposed fund size estimate and contribution factor within the 14-day period following release of this Public Notice, the fund size estimate and the contribution factor are considered approved by the Commission and become effective for Fiscal Year 2024.¹³

For further information, contact William Andrle, Competition Policy Division, Wireline Competition Bureau at william.andrle@fcc.gov.

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⁵ 47 CFR §§ 52.16(a), 52.17.

⁶ 47 CFR § 52.17(a).

⁷ Letter from Mark Jackson, Partner, Welch LLP, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 92-237 (filed July 5, 2023) (Filing). Prior to this Filing, the North American Numbering Council reviewed and approved it on June 28, 2023. *Id.* at 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ Compare *id.* with Letter from Mark Jackson, Partner, Welch LLP, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 92-237, at 4 (filed June 16, 2022).

¹¹ Filing at 4-5.

¹² See North American Numbering Plan Fund, Monthly Fund Reports, <http://nanpfund.com/monthly-fund-reports> (last visited July 17, 2023).

¹³ See, e.g., *Wireline Competition Bureau Announces the Proposed North American Numbering Plan Administration Fund Size Estimate and Contribution Factor for October 2022 Through September 2023*, CC Docket No. 92-237, Public Notice, DA 22-833, 2 (WCB Aug. 8, 2022); *Wireline Competition Bureau Announces the Proposed North American Numbering Plan Administration Fund Size Estimate and Contribution Factor for October 2021 Through September 2022*, CC Docket No. 92-237, Public Notice, 36 FCC Rcd 12454, 12455 (WCB 2021).



PUBLIC NOTICE

Federal Communications Commission
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Internet: www.fcc.gov
TTY: 888-835-5322

DA 23-676

Released: August 10, 2023

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED TO MASH TELECOM, INC.

WC Docket No. 21-65

By this Notice, the Wireline Competition Bureau (Bureau) grants the direct access application of MASH Telecom, Inc. (MASH Telecom or Applicant),¹ pursuant to the Commission's procedures for interconnected VoIP numbering authorization applications.²

Due to the substantial foreign ownership of the Applicant,³ the Bureau initially determined that further review was required to evaluate whether granting the Application served the public interest, and therefore established a non-streamlined pleading cycle.⁴ The Bureau referred the Application on December 2, 2022, 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.⁵ On December 7, 2022, the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) notified the Commission that it was reviewing the Application for any national security and law enforcement concerns that may be raised by the foreign

¹ See Application of MASH Telecom for Authorization to Obtain Numbering Resources, WC Docket No. 21-65 (filed Feb. 23, 2021), <https://www.fcc.gov/ecfs/filing/10223038263136> (Application). MASH Telecom is a registered Canadian Federal corporation. See Government of Canada, Federal Corporation Information, MASH Telecom Inc., Corp. No. 999803-9 (Nov. 25, 2016), https://www.ic.gc.ca/app/scr/cc/CorporationsCanada/fdrlCpDtls.html?corpId=9998039&V_TOKEN=1615309737039&crpNm=&crpNmbr=9998039&bsNmbr=.

² See 47 CFR § 52.15(g)(3); see also *Numbering Policies for Modern Communications et al.*, Report and Order, 30 FCC Rcd 6839, 6850, paras. 38-42 (2015).

³ MASH Telecom is a 100% Canadian-owned federal corporation.

⁴ See *Interconnected VoIP Numbering Authorization Applications Filed by MASH Telecom, Inc. Pursuant to Section 52.15(g)(3) of the Commission's Rules, Non-Streamlined Pleading Cycle Established*, WC Docket 21-65, Public Notice, DA 22-1258 (WCB Dec. 2, 2022), <https://docs.fcc.gov/public/attachments/DA-22-1258A1.pdf> (MASH Telecom Public Notice); see also N. Am. Numbering Council, Report on Foreign Ownership of Interconnected Voice over Internet Protocol Applicants, at 3-5 (June 29, 2017), http://nanc-chair.org/docs/mtg_docs/Jun17_NANC_Report_on_Foreign_Ownership_of_Interconnected_VOIP_Applicants.pdf (citing potential public interest concerns, including fraud and exhaust of numbering resources, and concerns surrounding consumer protection and U.S. telecommunications network operations).

⁵ See MASH Telecom Public Notice at 2.

ownership and requested that the Commission defer action on the Application.⁶ As requested, we deferred action on the Application.⁷

On March 16, 2023, the Committee notified the Commission that the Applicant had provided complete responses to initial questions posed by the Committee and that the Committee was conducting an initial 120-day review to assess whether grant of the Application would pose a risk to the national security or law enforcement interests of the United States.⁸ On June 27, 2023, the National Telecommunications and Information Administration, on behalf of the Committee, filed a letter stating that the Committee has no recommendation at this time regarding the Application and no objection to the Commission granting it.⁹

The Bureau now has concluded its review and has determined that the Application raises no public interest concerns warranting further consideration at this time, and hereby grants MASH Telecom's Application for direct access to numbering resources.

Effective Grant Date: August 10, 2023

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

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⁶ See Letter from Christopher R. Clements, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (Dec. 7, 2022) (on file at <https://www.fcc.gov/ecfs/document/1207128625874/1>).

⁷ See *id.* at 3.

⁸ See Letter from Christopher R. Clements, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1 (Mar. 16, 2023) (on file at <https://www.fcc.gov/ecfs/search/search-filings/filing/1031698513307>).

⁹ See Letter from Stephanie Weiner, Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, to Ethan Lucarelli, Chief, Office of International Affairs, Federal Communications Commission at 1 (June 27, 2023) (on file <https://www.fcc.gov/ecfs/document/10627594406146/1>).



PUBLIC NOTICE

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DA 23-677
August 10, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 21 (MICHIGAN) REGIONAL PLANNING COMMITTEES
TO HOLD 700 MHZ AND 800 MHZ MEETINGS

PR Docket No. 90-221 and WT Docket No. 02-378

The Region 21 (Michigan)¹ 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Thursday, September 14, 2023. Beginning at 10:00 a.m., the Region 21 800 MHz RPC meeting will convene at the Monitor Township Fire Department, 2483 Midland Rd, Bay City, MI 48706.

The agenda for the 800 MHz RPC meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – May 11 and July 13, 2023 meetings
- Correspondence
- Review of Applications
 - Old Applications
 - New Applications
- 800 MHz Subcommittee Reports
 - Interoperable Communication Subcommittee
 - Engineering/Technical Subcommittee
 - Ongoing Plan Revision Standing Committee
- Old Business
 - Web Site
 - 4.9 GHz
- New Business
 - Mid-band Non- NPSPAC 800 channels
- Next meeting: October 26, 2023, Zehnder's, Frankenmuth, MI
- Adjourn

Immediately following the 800 MHz RPC meeting, the 700 MHz RPC meeting will convene.

The agenda for the 700 MHz meeting includes:

- Call to Order/Roll Call
- Approval of Agenda
- Approval of Minutes – May 11 and July 13, 2023 meetings
- Correspondence

¹ The Region 21 (Michigan) 700 MHz regional planning area includes all eighty-three counties in the Upper and Lower Peninsulas in the state of Michigan. The Region 21 800 MHz regional planning area consists of all the Upper Peninsula and all counties in the Lower Peninsula except the counties of Allegan, Barrien, Barry, Cass, Kalamazoo, Ottawa, St. Joseph, and Van Buren, which are part of Region 54 (Great Lakes Area).

- Review of Applications
 - Old Applications
 - New Applications
- 700 MHz Subcommittee Reports
 - Interoperable Communications Subcommittee
 - Engineering/Technical Subcommittee
 - Ongoing Plan Revision Standing Subcommittee
- Old Business
- New Business
- Next meeting: October 26, 2023, Zehnder's, Frankenmuth, MI
- Adjourn

The Region 21 RPC meetings are open to the public. All public safety providers in Region 21 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 21 should plan to attend. For more information, please contact:

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- FCC -

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

In the Matter of)	
)	
HISPANIC CHRISTIAN COMMUNITY	)	MB Docket No. 23-267
NETWORK, INC., aka HCCN	)	NAL/Acct. No. 202341420025
	)	FRNS: 0014120505; 0013410998
)	
ANTONIO CESAR GUEL	)	NAL/Acct. No. 202341420026
Former President of HCCN	)	FRNS: 0006568448; 0023037682
)	
and)	
)	
JENNIFER JUAREZ, aka Jenifer Juarez,	)	NAL/Acct. No. 202341420027
Licensee of Low Power Television Stations	)	FRN: 0024126237
Applications for Renewal)	
)	
KHDE-LD, Denver, CO	)	Facility ID No. 189604
	)	LMS File No. 0000176579
)	
KJTN-LP, Abilene, TX	)	Facility ID No. 127351
	)	CDBS File No. BRTTL-20160411AAZ and
	)	LMS File No. 0000192978
)	
KZAB-LP, Abilene, TX	)	Facility ID No. 130088
	)	CDBS File No. BRTTL-20160412ABN and
	)	LMS File No. 0000192977
)	
KZTE-LD, Fulton, AR	)	Facility ID No. 128037
	)	LMS File No. 0000132447
)	
KTEQ-LP, Fulton, AR	)	Facility ID No. 130047
	)	LMS File No. 0000132448
)	
WESL-LP, Jamestown, KY	)	Facility ID No. 128034
	)	LMS File No. 0000142902
)	
KRPO-LD, Quartzite, AZ	)	Facility ID No. 128964
	)	LMS File No. 0000192826

**ORDER TO SHOW CAUSE WHY A CEASE AND DESIST ORDER SHOULD NOT BE ISSUED,
ORDER TO SHOW CAUSE WHY AN ORDER OF REVOCATION SHOULD NOT BE ISSUED,
HEARING DESIGNATION ORDER,
NOTICE OF OPPORTUNITY FOR HEARING, AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: August 10, 2023

Released: August 10, 2023

By the Chief, Media Bureau:

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I. INTRODUCTION

1. In this *Order to Show Cause Why A Cease and Desist Order Should Not Be Issued, Order to Show Cause Why an Order of Revocation Should Not Be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture*, we commence a hearing proceeding before the Administrative Law Judge to determine whether Hispanic Christian Community Network, Inc. (HCCN), its former 100% direct owner, Antonio Cesar Guel (Guel), and Jennifer Juarez (Juarez) have lacked candor and/or intentionally misrepresented facts to the Commission, abused Commission processes, and committed violations of the Communications Act of 1934, as amended (Act), and/or the Commission’s rules and regulations (Rules).

2. This proceeding arises from the conduct of HCCN, Guel, and Guel’s niece, Juarez (Party; collectively, Parties). Based upon the recitation of the facts that follow, Guel, former president of and 100% direct owner of the voting and equity rights in HCCN, the prior licensee of the captioned stations (Stations), apparently misrepresented material facts and orchestrated an illusory transaction to transfer the Stations to Juarez. The record developed so far raises substantial and material questions of whether Juarez controls the Stations, or whether HCCN and/or Guel exercise *de facto* control over the Stations. There are also substantial and material questions as to whether HCCN, Guel, and Juarez engaged in misrepresentation and/or lack of candor. Because of substantial common and overlapping facts, we hereby initiate a single hearing proceeding before the Administrative Law Judge, albeit with specific

objectives relative to each designated individual or entity.¹

3. With regard to Jennifer Juarez,² the current named licensee of record for the Stations, there are substantial and material questions of fact as to: 1) whether Juarez abused Commission processes³ by filing a sham application⁴ for the purpose of enabling HCCN or Guel to continue operating and controlling the Stations despite non-compliance with the foreign ownership limitations of section 310(b)(3) of the Act, and by secretly delaying the filing of the requisite consummation notice of the transaction; 2) whether and when Juarez acquired control of and began operating the Stations consistent with the Act and/or the Rules and, based on that, whether Juarez engaged in an unauthorized transfer of control in violation of section 310 of the Act by either operating the Stations without legitimate authority or by ceding control of the Stations to HCCN;⁵ 3) whether she lacked candor and/or intentionally misrepresented facts to the Commission, including in the Assignment Application and in her 1.88 Letter Response; and 4) whether Juarez has the qualifications to be and remain a licensee. As a consequence, we issue this *Order to Show Cause Why an Order of Revocation Should Not Be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* to determine whether (a) the licenses of the Stations should be revoked; (b) whether the captioned applications for renewal (Renewal Applications) of the licenses of the Stations should be granted, dismissed or denied; and/or (c) whether a forfeiture order should be issued to Juarez.⁶

4. With regard to HCCN and its former 100% direct stockholder, Guel, currently a non-licensee, we find that there are substantial and material questions of fact as to whether HCCN and Guel should be considered one and the same entity for purposes of this proceeding. There are also substantial and material questions of fact as to whether HCCN and/or Guel have exercised and continue to exercise *de facto* control over the Stations. Accordingly, we issue this *Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* against HCCN and Guel to cease and desist from violating Commission Rules and the Act, including making willfully inaccurate, incomplete, evasive, false, or misleading statements before the Commission in violation of section 1.17 of the Commission's Rules, and engaging in unauthorized control and operation of broadcast stations in violation of sections 301, 308, and 310 of the Act, and to determine whether a forfeiture should be issued to HCCN and Guel. Moreover, we find that there are substantial and material questions of fact as to whether HCCN and/or Guel (1) have misrepresented material information to the Commission and lacked candor; (2) have abused Commission processes first by filing an assignment application that lacked bona fides while maintaining *de facto* control of the Stations, and then by impermissibly and intentionally bifurcating ownership of the Stations for years by

¹ Actions taken as a result of this proceeding do not preclude the Commission from taking other actions stemming from the facts presented here.

² Juarez, a sole proprietor, has created inconsistencies in FCC records concerning the correct spelling of her first name. A sole-proprietor is required to provide its legal name in FCC applications. Juarez filed FCC applications alternatively referring to herself as "Jenifer" Juarez and Jennifer Juarez. She has since clarified that her first name is Jennifer. See, e.g., LMS File No. 0000053092 (changing licensee name to "Jennifer Juarez" for KRPO-LD (filed Apr. 19, 2018)). For clarity, we refer to her as Juarez or Jennifer Juarez.

³ An abuse of process is an attempt to achieve a result our licensing processes were not designed or intended to permit, or an attempt to subvert the underlying purpose of the licensing process; filing a sham application can be an abuse of FCC licensing processes. See, e.g., *Revision of Application for Construction Permit for Commercial Broadcast Station* (FCC Form 301), Report and Order, 4 FCC Rcd 3853, paras. 16, 23 (1989) (*Revised CP Form*).

⁴ A "sham" application is one where, for example, a legal entity serves as a surrogate applicant to acquire licenses that would then be operated by another, undisclosed entity, effectively concealing from FCC scrutiny the real party controlling the licenses/stations. See, e.g., *Revised CP Form*, 4 FCC Rcd at 3853 paras. 16, 23.

⁵ See, e.g., 47 U.S.C. § 310(d).

⁶ See 47 U.S.C. §§ 309(d), 309(e), 309(k), 310(d), 312(a), 312(c), and 503(b); 47 CFR §§ 1.17, 73.1150(a), (b).

not timely filing the requisite consummation notice; and (3) are fit to be Commission licensees in light of these apparent violations, abuses, and lack of candor and/or misrepresentation of facts to the Commission. Accordingly, we issue this *Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* against HCCN and Guel to cease and desist from operating, controlling, managing or providing any assistance to any stations; from preparing and/or filing applications or other documents regarding HCCN with the Commission; and, to the extent HCCN or Guel is allowed to assist any other licensee/permittee/applicant in any way with the operation or construction of any station, or to provide any assistance or input in any way in preparing or filing any application or form with the Commission, from doing so without also providing a copy of any order issued in this proceeding that finds HCCN or Guel lacks the character to be a Commission licensee in any and all filings with the Commission in every matter in which he participates in any way.⁷

II. BACKGROUND

5. This proceeding arises from a Media Bureau (Bureau) investigation into applications filed by HCCN between 2010 and 2014. HCCN sought to assign authorizations for a number of television stations then licensed to HCCN (a private company Guel held as sole stockholder and president) to various entities, including to his niece, Juarez.⁸ We evaluated the proposed assignment based on certifications Guel, as President of HCCN, and Juarez made in their 2010 assignment application (Assignment Application) and the content of the asset purchase agreement (APA) setting out the terms of the Parties' agreement, which they included as an exhibit to the Assignment Application.⁹ Both certified that the "agreements compl[ie]d fully with the Commission's rules and policies,"¹⁰ and that the APA embodied the "complete and final" agreement for the sale of the stations.¹¹ Guel further certified that HCCN "submitted to the Commission as an Exhibit to this application copies of all agreements for the sale/transfer of the station(s),"¹² and each Party certified that its respective statements in the Assignment Application "are true, complete, and correct to the best of my knowledge and belief, and are made in good faith" and "that all certifications and attached Exhibits are considered material

⁷ *Id.* §§ 301, 308, 310, 312(b),(c), and 503(b); 47 CFR § 1.17.

⁸ See applications to assign various stations from HCCN to: Centro Cristiano Sion (CDBS File No. BAPTTL-20070606AAF); Iglesia Manmin Toda La Creacion USA, Inc. (CDBS File No. BALTVL-20080811AAB); De Mujer a Mujer International (CDBS File No. BALTVL-20090821ADV); and Juarez (CDBS Lead File No. BALTTTL-20100315AAS). This item addresses only the Juarez transaction, but the Commission continues to investigate the other transactions which may result in future hearing or show cause proceedings.

⁹ See FCC Form 345, Application of HCCN for Assignment of Licenses, CDBS Lead File No. BALTTTL-20100315AAS (filed Mar. 15, 2010) at Exh. 4 (APA attached to application).

¹⁰ See CDBS Lead File No. BALTTTL-20100315AAS at sections II-6.b, III-5.a. See also FCC 345, OMB Control Number: 3060-0075, General Instructions (July 29, 2009) (announcing revised Form 345 Instructions) (Instructions). This Assignment Application sought consent to voluntarily assign the licenses for a total of 16 stations to Juarez. In subsequent years, Juarez surrendered four licenses (WGVI-LP, K13YU, K11WE, and W38FI-D) and transferred one (K09XZ (now KRKG-LP); see BALTVL-20161027ACU). Additionally, the Bureau cancelled the licenses for stations KHDE-LP, Laramie, WY, on July 20, 2021, and KXTY-LD on January 27, 2022, because Juarez failed to timely convert the stations to digital facilities. See, e.g., Letter from Barbara A. Kreisman, Chief, Video Division, FCC Media Bureau, to Jennifer Juarez (Aug. 6, 2021) (LMS File No. 0000152101) (re DKHDE-LP cancellation); see also LMS File No. 0000151883. Because Juarez no longer holds authorizations for these stations, they are not part of this proceeding.

¹¹ See CDBS Lead File No. BALTTTL-20100315AAS at sections II-6, III-5. As shall be discussed in greater detail, Guel as President of HCCN and Juarez certified in the Assignment Application that, other than redacting their payment schedule on the basis of purported "private financial information," their assignment agreement otherwise embodied the Parties' complete and full agreement.

¹² *Id.* at section II-6.a.

representations.”¹³ Based on their representations, the Bureau granted the assignment (Grant).¹⁴ Therein, the Bureau informed HCCN and Juarez they had 90 days to “consummate,” or close, the sale (*i.e.*, by July 25, 2010) and then promptly notify the Commission of such consummation.¹⁵ Then, and only then, could Juarez assume control and operate the Stations. If the Parties could not timely consummate the sale, they were to timely inform the Commission.¹⁶

6. For several years after the July 2010 closing deadline, however, HCCN continued to submit filings for the Stations purportedly assigned to Juarez. The Parties had not filed a notice of consummation and had neither requested an extension nor informed the Commission that the transaction had fallen through. Then, in August 2014, HCCN filed applications for consent to assign all of the HCCN station licenses purportedly assigned to Juarez in 2010 to another entity that is majority-owned by Guel family members (including Juarez).¹⁷ Subsequently, on November 10, 2014, HCCN’s attorney filed a notice certifying that HCCN and Juarez had consummated the assignment of the Stations to Juarez on July 25, 2010 (Consummation Notice).¹⁸ That submission provided no explanation for the four-year delay in filing the Consummation Notice nor made any reference to the then-pending August assignment filings. The following day, November 11, 2014, HCCN filed for bankruptcy protection.¹⁹

7. Due to concerns over who actually controlled and operated the Stations, the Bureau directed Juarez to explain the delinquent Consummation Notice and provide an affidavit attesting to her control of the Stations since July 25, 2010, or to explain why she had not controlled them since that time.²⁰ The Bureau also directed her to provide documents supporting her responses. Juarez filed a timely response (Response).²¹ Juarez claims in her 2018 Response that Guel financed her purchase of the Stations. She also asserts in an affidavit that she controlled the Stations since July 2010. However, the signed closing certificates she provided to demonstrate that the Parties closed the transaction on July 25,

¹³ *Id.* at certification statement immediately above each Party’s signature block.

¹⁴ See BALTTTL-20100315AAS, FCC Form 732, Authorization (Apr. 26, 2010).

¹⁵ *Id.* at Grant (“The **actual** consummation of voluntary transactions **shall be** completed within 90 days from the date hereof, and **notice . . . thereof shall promptly be furnished to the Commission . . .** showing the date the acts necessary to effect the transaction were completed.” (Emphasis added)).

¹⁶ The Grant stipulated that: “Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above described station(s).” *Id.* See also, *e.g.* FCC Consummation Notice form (requiring applicant to select one of three options in reporting the status of a pending transaction: Consummation; Extension of Consummation; or Notification of Non-consummation). *Dan J. Alpert, Esq. et al.*, Letter, 28 FCC Rcd 20, 21 n.6 (MB 2013) (reminding parties of the 90-day period to either consummate or request extension of consummation period). Guel was familiar with this requirement; see, *e.g.*, CDBS File No. BALTVL-20080811AAB (HCCN requested two extensions of consummation of assignment to Iglesia Manmin Toda La Creacion USA, Inc. on Dec. 11, 2008, and Mar. 18, 2009).

¹⁷ See CDBS File Nos. BALTTTL-20140807ABQ, 20140807ACD, and 20140807ABF (applications to assign stations from HCCN to Hispanic Family Christian Network, Inc. (HFCN)); see also CDBS File No. BON-20130128AAZ (2013 ownership report certifying that Maria Cristina Guel and Juarez each held 33.3% attributable interests in HFCN). The Bureau later dismissed the HCCN-to-HFCN assignment applications at the request of a bankruptcy trustee. Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, FCC Media Bureau, to Diane G. Reed, Bankruptcy Trustee (Nov. 30, 2016).

¹⁸ See CDBS File No. BALTTTL-20100315AAS, Consummation Notice.

¹⁹ Letter from Michael Wiss, Michael J. Wiss & Associates, debtor HCCN’s counsel, to FCC (Nov. 12, 2015 [sic]).

²⁰ See Letter from David Brown, Deputy Chief, Video Division, Media Bureau to Jennifer Juarez and Dan Alpert (Alpert) issued pursuant to section 1.88 of the Rules (Mar. 14, 2018) (1.88 Letter).

²¹ Response to 1.88 Letter, from Alpert, counsel for Juarez, to Marlene Dortch, FCC Secretary, and David Brown, Deputy Chief, Video Division, FCC Media Bureau (Apr. 23, 2018) (Response).

2010, were not dated.²² Juarez also revealed in her Response that Guel is her uncle and that they had “an understanding” that HCCN would hold the closing papers but not file the requisite consummation notice until “payments were made for the stations,” but that Juarez would nevertheless operate the Stations after the July 25, 2010 closing.²³

8. To explain the delinquent Consummation Notice, Juarez referred the Bureau to a Declaration from Guel included in her Response.²⁴ Therein, Guel avers that HCCN’s assets were “under attack” due to a lawsuit against him and HCCN, which purportedly led to HCCN’s bankruptcy. He also averred that, as a result of the lawsuit, “it was realized for the first time” in 2014 that he was unqualified to be an FCC licensee as he was not a U.S. citizen.²⁵ Guel further avers that one of his last acts before filing for HCCN’s bankruptcy was to complete the transactions to ensure that assignees such as Juarez became the “officially recognized licensees at the FCC.”²⁶ Guel adds that he had entered “verbal arrangements” whereby the assignees “could run the stations, but HCCN would remain officially the named licensee with the FCC until such time as the majority of the amounts owed was paid.”²⁷ Neither Guel nor Juarez provided details explaining exactly how Guel “financed” her purchase of the Stations or provided any evidence of payments or terms of such financing.

A. Applicable Legal Standards

9. *License Renewal Standard.* Juarez’s Renewal Applications are currently pending before the Commission. Section 309(k) of the Act provides that the Commission is to grant a license renewal application if it finds, with respect to that station, during the previous license term (a) the station has served the public interest, convenience, and necessity, (b) there have been no serious violations by the licensee of the Act or the Rules, and (c) there have been no other violations of the Act or Rules which, taken together, would constitute a pattern of abuse.²⁸ If the Commission is unable to make such a determination, it may deny the renewal application or grant it on such terms and conditions as are appropriate, including a short-term renewal.²⁹ Prior to denying a renewal application, the Commission must provide notice and opportunity for a hearing conducted in accordance with section 309(e) of the Act and consider whether any mitigating factors justify the imposition of lesser sanctions.³⁰ Allegations of misrepresentation are material considerations in a license renewal review.³¹

10. *Character Qualifications.* The character of an applicant is among those factors that the Commission considers in determining whether the applicant has the requisite qualifications to be a Commission licensee. Section 312(a)(2) of the Act provides that the Commission may revoke any license if “conditions com[e] to the attention of the Commission which would warrant it in refusing to grant a license or permit on the original application.”³² Because the character of the applicant is among those factors the Commission considers in its review of applications to determine whether the applicant has the

²² See Response at Attach. 1 (Buyer’s Officer’s Certificate and Seller’s Certificate) (Certificates).

²³ Response at 1, Question 2.

²⁴ See Attach. 3 to Response, Declaration of Antonio Cesar Guel (Apr. 22, 2018) (Guel Decl.).

²⁵ *Id.* at 3.

²⁶ Guel Decl. at 3.

²⁷ *Id.*

²⁸ 47 U.S.C. § 309(k)(1).

²⁹ 47 U.S.C. § 309(k)(2).

³⁰ 47 U.S.C. § 309(k)(3).

³¹ See, e.g., *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980).

³² 47 U.S.C. § 312(a)(2).

requisite qualifications to operate the station for which authority is sought,³³ a character defect that would warrant the Commission's refusal to grant a license in the original application would likewise support a Commission determination to revoke a license or permit.³⁴

11. *Misrepresentation and Lack of Candor.* As courts have noted, “applicants before the FCC are held to a high standard of candor and forthrightness.”³⁵ The Commission licenses tens of thousands of radio and television stations in the public interest, and therefore relies heavily on the completeness and accuracy of the submissions made to it.³⁶ Thus, “applicants . . . have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate.”³⁷ The Commission “refuse[s] to tolerate deliberate misrepresentations” and may also premise a finding of lack of candor on omissions, the core of which is “a failure to be completely forthcoming in the provision of information which could illuminate a decisional matter.”³⁸

12. Misrepresentation is a false statement of fact made with intent to deceive the Commission³⁹ and is proscribed by our Rules. Section 1.17(a)(1) of the Rules states that no person shall, in any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading.⁴⁰ Similarly, lack of candor (a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission) is within the scope of the rule.⁴¹ A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.⁴² Fraudulent intent can be found from “the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity.”⁴³ Intent can also be found from motive or a logical desire to

³³ See *id.* § 308(b).

³⁴ *Id.* § 312(a)(2). Section 312 of the Act does not contain a statute of limitations provision, so a revocation proceeding under this provision would encompass the Parties' conduct since 2010. See *id.* at § 312; see also *Black Television Workshop of Los Angeles, Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 8719, n.9 (1993).

³⁵ *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1139 (D.C. Cir. 1985) (*WHW*).

³⁶ *Id.*, citing *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982).

³⁷ *WHW* at 1139.

³⁸ *Id.* (citations omitted).

³⁹ *Fox River Broadcasting, 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*).

⁴⁰ See 47 CFR § 1.17(a)(1).

⁴¹ See *Fox River*, 93 FCC 2d at 129; *Discussion Radio*, 19 FCC Rcd at 7435.

⁴² See *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994); *Discussion Radio*, 19 FCC Rcd at 7435.

⁴³ *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)); see also *Discussion Radio*, 19 FCC Rcd at 7435.

deceive.⁴⁴ False statements knowingly made to the Commission can be a basis for revocation of a license or construction permit.⁴⁵

13. Section 1.17(a)(2) of the Rules further requires that 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.”⁴⁶ Thus, even absent an intent to deceive, a false statement may constitute an actionable violation of section 1.17 of the Rules if provided without a reasonable basis for believing that the material factual information it contains is correct and not misleading.⁴⁷

14. When reviewing FCC-related misconduct in the licensing context, the Commission evaluates whether the licensee will likely be forthright in future dealings with the Commission and will operate its station consistent with the requirements of the Act, the Rules and FCC policies.⁴⁸ Indeed, the Commission’s *Character Qualifications Policy Statement* acknowledges that, in assessing character qualifications in broadcasting matters, the relevant character traits the Commission is concerned with “are those of ‘truthfulness’ and ‘reliability.’”⁴⁹ Thus, misrepresentation would also demonstrate a lack of candor under the Commission’s character qualifications policy.⁵⁰ Because the Commission relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing, courts have recognized that an applicant who deliberately makes misrepresentations or lacks candor may engage in disqualifying conduct.⁵¹ The Commission also has recognized that “any violations of the Communications Act, Commission rules or Commission policies can be said to have a potential bearing on character qualifications.”⁵² It therefore is appropriate to consider “any violation of any provision of

⁴⁴ 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 Broadcasting 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 International 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)).

⁴⁵ 47 U.S.C. § 312(a)(1).

⁴⁶ 47 CFR § 1.17(a)(2).

⁴⁷ See *Amendment of Section 1.17 of the Commission’s Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4017, para. 4 (2003) (stating that the revision to section 1.17 is intended to “prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive”), *recons. denied*, Memorandum Opinion and Order, 19 FCC Rcd 5790, *further recons. denied*, Memorandum Opinion and Order, 20 FCC Rcd 1250 (2004).

⁴⁸ See *Policy Regarding Character Qualifications In Broadcast Licensing Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and Making of Misrepresentations to the Commission by Permittees and Licensees*, Report, Order, and Policy Statement, 102 FCC 2d 1179, 1209, para. 55 (1986 *Character Policy Statement*), *recon. dismissed/denied*, 1 FCC Rcd 421 (1986).

⁴⁹ 1986 *Character Policy Statement* at 1209, para. 55.

⁵⁰ See 1986 *Character Policy Statement*, *recon. dismissed/denied*, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986); *Policy Regarding Character Qualifications in Broadcast Licensing*, Policy Statement and Order, 5 FCC Rcd 3252 (1990) (1990 *Character Policy Statement*), *modified*, Memorandum Opinion and Order, 6 FCC Rcd 3448 (1991), *further modified*, Memorandum Opinion and Order, 7 FCC Rcd 6564 (1992).

⁵¹ *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193, 196 (D.C. Cir. 2000), *citing Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000).

⁵² 1986 *Character Policy Statement*, at 1209, para. 56.

the Act, or of our Rules or policies, as possibly predictive of future conduct and, thus, as possibly raising concerns over the licensee's future truthfulness and reliability."⁵³ Such violations also can be a basis for revocation of a license or construction permit.⁵⁴

15. *Unauthorized Transfer of Control.* Section 310(d) of the Act states that no "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 . . . to any person except upon application to the Commission and a Commission finding that the public interest, convenience, and necessity will be served thereby."⁵⁵ Thus, under section 310(d) of the Act, the Commission prohibits *de facto*, as well as *de jure*, transfers of control of a station license, or any rights thereunder, without prior Commission consent.⁵⁶

16. In determining whether an entity has *de facto* control of a broadcast applicant or licensee, we have traditionally looked beyond legal title and financial interests to determine who holds operational control of the station.⁵⁷ The Commission, in particular, looks to whether the entity in question establishes the policies governing station programming, personnel, and finances, and has long held that a licensee may delegate day-to-day operations regarding those three areas without surrendering *de facto* control, so long as the licensee continues to set the policies governing those operations.⁵⁸ In addition, the Commission will consider other factors, such as whether someone other than the licensee holds themselves out to station staff and/or the public as one who controls station affairs.⁵⁹

17. *Act and Rule Violations by Non-licensees.* With respect to HCCN and Guel (currently non-licensees), section 312(b) of the Act authorizes the Commission to order a person who "has violated or failed to observe any of the provisions of this chapter," or "has violated or failed to observe any rule or regulation of the Commission authorized by this chapter," to cease and desist from such activity.⁶⁰ The process is laid out in section 312(c), which specifies that, prior to issuing such a cease and desist order, the Commission "shall serve upon the licensee, permittee, or person involved an order to show cause why . . . a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters with respect to which the Commission is inquiring and shall call upon said . . . person to appear before the Commission."⁶¹ Courts have specifically rejected the argument that the Commission lacks authority to sanction non-licensees for violating the Act and Commission rules after notice and an opportunity for hearing,⁶² stating that "such a result would make little sense. If a person who should have

⁵³ *Id.* at 1209-10, para. 57.

⁵⁴ 47 U.S.C. § 312(a).

⁵⁵ 47 U.S.C. § 310(d); *see also* 47 CFR § 73.3540.

⁵⁶ *See id.*

⁵⁷ *See WHDH, Inc.*, 1 FCC 2d 856, 863 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970); *Paxson Mgmt. Corp. & Lowell W. Paxson (Transferors) & CIG Media LLC (Transferee)*, 22 FCC Rcd 22224, 22234, para. 28 (2007).

⁵⁸ *See, e.g., Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306 (2002).

⁵⁹ *See WQRZ, Inc.*, Decision, 22 FCC 1254, 1332, para. 51 (1957).

⁶⁰ 47 U.S.C. § 312(b).

⁶¹ 47 U.S.C. § 312(c).

⁶² *See, e.g., Amendment of Subpart L, Part 91, to Adopt Rules and Regulations to Govern the Grant of Authorizations in the Business Radio Service for Microwave Stations to Relay Television Signals to Community Antenna Systems*, Second Report and Order in Docket No. 14895, 2 FCC 2d 725, 728, 730, paras. 10, 12 (1966) (rejecting argument that FCC did not possess authority to sanction non-licensees for violating cable television (CATV) rules, stating: "Sections 312 (b) and (c) provide for the issuance of a cease and desist order against 'any (continued....)"

a license but did not obtain one were to start doing what only a licensee can do, why should the Commission not be able to issue a cease and desist order against that person?”⁶³ Moreover, the Act expressly authorizes the Commission to issue a monetary sanction “against a person under this subsection after notice and an opportunity for a hearing before the Commission or an administrative law judge thereof” where a non-licensee engages in activities for which a license, permit, certificate, or other authorization is required.⁶⁴ Thus, although HCCN and Guel do not currently hold licenses, they nevertheless are subject to the Act by virtue of the fact that both satisfy the definition of a “person”⁶⁵ and have apparently violated and/or failed to observe the requirements of section 301 of the Act. This is eminently sensible since, in the alternative, individuals could continue to violate Commission rules with impunity.

18. *Real Party in Interest and Abuse of Process.* Because the Commission must determine whether a potential licensee meets statutory requirements to hold and operate broadcast stations, parties who intend to assign authorizations are required to disclose the “real party in interest” purchasing the stations at issue and must certify that they have disclosed all material information requested in the application. The Commission has noted that the phrase “real party in interest” usually applies to parties to pending applications, while “*de facto*” control is normally applied to persons controlling existing authorizations.⁶⁶ The concern in either context is whether an applicant is, or will be, controlled in a manner that differs from the proposal before, or approved by, the Commission.⁶⁷ Thus, a real party in interest is an undisclosed applicant that “has an ownership interest or is or will be in a position to actually or potentially control the operation of the station.”⁶⁸ Given the concealment from the Commission of a party controlling an applicant, real parties in interest are deemed to exercise *de facto* control over a station in a manner that, “by its very nature, is a basic qualifying issue in which the element of deception is necessarily subsumed.”⁶⁹

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person’ — not merely any ‘licensee or permittee’ — who has ‘violated or failed to observe any rule or regulation of the Commission authorized in this act.’”).

⁶³ See, e.g., *Buckeye Cablevision, Inc.*, Decision, 3 FCC 2d 798, 801, 802, 806, paras. 8, 140 [sic], 16 (1966) (rejecting challenge to FCC’s authority to issue cease-and-desist to non-licensee CATVs), *aff’d* *Buckeye Cablevision, Inc. v. FCC*, 387 F.2d 220, 223-26 (D.C. Cir. 1967); *Valley-Vision, Inc. v. FCC*, 399 F.2d 511 (9th Cir. 1968) (opining that section 312(b) is not limited to licensees and noting that “none of the language that Valley quotes says that Congress did not intend that cease and desist orders could be issued against a non-licensee.” (citation omitted)).

⁶⁴ See 47 U.S.C. §§ 301, 503(b)1, (b)(3)(A), (b)(5). See also *Stephen Paul Dunifer*, Memorandum Opinion and Order, 11 FCC Rcd 718, 728, para. 26 (1995) (*subsequent history omitted*) (affirming forfeiture against a non-licensee and rejecting argument that section 503(b) of the Act requires issuance of a citation prior to forfeiture because that section specifically excludes citation requirement for individuals that are “engaging in activities for which a license, permit, certificate or other form of authorization is required.”).

⁶⁵ 47 U.S.C. § 153(39). The Act defines “person” as an “individual, partnership, association, joint-stock company, trust, or corporation.” A “person” is distinct from the Act’s definition of a “licensee” (“the holder of a radio station license granted or continued in force under authority of this chapter.”). 47 U.S.C. § 153(30).

⁶⁶ *Arnold L. Chase*, Decision, 5 FCC Rcd 1642, 1648 n.5 (1990).

⁶⁷ *Univision Holdings, Inc.*, FCC 92–445, released September 30, 1992 (quoting *Arnold L. Chase*, Decision, 5 FCC Rcd 1642, 1648 n. 5 (1990) (concern in a real party in interest inquiry is whether an applicant is, or will be, controlled in a manner that differs from the proposal before the Commission)).

⁶⁸ See *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1564 (D.C. Cir. 1988) (quoting *KOWL, Inc.*, Memorandum Opinion and Order, 49 FCC2d 962, 964 (Rev. Bd. 1974)).

⁶⁹ *Maritime Communications/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd 6520, 6534-6535, para. 36 (2011), citing *Fenwick Island Broadcast Corp. & Leonard P. Berger*, Decision, 7 FCC Rcd 2978, 2979 (Rev. Bd. 1992) (citation omitted). See also 47 U.S.C. § (continued....)

19. Further, it is an abuse of Commission processes to attempt to achieve a result our licensing processes were not designed or intended to permit, or to attempt to subvert the underlying purpose of the licensing process.⁷⁰ As the Commission has noted, “both the potential for deception and the failure to submit material information can undermine the Commission’s essential licensing functions.”⁷¹ Thus, false certifications subvert our licensing process.⁷² Moreover, filing an application in the name of a surrogate is deceptive and denies the Commission and the public the opportunity to review the qualifications of the real party who will control and operate a station; it also constitutes an abuse of process.⁷³ Classic abuse-of-process cases involving surrogate applicants include sisters who served as fronts for their brother to claim a preference once available to female-owned businesses,⁷⁴ or deceased relatives whose names were used by licensees that had reached the limit on the number of authorizations that could be issued in their names.⁷⁵

20. *Foreign Ownership Limitations.* Section 310(b) of the Act limits foreign holdings of broadcast licenses.⁷⁶ The statute limits direct foreign ownership of broadcast licensees to 20%, while allowing for certain indirect holdings of such interests by foreign persons or entities. Specifically, the statute states:

No broadcast . . . station license shall be granted to or held by--

- (1) any alien or the representative of any alien;
- (2) any corporation organized under the laws of any foreign government;
- (3) **any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens** or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

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308(b) (“All applications for station licenses, or modifications or renewals thereof, shall set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station”); 47 U.S.C. § 310(d) (“Any such application for [assignment or transfer of control] shall be disposed of as if the proposed transferee or assignee were making application under section 308 for the permit or license in question.”).

⁷⁰ See, e.g., *Revised CP Form*, 4 FCC Rcd 3853, paras. 16, 23.

⁷¹ *Intermart Broadcasting Pocatello, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 8822, 8827, para. 8 (2008).

⁷² *San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, para. 19, n.40 (2004) (false certifications are abuses of Commission processes which waste Commission resources and which may not only violate 47 CFR § 73.1015 but may subject the applicant to a monetary forfeiture as well as criminal liability under 18 U.S.C. § 1001 (*citing In the Matter of Financial Certifications by Applicants for Broadcast Station Permits*, FCC No. 87-97 (Mar. 19, 1987))).

⁷³ See *Ronald Brasher*, Decision, 19 FCC Rcd 18462, 18477 (2004) (*Brasher*) (quoting *Arnold L. Chase*, Decision, 5 FCC Rcd 1642, 1643, n.7 (1990)); see also *Evansville Skywave, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 1699, 1701 n.7 (1992).

⁷⁴ See, e.g., *Opal Chaldwell*, Decision, 2 FCC Rcd 5502, 5507, para. 6 (Rev. Bd. 1987), *aff’d sub nom S.L. Communications, Inc. v. FCC*, 168 F.3d 1354 (D.C. Cir. 1999) (*SL Communications*) (affirming FCC decision that two sisters filed applications as surrogates for their brother, who was the real-party-in-interest and had used his sisters as nominal applicants to take advantage of then-applicable affirmative action programs affording preferences to women-owned license applicants).

⁷⁵ *State of Oregon*, Letter, 22 FCC Rcd 17663, 17665, nn.20, 21 (MB 2007) (discussing and citing *SL Communications* and *Brasher*).

⁷⁶ 47 U.S.C. § 310(b).

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.⁷⁷

Guel avers he created HCCN in 2005 and directly held 100% voting rights of HCCN until 2013. Guel was not a U.S. citizen during that time; he was – and apparently still is – a citizen of Mexico.⁷⁸ There is nothing in the record to indicate that HCCN was owned by any other corporation. Thus, at the time of Guel’s direct ownership of HCCN, the company was subject to section 310(b)(3) of the Act, which limits direct foreign ownership by non-U.S. citizens to no more than one-fifth of the capital stock. The Commission therefore could not have granted a broadcast license to HCCN in accordance with the Act because of Guel’s 100% direct stock ownership in HCCN.⁷⁹

B. Factual Background

1. The Parties

21. ***Antonio Cesar Guel and HCCN.*** Guel avers he founded HCCN, a for-profit, private Texas corporation created in 2005, to acquire low power television (LPTV) stations that would serve the Hispanic Christian community.⁸⁰ Guel was president and sole owner of HCCN⁸¹ and had significant experience in the broadcast industry when he filed the 2010 Assignment Application.

22. As Guel recounts, he became interested in media through his work in radio ministry for Iglesia Jesucristo es mi Refugio, Inc. (Iglesia) from 1994 through 2000.⁸² He states he tried, unsuccessfully, to acquire AM radio stations for different ministries in 2003 and was a sales manager for KDFT(AM) from

⁷⁷ *Id.* (emphasis added). In 2013, the Commission clarified that foreign persons or entities could seek approval to hold indirect interests in broadcast licenses in excess of the 25% limit referenced in section 310(b)(4). *See Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act, Foreign Investment in Broadcast Licensees*, Declaratory Ruling, 28 FCC Rcd 16244 (2013); *see also* 47 CFR § 1.5000(a)(1). However, in this case, section 310(b)(4), the provision pertaining to indirect foreign ownership of broadcast licensees, is not at issue because Guel’s ownership interest in HCCN was directly held and accordingly falls under section 310(b)(3).

⁷⁸ *See* Petition of Michael Couzens to Deny Renewal of K23IA, *et al.*, CDBS File No. BRTTL-20140401ABB at 1-2 (filed June 30, 2014); *see also* Guel Decl. at 3.

⁷⁹ *See, e.g., Caribbean Festival Association, Inc.*, Letter, 22 FCC Rcd 19238, 19239-19241 (MB 2007) (*Caribbean Festival*) (affirming dismissal of application for new radio station because foreign ownership exceeded statutory 20% benchmark imposed by 47 U.S.C. § 310(b)(3)); *Ministerios el Jordan*, Order to Show Cause, Hearing Designation Order, and Opportunity of Opportunity for Hearing, DA18-834, 2018 WL 5004795 (EB 2018) (*Ministerios*) (ordering applicant to show cause why radio license should not be revoked for unauthorized operation by non-U.S. citizens and misrepresentation of U.S. citizenship) (license surrendered Nov. 9, 2018).

⁸⁰ *See* Guel Decl. at 1. Anyone doing business with the FCC must obtain a Federal Registration Number (FRN). *See* 47 CFR §§ 1.8001-1.8003. HCCN obtained an FRN (0014120505) on October 11, 2005. *See* <https://apps.fcc.gov/coresWeb/searchDetail.do?frn=0014120505> (last visited Mar. 5, 2020).

⁸¹ Ownership Report for HCCN, CDBS File No. BOA-20131220HCO (biennial report filed Dec. 20, 2013) (certifying that as of October 1, 2013, Guel was replaced as HCCN’S sole officer and director by “Cesar A. Guel” (Cesar), though it appears Cesar held that position, or claimed to hold that position, earlier in 2013). *See* CDBS File No. BRTVL-20130401ADR (Renewal Application for WESL-LP, CDBS File No. BRTVL-20130401ADR, certified by Cesar as President, HCCN, as of March 31, 2013). Antonio Guel, however, retained control of HCCN as the result of his 100% voting and equity rights in HCCN.

⁸² Guel Decl. at 1.

2002 to 2004.⁸³ Guel avers HCCN acquired various LPTV stations in 2007, including the Stations at issue here.⁸⁴

23. Although it was not mentioned in Guel's Declaration, HCCN had acquired an LPTV station (KYUM-LD, Yuma, Arizona) as early as 2005. Guel, as President of HCCN, certified on the FCC Form 345 filed with the Commission in connection with the Yuma transaction that HCCN complied with the foreign ownership limitations of section 310 (Yuma Acquisition).⁸⁵ This station was sold shortly thereafter and is not part of this proceeding, but this is the first known instance of a false foreign ownership certification by Guel.

24. Guel avers that, after many of the LPTV stations were "successfully built and operating," HCCN entered into agreements to sell some of those stations to several churches.⁸⁶ According to Guel, many transactions were structured so the buyers could run the stations "under HCCN's supervision," but HCCN would officially remain the named licensee until such time as "the majority of the amounts owed was paid."⁸⁷ For example, in 2006 and 2007, HCCN acquired stations KSSY-LP and K43AG, which HCCN later

⁸³ *Id.* Commission records reveal that Guel participated in filing LPFM applications as early as 2001. *See, e.g.,* Iglesia de Cristo Miel Meza, CDBS File No. BNPL-20010611ADY; and Iglesia de Cristo Miel Tucson, CDBS File No. BNPL-20010611ADZ. Guel apparently consulted during this period too. *See, e.g.,* CDBS File No. BNPFT-20030317HFT (FM permit for Juan Alberto Ayala, listing Guel as consultant and using Guel's FRN). The FM permit ultimately was assigned to Elohim Group Corporation; *see Juan Alberto Ayala and Elohim Group Corporation*, Order, 32 FCC Rcd 3739 (MB 2017) (consent decree to resolve, *inter alia*, allegations that Ayala falsely certified he had consent to rebroadcast programming and to grant consent to assign construction permit from Ayala to Elohim); *see also* CDBS File No. BAPFT-20161207ABD at Attach. (contract executed by Joel Juarez, President of Elohim and listing Jennifer Juarez's 1138 N. Tillery Avenue address). Elohim is owned by Guel's daughters. *See* LMS File No. 0000181653 (Jan. 27, 2022) (Sharai Guel, President, lists Elohim's official address as 2605 Hyacinth Drive, Mesquite, TX 75181 – Guel's address, which is sometimes listed in FCC filings by Guel or Guel entities with erroneous information, such as a "2505" street number or a 75247 zip code) (Hyacinth Drive).

⁸⁴ *See* Guel Decl. at 1. *See also, e.g.,* CDBS File No. BALTVL-20080124ADQ (acquisition by HCCN of various stations (several of which were part of the 2010 Assignment Application)). Guel agreed to pay \$500,000 in monthly installments over five years, secured by a promissory note, and certified compliance with 47 U.S.C. § 310. Alpert was the legal contact on the application for both parties and timely filed a consummation notice.

⁸⁵ CDBS File No. BALTTL-20050615ACE (assignment of KYUM-LD, Yuma, Arizona, facility ID No. 74378, from Powell Meredith Communications Company to HCCN). The application, filed June 15, 2005, was signed by Guel. The KYUM application is relevant to Guel's propensity for truth; *see infra* para. 94.

About six weeks later, the parties updated their application with an amended asset purchase agreement. The amendment noted that, pursuant to *LUJ, Inc.*, the parties were withholding two schedules (tangible property/equipment used to operate the station, and station agreements) as proprietary, non-public information related to the parties' businesses. *See LUJ, Inc., and Long Nine, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 16980, 16982-84, paras. 6-9 (2002) (*LUJ*) (*aff'g* 2001 staff assignment grant where parties withheld certain proprietary agreements not germane to FCC consideration, and which did not constitute a separate or additional agreement, but cautioning applicants that "failure to submit all material terms of an assignment agreement will delay processing of the application" and may result in an additional thirty-day public notice period). *See also Luis A. Mejia and MSG Radio, Inc.*, Forfeiture Order, 23 FCC Rcd 15242, 15245-46, paras. 11-14 (MB 2008) (imposing forfeiture where parties improperly cited *LUJ* as basis to withhold a schedule regarding "excluded assets" in assignment application; the Bureau found the excluded schedule was essential to fully understanding the proposed transaction). The Bureau consented to the Yuma Acquisition on August 4, 2005. The Commission has no record that the parties' filed the requisite consummation notice.

⁸⁶ Guel Decl. at 1-2.

⁸⁷ *Id.* at 2. Of the three other licensees referenced in Guel's Declaration, one licensee no longer holds authorizations. *See* CDBS File No. BLTTL-20071212ABV (license for K22HB-LD cancelled in May 2018 based on admitted silence by then-licensee Centro Cristiano Sion); CDBS File No. BALDTL-20150501AJX (assigning Sion's other station, K49KS, in 2015). The Commission is investigating the remaining licensees.

assigned to Iglesia.⁸⁸ The sale of these two stations eventually became the basis for a lawsuit against Guel/HCCN that raised questions as to Guel's true citizenship.⁸⁹

25. ***Guel's Direct Interest in HCCN in Excess of 20% Rendered HCCN Noncompliant with Section 310(b) of the Act.*** After acquiring KSSY and K43AG, Iglesia—with Guel as broker—entered into an agreement to sell the two California stations to several pastors for \$1,299,090 in or around 2007.⁹⁰ Guel recounts that the parties signed a letter of intent and payments had commenced.⁹¹ However, “[u]nder the terms of the agreement, the areas of operation of those stations were to be moved [and] [w]hen the relocations did not occur quickly enough,” the pastors sued Guel/HCCN and Iglesia in or around 2014.⁹²

26. On May 14, 2014, counsel for the pastor/plaintiffs in the lawsuit petitioned the court to compel Guel to answer interrogatories on his citizenship.⁹³ On May 19, 2014, Guel complied,

⁸⁸ In 2006, HCCN applied for consent to acquire K43AG, Ridgecrest, CA from Kern Educational Telecommunications for \$80,000. CDBS File No. BALTTL-20061102ABW (Guel, as President of HCCN, certified in FCC Form 345 HCCN's compliance with the foreign ownership limits of 47 U.S.C. § 310; the APA filed with the application disclosed the parties' payment plan of a downpayment followed by monthly payments). Guel timely certified that the transaction closed on March 19, 2007. *See id.* In January 2007, HCCN contracted to buy KSSY-LP, Ford City, CA; Alpert, by then representing HCCN, timely certified the sale had closed. *See* CDBS File No. BALTTL-20070126AFK (Guel certified that HCCN complied with foreign ownership limits of 47 U.S.C. § 310). HCCN then obtained consent to assign KSSY-LP to Iglesia and disclosed the \$250,000 payment schedule (\$50,000 paid upon execution, followed by monthly payments secured by promissory note); Alpert, representing both HCCN and Iglesia, timely filed the consummation notice. *See* CDBS File No. BALTTL-20070918ACP. Also in 2007, HCCN sought to sell K43AG to Iglesia and disclosed the \$250,000 payment plan. CDBS File No. BALTTL-20070918ACO. But Alpert did not file the consummation notice until 2008, a year after the Bureau's November 2007 consent to the transaction. *Id.* (Alpert certified the sale closed Apr. 10, 2008).

⁸⁹ *See* Guel Decl. at 2-3. The lawsuit Guel appears to reference in his Declaration apparently was initiated in 2014 and resulted in a 2016 default judgment finding Guel and his co-defendants liable for civil fraud involving the sale of several LPTV stations. *See Jose Gonzalez et al. v. Iglesia Jesucristo Es Mi Refugio, Inc. et al.*, No. BC 501688, Los Angeles County Superior Court) (*Gonzalez v. Iglesia Jesucristo*). This case is what apparently prompted HCCN's bankruptcy filing and belated Consummation Notice. An earlier case involving Guel/HCCN, however, seems to have been the proximate motive for Guel's transfer of the Stations to Juarez. *See Unidad de Fe y Amor Corporation v. Iglesia Jesucristo Es Mi Refugio, Inc., Robert Gomez, HCCN, Inc., Antonio Cesar Guel*, No. C 08-4910 RS, 2009 WL 1813998 (N.D. Cal. June 25, 2009) (*Unidad*). Guel and his co-defendants ultimately settled the *Unidad* fraud/breach of contract case in 2009, agreeing to pay *Unidad* \$5,000 per month until 2011. In February 2010, however, *Unidad* petitioned the court to enforce the settlement. *See infra* note 184. The very next month – March 12, 2010 – Guel executed the APA with his minor niece to assign to her 16 of HCCN's stations scattered over eight states, notwithstanding Juarez's admitted lack of broadcast experience, lack of personnel, apparent lack of legal representation, and apparent lack of funds and ability to legally execute a contract. Ostensibly transferring the Stations to Juarez in 2010, while retaining the option to “consummate” the purported transaction later through the use of possibly backdated closing documents, would have benefitted Guel by shielding HCCN's assets from potential default in *Unidad*.

⁹⁰ *See, e.g.*, Petition of Michael Couzens to Deny Assignment of KEAM-LD from HCCN to HFCN, CDBS File No. BALDTL-20140807ABF, at 1-2 (filed Sept. 22, 2014) (Petition to Deny) (Couzens represented the pastor plaintiffs in *Gonzalez v. Iglesia Jesucristo*).

⁹¹ *See* Guel Decl. at 2-3.

⁹² *Id.* *See also supra* note 89 and *Roberto Gomez*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 10618 (MB 2009) (proposing \$5000 forfeiture for Iglesia's false certification in application that K43AG had been constructed on the tall tower specified in construction permit, when in reality no tall tower had ever been built at the specified coordinates. Guel, as consultant, had certified the accuracy and veracity of the technical section).

⁹³ *See* Petition of Michael Couzens to Deny Renewal Applications of K23IA, KJTN-LP, et al., CDBS File No. BRTTL-20140401ABB, at 2 (filed June 30, 2014) (Couzens's amended civil complaint in *Gonzalez v. Iglesia Jesucristo* alleged fraud and breach of contract by Guel and others in failing to move stations and to return payments to buyers. Couzens argued that Guel had misrepresented his citizenship to the FCC and that HCCN violated statutory (continued....)

acknowledging to plaintiffs that he was not a natural born citizen of the United States, had not become a naturalized U.S. citizen and, therefore, was not, at that time, a U.S. citizen.⁹⁴

27. Guel did not disclose his true citizenship to the FCC until almost four years later, when Juarez filed her Response in 2018.⁹⁵ Therein, Guel avers that, as a result of a lawsuit, “it was realized” (purportedly for the first time) that, as a non-U.S. citizen (and holder of a 100% direct stock interest in HCCN), he “was not qualified to be a Commission licensee.”⁹⁶

28. **Jennifer Juarez.** Juarez is the named licensee of the Stations. Juarez states in her Response that she had no broadcast experience when she agreed to acquire the Stations from HCCN, which was 100% directly owned by Guel, her uncle. Publicly available information suggests she was a minor as of the March 12, 2010 date on which she executed the APA.⁹⁷

29. As Juarez explains, she and her father would occasionally meet up with Guel at family events beginning in the 1990s.⁹⁸ Juarez states her father was always interested in Guel’s work in broadcasting; in late 2008, she and her father talked with Guel “to know more about how we could start working in the communications industry.”⁹⁹ Juarez recalls that Guel said “he was struggling financially” due to the economic crisis at that time.¹⁰⁰ Guel “offered to sell us some television channels [sic] and also offered us financing [sic] the channels through his company. We thought it was a great opportunity and agreed to pay a deposit and the rest in monthly payments.”¹⁰¹ Guel also “helped us to contact some vendors to buy our equipment for the stations and that is how we started our new adventure into this business.”¹⁰² Juarez further

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limits on foreign ownership, thus rendering HCCN’s ownership of the stations illegitimate and attempts to assign the licenses a legal nullity).

⁹⁴ See *id.* at 2-3; see also Guel Decl. at 3.

⁹⁵ See *infra* para. 51, note 184.

⁹⁶ See Guel Decl. at 3 (Guel does not clearly identify the name of or parties to the lawsuit he references); see also 47 U.S.C. § 310(b)(3). See also *Review of Foreign Ownership Policies for Broadcast, Common Carrier, and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272, 11277, n.4 (2016) (“Under the Commission’s Section 310(b)(3) forbearance approach applicable to common carrier licensees, common carrier licensees have the option to file a petition for declaratory ruling requesting prior Commission approval to exceed the 20 percent foreign ownership limits in Section 310(b)(3) where the foreign ownership interests would be held in the licensee through intervening U.S.-organized entities that do not control the licensee. . . . [T]he Commission’s forbearance authority does not extend to broadcast . . . licensees covered by Section 310(b)(3)”), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017). See also *supra* note 79.

⁹⁷ Public records indicate Juarez was born in April 1992, so she would have been 17 when she executed the APA in March 2010.

<https://www.truepeoplesearch.com/details?streetaddress=3332%20Chihuahua%20Ave&citystatezip=Dallas%2C%20TX&rid=0x8>. Juarez thus was a minor at the time, as the age of majority (when individuals can, *inter alia*, legally execute contracts) is 18 in Texas. See <https://statutes.capitol.texas.gov/Docs/CP/htm/CP.129.htm#:~:text=AGE%20OF%20MAJORITY.,%2C%2069th%20Leg.%2C%20ch.> (section 129.001 of Texas statutes).

⁹⁸ See Response at 4, Question 5; Attach. 2 to Response (Declaration of Jennifer Juarez (undated)) (Juarez Decl.)

⁹⁹ *Id.*

¹⁰⁰ *Id.* Juarez makes no mention of Guel’s 2009 *Unidad* fraud/breach of contract case.

¹⁰¹ *Id.*

¹⁰² *Id.*

states that “[m]y dad decided to pursue [another] industry . . . and I decided to stay in the communications industry.”¹⁰³ Juarez claims she has “been learning every day and continue[s] to learn in this industry.”¹⁰⁴

30. Juarez averred in her Response “[t]here are no other stations owned or controlled by me.”¹⁰⁵ But Commission records and documents filed with the FCC indicate that she holds a 33% attributable interest in Hispanic Family Christian Network, Inc. (HFCN), a company Guel founded in 2007.¹⁰⁶ Juarez apparently became a director of HFCN on February 5, 2010 – before she executed the APA with HCCN – and our records indicate that she has held a one-third voting interest in HFCN since.¹⁰⁷

2. The Transaction at Issue

31. ***The Juarez Purchase and Assignment.*** On March 12, 2010, while still legally a minor, Juarez executed the APA with HCCN to acquire 16 stations licensed to HCCN, including the seven at issue here: KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, WESL-LP, and KRPO-LD.¹⁰⁸ Pursuant to the APA, she agreed to pay her uncle \$320,000 for the stations as specified in Schedule 2.1.¹⁰⁹ The Parties further agreed to “comply with any condition imposed on it by the FCC” with respect to Commission consent to the transaction.¹¹⁰ Guel, as 100% stockholder and president of HCCN,¹¹¹ executed the APA and was apparently represented by Alpert.¹¹² It does not appear that Juarez was represented by counsel in this transaction.¹¹³

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Response at 5, Question 9.

¹⁰⁶ See e.g., CDBS File No. BON-20130128AAZ (filed Jan. 28, 2013). See also Petition to Deny at 3, Attach. C (incorporation papers filed with the Texas Secretary of State on October 11, 2007, stating Guel founded Hispanic Family Christian Network, Inc., as a non-profit charitable organization designed to operate a Christian radio station. The initial board was comprised of Guel and three other individuals, each of whom listed Guel’s home address (Hyacinth Drive) as their official address). In 2008, Guel became HFCN’s registered agent at his Hyacinth Drive address; he appears to have served in that position into at least early 2013, if not later. See *id.* at Attachs. D, F. According to a recent ownership report filed with the FCC, however, Maria C. Guel certified that HFCN is a for-profit corporation with three owners as of 10/1/21: Maria C. Guel, President and Director with a 33.3% voting interest; Jennifer Juarez, Director, with a 33.3% voting interest; and Ana K. Guel, Director and Stockholder with 33.3% voting and equity interests. LMS File No. 0000171529 (filed Nov. 24, 2021).

¹⁰⁷ On February 16, 2010, HFCN’s president, Maria C. Guel, notified the Texas Secretary of State that, as of February 5, 2010, Juarez had been named a director and would serve as HFCN’s treasurer; on January 28, 2013, HFCN notified the Texas Secretary of State that Juarez’s term as a member of HFCN’s board of directors would run through 5/15/2013. See Petition to Deny at Attachs. E, F (listing Maria C. Guel as HFCN’s president); See also HFCN Ownership Report, CDBS File No. BON-20130128AAZ (filed Jan. 28, 2013); LMS File No. 0000047758 (filed Mar. 2, 2018) (listing Juarez as a director and holder of a one-third interest in a number of stations licensed to HFCN as of 10/1/17, along with attributable interests in other stations); and LMS File No. 00000171529 (filed Nov. 26, 2021) (listing Juarez as a director and holder of a one-third interest in LPTV and radio stations licensed to HFCN as of 10/1/21, along with attributable interests in other stations).

¹⁰⁸ See *supra* note 97. See also Main CDBS File No. BALTTL-20100315AAS at Attach. 4, APA (the 16 stations were located in eight states: Arizona, Arkansas, Kentucky, Mississippi, Missouri, Nevada, Texas, and Wyoming). The other stations listed in the Application were subsequently sold, surrendered, or cancelled. See *supra* note 10.

¹⁰⁹ See APA at 3, section 2.1.

¹¹⁰ Assignment Application at Attach. 4, APA, at Section III.3.2(c) (Application for Commission Consent).

¹¹¹ HCCN Ownership Report, CDBS File No. BOA-20100723ATM (biennial ownership report filed July 23, 2010, certifying Guel’s 100% direct equity and voting interest in HCCN as of November 1, 2009).

¹¹² Assignment Application at Section II; APA at ¶¶ 15-16 (specifying that all notices, communications, etc., from Juarez to HCCN be sent to HCCN and counsel Dan Alpert).

32. On March 15, 2010, HCCN filed the Assignment Application to voluntarily assign the stations to Juarez and included a copy of the APA as Exhibit 11.¹¹⁴ The application required each Party to certify to the Commission that “the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that **all certifications and attached Exhibits are considered material representations.**”¹¹⁵ It also cautioned applicants that “WILLFUL FALSE STATEMENTS . . . ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).”¹¹⁶ Guel’s signature as President of HCCN on the Assignment Application affirmatively represented that the Parties’ agreements “complied fully” with FCC rules and policies; that the documents provided “embody the complete and final understanding between” the Parties; and that HCCN had provided copies of all agreements for the sale/transfer of the stations, except for Schedule 2.1, which he represented contained “private financial information, and was properly redacted pursuant to Commission policy established in *LUJ, Inc.*”¹¹⁷ Juarez made a similar certification.¹¹⁸

33. By their signatures, Juarez and Guel also certified they had answered all Assignment Application questions based on their respective review of the form’s instructions and worksheets (Instructions), and that their affirmative certifications were material representations that the Assignment Application satisfied each pertinent standard and criteria set forth in the Instructions.¹¹⁹

34. On April 26, 2010, the Commission consented to the assignment to Juarez¹²⁰ based on the Parties’ certifications in the Assignment Application that the proposed transaction complied with the Commission’s rules and policies.¹²¹ This Grant informed the Parties that consummation of their

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¹¹³ No counsel was identified for Juarez in either the Assignment Application or in the APA. See CDBS Lead File No. BALTTTL-20100315AAS and APA at ¶¶ 15-16.

¹¹⁴ CDBS Lead File No. BALTTTL-20100315AAS.

¹¹⁵ *Id.* (emphasis added).

¹¹⁶ *Id.* (emphasis in original).

¹¹⁷ BALTTTL-20100315AAS at Section II, item 6. As described above, HCCN selected “no” in response to the query asking whether he had submitted copies of all agreements for the sale of the stations and whether these documents embodied the complete and final understanding between assignor and assignee and complied with FCC rules and policies. As required, Guel explained his negative answer at Exhibit 4, *i.e.*, stating that “Schedule 2.1 has been redacted. The document contains private financial information, and is properly redacted pursuant to Commission policy established pursuant to *LUJ, Inc.*”

¹¹⁸ *Id.* at Section III, item 5. Juarez selected “no” as to whether the written agreements embody the complete and final agreement for the sale of the stations and that the agreements comply fully with FCC rules and policies; she explained her response at Exhibit 11 (citing the APA and “See Section II”).

¹¹⁹ CDBS Lead File No. BALTTTL-20100315AAS at Section II, item 1; Section III, item 1. The Form 345 Instructions promulgated in July 2009 required applicants to submit with the form “a complete and final copy of the unredacted contract for the assignment or transfer of the authorizations that are the subject of this application, including all exhibits and attachments.” Instructions at Section II, F. Item 6; Section III, E. Item 4. The Instructions also required applicants “to certify that the contracts/agreements for assignment of the subject authorizations ‘comply fully with the Commission’s rules and policies.’ In order to complete this certification, applicants must consider a broad range of issues. Worksheet #2 provides guidance on key compliance issues to facilitate applicants’ review of their proposed transactions, and to help applicants identify issues where additional explanatory exhibits may be required or helpful.” Instructions at Section II, F. Item 6c; Section III, A. Item 1.

¹²⁰ CDBS Lead File No. BALTTTL-20100315AAS (Grant).

¹²¹ CDBS Lead File No. BALTTTL-20100315AAS at sections II-6, III-5; *see also id.* at sections II-1, III-1 (each party certified it “had answered each question in this application based on its review of the application instructions and
(continued....)

transaction “shall be completed within 90 days from the date” of the Grant (*i.e.*, no later than July 25, 2010) and that “notice in letter form thereof shall promptly be furnished to the Commission by the seller or buyer showing the date the acts necessary to effect the transaction were completed.”¹²² The Grant further informed the Parties that the Commission would consider the assignment complete upon the filing of the consummation notice, at which point Juarez could begin operating the stations as the licensee.¹²³ As specified in the APA, the closing “shall take place within ten (10) business days after the date of Final Order of the FCC’s action [] granting the Assignment Application. . . . ‘Final Order’ means that forty (40) days will have elapsed from the date of the FCC’s issuance of a Public Notice of the Consent to the Assignment;” in this case, the Parties, pursuant to the terms of the APA, should have closed no later than June 25, 2010.¹²⁴

35. The Parties certified that the APA as submitted in the Assignment Application (except for what the Parties claimed was “private financial information” in Schedule 2.1) embodied their complete agreement and complied with FCC rules and policies – to include certification that Juarez had “sufficient net liquid assets [] on hand or are available from committed sources to consummate the transaction and operate the station(s) for three months.”¹²⁵ The Parties, however, did not disclose that Guel purportedly was financing Juarez’s purchase of all the stations on a payment plan pursuant to Schedule 2.1, which they withheld by characterizing it as private financial information that could be excluded from the Assignment Application pursuant to the Commission’s *LUJ* decision. (To this day, Guel/HCCN and Juarez have not produced a copy of Schedule 2.1, and it is not clear if such a document ever existed or if the claim in the Assignment Application about Schedule 2.1 was false. As will be shown below, this type of seller financing of a broadcast transaction is not “private financial information,” but rather was required to be included in the Assignment Application because it was directly relevant to the issue of whether the transaction complies with the Rules, particularly the Rule prohibiting a seller from having a reversionary interest in a broadcast station.¹²⁶) They also did not disclose the terms of their unwritten side agreement, whereby payments for the Stations would be made after “consummating” the sale, and Guel would hold the closing papers and not file the requisite consummation notice until some unspecified time after “payments were made.”¹²⁷

36. The Parties did not file the requisite notice (or the requisite ownership report) within 30 days of purportedly consummating the transaction.¹²⁸ Instead, HCCN’s counsel filed the Consummation

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worksheets” and “that where it has made an affirmative certification below, this certification constitutes its representation that the application satisfies each of the pertinent standards and criteria set forth in the application instructions and worksheets”). Each party also certified that its respective “statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.” *Id.*

¹²² Grant.

¹²³ *Id.*

¹²⁴ See APA at ¶ 8.1. The Bureau published notice of the Grant on May 3, 2010 (*Broadcast Actions*, Public Notice, Report No. 47227, 2010 WL 1743192); 40 days from May 3 was Saturday, June 12, and 10 business days from June 12 was June 25, 2010.

¹²⁵ CDBS Lead File No. BALTTL-20100315AAS at Section III, item 9 (Financial Qualifications) (Juarez checked the “yes” box).

¹²⁶ 47 CFR § 73.1150(a) and (b). Both the initial withholding of Schedule 2.1 from the Assignment Application and the failure to produce it in response to the Bureau’s subsequent investigation (*see infra* para. 97) raise questions about the Parties’ veracity. See 47 CFR § 1.17.

¹²⁷ Response at 1, Question 2. This non-disclosure similarly raises questions about the parties’ veracity.

¹²⁸ Licensees must file an ownership report (FCC Form 323) within 30 days of consummating authorized assignments, which the Parties did not do. 47 CFR § 73.3615(c). On July 23, 2010, however—two days before the purported consummation—HCCN filed biennial ownership reports for all 16 stations. BOA-20100723ATM (in (continued....))

Notice on November 10, 2014, certifying that HCCN and Juarez had consummated the sale on July 25, 2010, the deadline indicated in the Grant.¹²⁹ The same counsel obtained an FCC Registration Number (FRN), required to conduct business with the FCC, for Juarez on December 1, 2014.¹³⁰ In the spring of 2016, Juarez filed applications to renew the licenses of three of the captioned Stations, two of which remain pending.¹³¹ In 2021, Juarez filed applications to renew the licenses of four of the captioned Stations, and in 2022 she filed an application to renew the seventh station; these applications are likewise pending.¹³²

37. ***HCCN Actions Taken Concerning the Stations After the Purported Consummation of the Juarez Assignment.*** If the Parties had in fact consummated the sale on July 25, 2010, at which point Juarez should have assumed control of the Stations, the Parties should have notified the Commission no later than August 24, 2010. Yet actions taken by HCCN after that time are inconsistent with the Parties' assertions that the consummation and transfer of control occurred in July 2010. Between July 25, 2010 and November 10, 2014, HCCN filed two biennial ownership reports, one change-of-address notice, and over 30 applications affecting the stations purportedly assigned to Juarez in July 2010.¹³³ Specific HCCN filings include:

- On July 13, 2011, HCCN filed a change-of-mailing-address notice to reflect a PO box.¹³⁴ The new address applied to all stations transferred to Juarez in 2010.

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which Guel certified, apparently falsely, U.S. citizenship). HCCN did not update that report.

¹²⁹ See BALTTL-20100315AAS (Grant and Consummation Notice).

¹³⁰ See FCC Registration, FRN number 0024126237 for registrant "Juarez, Ms. Jennifer" with registration date 12/01/2014 <https://apps.fcc.gov/coresWeb/searchDetail.do?frn=0024126237> (last visited Mar. 3, 2020).

¹³¹ CDBS File Nos. BRTTL-20160411AAZ and BRTTL-20160412ABN. In 2019, the Bureau inadvertently granted the third renewal application Juarez filed in 2016. See CDBS File No. BRDTL-20160412ABO (KRPO-LD).

¹³² LMS File Nos. 0000132447; 0000132448; 0000142902; and 0000176579; and LMS File No. 0000192826. See also LMS File Nos. 0000192977 and 0000192978.

¹³³ These applications specified HCCN as licensee and nowhere referenced Juarez, either as licensee or a signatory.

¹³⁴ FCC Change in Official Mailing Address, certified by Alpert as Legal Counsel (July 13, 2011) (PO Box 542843). See CDBS Station Search for KHDE-LP, Correspondence Folder (https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.htm?context=25&appn=101435388&formid=901&fac_num=128721). (This PO Box is the same address identified in Texas records as HFCN's address as of 9/15/14. See Petition to Deny, Attach. B). HCCN's prior official address was listed as 8500 N Stemmons Freeway, Suite 5050, Dallas, TX. See CDBS File No. BLSTA-20100823.

- On May 3, 2012, HCCN filed a biennial ownership report for 41 stations, listing all 16 stations purportedly sold to Juarez.¹³⁵ Guel certified that, as of October 1, 2011, he was the sole officer, director, and owner of HCCN and was a citizen of the U.S.¹³⁶
- On April 1, 2013, HCCN filed a renewal application for WESL-LP.¹³⁷ “Cesar A. Guel” (Cesar), President, signed the application and certified that HCCN complied with statutory foreign ownership limits.¹³⁸
- On December 20, 2013, HCCN filed another biennial ownership report for 40 stations, including those purportedly sold to Juarez.¹³⁹ This report certified that, as of October 1, 2013, Guel was no longer an officer or director of HCCN but retained 100% direct ownership of the voting and equity rights for HCCN’s outstanding stock. Cesar certified that he was HCCN’s sole officer and director¹⁴⁰ and that Guel was a U.S. citizen. Cesar also certified that he and Guel were not related as parent/child.¹⁴¹
- On April 1, 2014, HCCN filed applications to renew the licenses of Stations KZAB-LP and KJTN-LP. Cesar signed the applications, certifying that HCCN complied with statutory foreign ownership limits.¹⁴² HCCN, however, did not timely withdraw or amend these applications that remained pending after the purported May 19, 2014 realization that Guel, as a non-U.S. citizen,

¹³⁵ See CDBS File No. BOA-20120503ABO. Guel listed his address as 8500 N Stemmons Freeway.

¹³⁶ *Id.* at sec. II-B.3.a.copy 2 (“Citizenship: US”); III (certification signed by Antonio Cesar Guel that “I have examined this Report and that to the best of my knowledge and belief, all statements in this Report are true, correct and complete.”)

¹³⁷ CDBS File No. BRTVL-20130401ADR.

¹³⁸ *Id.* As the Bureau later learned, Cesar Antonio Guel is Antonio Cesar Guel’s son; Cesar was 19 years old when he purportedly became HCCN’s sole officer and director. See CDBS File No. BALED-20180516ABH (filed May 16, 2018) (application to assign licenses from HFCN to Hispanic American Christian Network, Inc., and certifying the transaction presented no issue under FCC policies relating to media interests of immediate family members (sibling or parent/child)). After Bureau inquiry, HFCN corrected this false certification; see amended application at Exh. 14 (filed Nov. 19, 2018) (Antonio Cesar Guel is father of Maria C., Ana K., Sharai, and Cesar A. Guel)).

¹³⁹ See CDBS File No. BOA-20131220HCO. This report listed HCCN’s FRN as 0014120505, its official address as PO BOX 542843, and its actual address as 5787 S. Hampton Rd., Suite 200, Dallas, TX. Guel’s address was listed as the Stemmons Freeway location and his FRN as 0006568448. Cesar’s address was listed as Guel’s Hyacinth Drive residence; Cesar listed his FRN as 9990093107 (Commission records currently reflect two FRNs associated with Cesar Guel: (1) 2130006600 (Cesar A. Guel as named registrant; registered by Alpert on 2/27/18) and (2) 0006568448 (affiliated with entity Millington Community Center and listing Cesar C. [sic] Guel as contact for organization Comunidad Cristiana and president, at Hyacinth Drive, as updated 2/27/23. This FRN was initially registered on 2/23/00). *Id.*

¹⁴⁰ This report appears inaccurate. First, it appears that Cesar was an officer/director as early as January 2013; see, e.g., CDBS File No. BAPFT-20130118AIW (filed Jan. 18, 2013) (assignment of station to HCCN). Second, it appears that his sisters Maria C. and Ana K. were also officers/directors at HCCN in October 2013, as reflected in a tax-reporting form Cesar filed with the Texas Secretary of State. Specifically, Cesar reported in November 2013 that, for reporting year 2013, he was a director/president; Maria Cristina Guel was a director/treasurer; and Ana Karen Guel was a director/secretary with all terms expiring on May 15, 2014. Guel was listed as HCCN’s registered agent, and all four Guels listed Hyacinth Drive as their respective addresses. See Petition to Deny, Attach. H. We are unaware of any FCC record of HCCN’s apparent corporate changes by adding Guels’ daughters Maria and Ana as officers/directors.

¹⁴¹ See CDBS File No. BOA-20131220HCO. As the FCC discovered in 2018, Cesar is Guel’s son.

¹⁴² CDBS File Nos. BRTTL-20140401AAX and BRTTL-20140401AAZ, respectively. In 2014, the Bureau granted the applications but later rescinded the grants. See Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, FCC’s Media Bureau to Michael Couzens, Esq. (Jan. 23, 2017). In 2016, Juarez filed renewal applications for these two captioned Stations, both of which remain pending.

could not hold a direct interest greater than 20% in a corporate FCC licensee.¹⁴³

- On June 2, 2014, HCCN filed an application to renew the license of Station KRPO-LD. Cesar signed the application on May 21, 2014, certifying that HCCN complied with statutory foreign ownership limits.¹⁴⁴ This certification was made two days *after* Guel's admission in the *Gonzalez* litigation that he was not a U.S. citizen.
- On June 5, 2014, HCCN filed an application to assign to La Palabra Viviente Ministries LPTV station K48OL-D.¹⁴⁵ The assignment application was signed on June 3, 2014, by "Maria C. Guel, President" of HCCN.¹⁴⁶
- In August 2014, HCCN filed applications to assign to HFCN all the stations that had purportedly been sold to, and purportedly operated by, Juarez since July 25, 2010.¹⁴⁷ Cesar signed these applications on behalf of HCCN, and his sister, Maria C. Guel (Guel's daughter/Juarez's cousin), signed on behalf of HFCN.¹⁴⁸ HCCN described the transaction as a "corporate reorganization to another corporation" for which no consideration was being paid.

¹⁴³ See 47 CFR § 1.65 (requiring applicants to notify FCC within 30 days of a "substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application"). HCCN's 2013 ownership report stated that Guel retained 100% control of its common stock. As such, HCCN exceeded the statutory foreign ownership limits of section 310(b) of the Act. Assuming Cesar Guel was unaware that his father, Antonio Guel, was not a U.S. citizen when HCCN filed the renewal applications, it should have amended or withdrawn them upon discovery of Guel's true citizenship but in no event later than June 19, 2014.

¹⁴⁴ CDBS File No. BRDTL-20140602AUH.

¹⁴⁵ CDBS File No. BAPDTL-20140605AGG (granted July 21, 2014; consummated Oct. 6, 2014). Station K48OL's call sign changed to K80JQ (facility ID number 130352).

¹⁴⁶ *Id.*

¹⁴⁷ CDBS File Nos. BALTVL-20140807ACD, BALDTL-20140807ABF, and BALTTL-20140807ABQ. (Assignment applications at that time did not have a question as to the assignor/seller's citizenship.) These applications remained pending until the Bureau acceded to the bankruptcy trustee's November 2016 request and dismissed the applications, thereby permitting prosecution of the bankruptcy proceeding. Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, FCC Media Bureau, to Diane G. Reed, Bankruptcy Trustee (Nov. 30, 2016). One month later, the Bureau informed Couzens that it had dismissed as moot his Petitions, due to the Bureau's November dismissal of the applications. Letter from Hossein Hashemzadeh, Deputy Chief, Video Division, FCC Media Bureau, to Michael Couzens, Esq. (Dec. 29, 2016). Therein, the Bureau indicated that it intended to investigate on its own motion the HCCN-to-HFCN transfer applications. *Id.* at n.3.

¹⁴⁸ When HCCN filed this application to assign the Stations, HFCN had identified Juarez as holding a one-third attributable interest in HFCN as one of three directors of the company. See Ownership Report, CDBS File No. BON-20130128AAZ (filed Jan. 28, 2013). See also LMS File No. 0000047758 (filed Mar. 2, 2018) listing Juarez as a director with a one-third interest in LPTV stations licensed to HFCN as of October 1, 2017, along with attributable interests in other stations; and LMS File No. 0000103107 (filed July 26, 2021) listing Juarez as a director with a one-third interest in LPTV and radio stations licensed to HFCN as of October 1, 2019, along with attributable interests in other stations.

3. The Investigation

38. **The Bureau's Section 1.88 Letter.**¹⁴⁹ In light of the delinquent Consummation Notice and HCCN's numerous filings affecting the Stations after the purported consummation,¹⁵⁰ the Bureau sent a letter to Juarez on March 14, 2018, pursuant to section 1.88 of the Rules (1.88 Letter), seeking confirmation that the Parties had in fact timely closed the transaction and complied with statutory ownership requirements.¹⁵¹

39. The 1.88 Letter explicitly notified Juarez that the Bureau needed to develop the record and evaluate potential statutory and/or Commission rule violations.¹⁵² Accordingly, the Bureau instructed Juarez to provide a written response, under penalty of perjury, to nine inquiries and explain, inter alia, the delay in filing the Consummation Notice and why HCCN had continued filing applications if Juarez had assumed control of the 16 stations in July 2010.¹⁵³ It instructed her to provide evidence that she controlled the policies governing the Stations' programming, personnel, and finances. It also instructed Juarez to provide documentary evidence supporting her responses. Finally, it instructed her to:

provide an affidavit, signed under penalty of perjury by Jennifer Juarez stating that since July 25, 2010, she has been the licensee and in control of the day-to-day operations of the stations in a manner that is consistent with Commission rules and precedent; each station has operated pursuant to the parameters authorized in its license; and at no time has any station been silent for a consecutive twelve month period. To the extent such statements cannot be provided, please provide a detailed explanation.¹⁵⁴

40. **The Juarez Response.** Juarez timely responded to the 1.88 Letter through Alpert (the same counsel who had represented HCCN).¹⁵⁵ Her Response consisted of five pages of written answers addressing each of the Bureau's inquiries, and she properly attested under penalty of perjury that her answers in the body of the Response were true and correct.¹⁵⁶ She also provided six attachments, including her "affidavit" and declarations from herself and Guel.¹⁵⁷

41. To explain the delinquent Consummation Notice, Juarez refers the Bureau to "the explanation that has been provided by [Guel]. . . ."¹⁵⁸ She adds "the Closing papers were first prepared in May 2010 and were signed July 2010 [sic]. The understanding I had with HCCN was that it would hold onto the papers and that the consummation notice would be filed as soon as payments were made for the

¹⁴⁹ Section 1.88 of the Rules (Pre-designation pleading procedure); 47 CFR § 1.88. This Rule describes the Commission's authority to issue a letter informing a broadcaster that it is investigating the licensee's operation of a station and/or character qualifications and offering the licensee an opportunity to submit a written response for Commission consideration prior to designation. See, e.g., *Shareholders of Stop 26 Riverbend, Inc., et al.*, Memorandum Opinion and Order, 27 FCC Rcd 6516, 6518 at para. 5 (2012) (after receiving allegations of lack of character qualifications, Bureau issued 1.88 letter to determine whether licensee had the requisite character qualifications to remain a licensee).

¹⁵⁰ See *supra* para. 37.

¹⁵¹ See 1.88 Letter.

¹⁵² *Id.* at 1.

¹⁵³ *Id.* at 1 and para. 2.

¹⁵⁴ *Id.* at 2, para. 6.

¹⁵⁵ See Response.

¹⁵⁶ See *id.* at 6.

¹⁵⁷ See Response. See also *id.* at 6.

¹⁵⁸ Response at 1, Question 2. Juarez is referring to Attachment 3, the Guel Decl.

stations.”¹⁵⁹ Juarez neither provides the date in July 2010 she claims to have signed the closing papers, nor explains why the closing Certificates she provided were signed but undated and had retained the blank space to indicate when in May 2010 the Parties had signed the Certificates. Juarez does not state when payments were made, the size of such payments, or who made such payments. She avers she “at all times assumed that this was the proper procedure.”¹⁶⁰

42. To explain the fact that HCCN had filed over two dozen applications and two ownership reports concerning the Stations after Juarez had purportedly assumed operational control in July 2010, Juarez states “I am told those applications were filed by HCCN because, at that time, HCCN was the [sic] still the record holder of the licenses for the Stations, and was the only party authorized to file the application[s].”¹⁶¹ She adds “the full explanation of why these things happened the way they did has been provided to me by Antonio Cesar Guel.”¹⁶²

43. Regarding HCCN’s August 2014 applications to reassign the Stations to HFCN, Juarez states she “was not personally aware of any time it was proposed that the stations be assigned to Hispanic Family Christian Network, Inc. If that was done, it was not authorized by me and I was not part of the application.”¹⁶³ She further avers that there are “no other stations owned or controlled by me, Jennifer Juarez.”¹⁶⁴ Documents filed with the Commission from 2010 through 2021 and certified by Maria C. Guel, however, state that Juarez (along with Maria, one of Guel’s daughters¹⁶⁵) held an attributable interest in HFCN through her one-third voting interest from at least 2010 to the present.¹⁶⁶

44. In reply to the Bureau’s request that she provide evidence that, since July 25, 2010, she has controlled the policies governing programming, personnel, and finances of the stations, Juarez avers “there is not a great deal to show, since the stations operate on an automated basis. The free programming is provided by satellite.”¹⁶⁷ With respect to programming on certain stations that, at the time of the response, were analog (WESL-LP, KZAB-LP, KJTN-LP, and KTEQ-LP), she avers they “cannot be received by most of the viewing audience, are not making money at the present time, and not a

¹⁵⁹ *Id.* at 1, question No. 2.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 3, Question No. 3.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Response at 5, Question 9. Commission records indicate Juarez filed her first ownership report for the Stations in 2015. *See* CDBS File No. BOA-20151119ABF (filed Nov. 19, 2015) (Juarez certified she held no interest in other broadcast stations as of 10/1/2015). *See also* LMS File No. 0000046611 (filed Mar. 2, 2018) (Juarez certified she held no interest in other broadcast stations as of 10/1/2017). *But see* LMS File Nos. 000100164 (filed Jan. 24, 2020) and 0000171798 (filed Nov. 26, 2021) (in both reports, Juarez certified reportable interests in other broadcast stations as of 10/1/2019 and 10/1/21, respectively).

¹⁶⁵ Response at 4, Question 5.

¹⁶⁶ *See, e.g.*, CDBS File No. BMJADTL-20100521ACD (May 21, 2010) (HFCN application re K08QJ-D/facility ID 130352, listing Juarez as holding 33% voting interest in HFCN); HFCN Ownership Report, CDBS File No. BON-20130128AAZ (filed Jan. 28, 2013) (listing Juarez as a member holding a one-third voting interest in stations licensed to HFCN as of 1/1/2013, and holding no other broadcast interests). *See also* LMS File Nos. 0000047745, 0000047747, and 0000047758 (all filed Mar. 2, 2018) (variously listing Juarez as a member or director (0000047747 specifying principal position/profession as “HFCN”) holding a one-third voting interest in HFCN as of 10/1/2017); LMS File No. 0000171529 (filed Nov. 24, 2021) (Juarez a director with a one-third voting interest with Ana K. and Maria C. Guel, as of 10/1/2021). Maria C. Guel certified all HFCN reports. *See also* Petition to Deny at Attach. E (documents HFCN filed with the Texas secretary of state indicating Juarez was HFCN’s treasurer as of Feb. 5, 2010, when she presumably would have been 17 years old (we do not know if or when that position expired)).

¹⁶⁷ Response at 3, Question 4.

great deal of effort has been put into those stations, and the stations have been silent for protracted periods of time.”¹⁶⁸ She offers that “Antonio Cesar Guel helps us with keeping the stations on air. He provides programming from some of the churches or pastors that he knows and is also our representative with some advertising agencies.”¹⁶⁹

45. Juarez further avers she has no personnel but that Guel “provides a lot of the technical assistance and advice I need.”¹⁷⁰ She states she receives “a great deal of help from my uncle in getting help with contacts in the industry, contracts, programming, building the stations, moving the stations, etc.”¹⁷¹ Juarez also states that she relies on and receives a great deal of help from her cousin Maria, and some help from another cousin, Ana, “as they also are in the broadcast business. As a result, I have not really had to put much time into the stations.”¹⁷² Juarez further avers she receives “a great deal of help from my attorney and outside engineer,” neither of whom she names.¹⁷³

46. With respect to finances, Juarez states that “[w]e pay [Guel] 10% commission on direct sales and 5% if it is sold through any [sic] agency. Moreover, he also participated as a broker in the sale of an LPTV that we have sold. He has recommended different brokers to put some of our stations [sic] for sale.”¹⁷⁴

47. **Documentary Evidence of Control.** Juarez provides insufficient documentation to establish her purported control of the Stations since July 25, 2010. She submitted only seven invoices from counsel, Dan Alpert, dated January 24, 2015, April 26, 2015, December 13, 2015, June 6, 2016, October 18, 2016, December 20, 2016, and December 21, 2016. All are for services rendered after November 2014¹⁷⁵ (and after Couzens had filed petitions to deny with the FCC). Moreover, Juarez provides no evidence demonstrating that she was responsible for paying these or any other station invoices or expenses.

48. **Documentary Evidence of Consummation.** In response to the Bureau’s request that Juarez “[p]rovide written evidence . . . demonstrating that the consummation of the sale from HCCN took place on July 25, 2010,”¹⁷⁶ Juarez refers the Bureau to “copies of the signed contracts and the Closing papers,” consisting of copies of the APA and closing documents, most notably the Buyer’s Officer Certificate and the Seller’s Certificate.¹⁷⁷

¹⁶⁸ *Id.* at 3, response to Question 4.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 4, Question 5.

¹⁷² *Id.* at 3, Question 4, and 4, Question 5. *See also supra* note 138 relating to CDBS File No. BALED-20180516ABH, amended Exh. 14 (filed May 16, 2018 and amended Nov. 19, 2018) (including certification reflecting Maria’s and Ana’s participation in Hispanic American Christian Network, Inc.).

¹⁷³ Response at 4, Question 5.

¹⁷⁴ *Id.* at 4, Question 5. Juarez does not identify which stations Guel brokered.

¹⁷⁵ *See* Response at Attach. 4. According to the January 2015 invoice, Alpert billed Juarez for one hour of legal services to prepare and file FCC form 317 on December 1, 2014.

¹⁷⁶ Section 1.88 Letter at question No. 1.

¹⁷⁷ *See* Response at 1, Question No. 1, Attach. 1 (this attachment included an email to Cesarguelhccn@aol.com from Alpert, dated May 16, 2010, stating: “These are ready to be signed” and purportedly attached the Assignment of Authorizations, the Assignment of Intangibles, the Bill of Sale, and the Buyer’s Officer’s and Seller’s Certificates. It is unclear whether this email was directed to Guel or to another member of his family). The copy of the APA provided in Attachment 1, like the copy provided with the Assignment Application, does not contain Schedule 2.1. *See* Response at Attach. 1, APA.

49. The first pages of certain closing documents—the Assignment of Authorizations, the Assignment of Intangibles, and the Bill of Sale—each state that the agreement was made and entered into as of July 25, 2010, but the signature pages are undated. Instead, these signature pages each state that the document has been duly executed “as of the date first” written above.¹⁷⁸ With respect to the Buyer’s Officer’s and Seller’s Certificates, the remaining closing documents (each of which is single-paged) with a signature block that reads: “IN WITNESS WHEREOF, I have hereunto set forth my hand this _ day of May, 2010” and leaves blank the specific day on which the Parties purportedly signed their respective Certificate.¹⁷⁹

50. ***The Guel Declaration.*** Guel provided a Declaration made under penalty of perjury that all statements made therein were true and accurate.¹⁸⁰ Guel discusses the “closing papers,” i.e., the buyer’s and seller’s Certificates that the Parties had signed, but not dated.¹⁸¹ Guel avers that in many of his previous transactions (which includes his transaction with Juarez):

to avoid fraud by the buyers, a verbal arrangement was worked out . . . whereby they could run the stations, but HCCN would remain officially the named licensee with the FCC until such time as the majority of the amounts owed was paid. Therefore, in cases such as those, the closing papers were prepared almost immediately after the transactions were approved by the FCC. The papers were signed by both parties, but were not sent by HCCN to the attorney. In the meantime, however, payments were made by the assignee that were owed to HCCN, and the stations were run by the assignee (programming, etc.) under HCCN’s supervision as the licensee. . . . During all this time, . . . Hispanic Christian Community Network, Inc., remained as the named licensee. . . . **[W]henver applications and reports needed to be filed** for any of those in-transition stations, Hispanic Christian Community Network continued to help file the applications . . . under its name. **I was still the President of [HCCN] at that time**, so I let the applications (and required reports) be filed with my electronic signature.¹⁸²

51. Guel explains that HCCN’s August 2014 applications to transfer all of the stations to HFCN was the result “of [a] lawsuit, [when] in 2014 all of the assets of Hispanic Christian Community

¹⁷⁸ Response at Attach. 1, Assignment of Authorizations. At the top of the document’s first page, the date of July 25, 2010, is typed in the body of the text and reads: “THIS ASSIGNMENT OF AUTHORIZATIONS . . . dated as of July 25, 2010, by HISPANIC CHRISTIAN COMMUNITY NETWORK, INC., a Texas corporation (“Assignor”) in favor of JENIFER JUAREZ (“Assignee”).” The signature page is a separate page. This format is used for the Assignment of Intangibles and the Bill of Sale. *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ See Response at Attach. 3 (Guel Decl.).

¹⁸¹ See Guel Decl. at 2; see also *infra* note 205.

¹⁸² Guel Decl. at 2 (emphasis added). Based on this statement, it appears Guel is asserting that he was president of HCCN in 2014. But HCCN had represented to the FCC in December 2013 that, as of October 1, 2013, Guel was no longer president of HCCN and that Cesar was the sole officer and director. See *supra* ¶ 37; see also CDBS File No. BOA-20131220HCO; Supplement to Petition to Deny of Michael Couzens, File No. BALDTL - 20140807ABF (filed Mar. 24, 2015) (in copies of the Voluntary Petition HCCN filed with the bankruptcy court on November 11, 2014, Guel certified that he was HCCN’s general manager and HCCN’s address was 2727 LBJ Freeway, Dallas, Texas. The filing also included a waiver of notice of consent signed by HCCN’s board of directors, to wit: Cesar Antonio, Ana K. and Maria C. Guel). We do not know when Guel’s daughters became directors of HCCN.

Network, Inc. were under attack.”¹⁸³ He avers that, “as a result of allegations raised in the lawsuit, **it was realized for the first time** that I, Antonio Cesar Guel, was not qualified to be a Commission licensee at that time, due to my Mexican citizenship. This was never told to me by my prior attorney, Mark Denbo, but was very strongly told to me by my present attorney, Mr. Alpert!”¹⁸⁴ Guel further avers that, “to protect the licenses, make all ownership legal under Commission rules, and to protect the interest of those parties that already were in the process of purchasing those licenses, there momentarily was an intention to assign those licenses to a corporation owned and controlled by a third-party family member,” HFCN, which “would then complete the transactions.”¹⁸⁵

52. Guel also avers that, in November 2014, when HCCN was about to file for bankruptcy, “one of the last acts that were [sic] performed prior to the Chapter 7 Bankruptcy filing was to review all [HCCN’s] licenses, and ensure that all parties that were approved by the FCC and **were in the process of completing their transactions** officially [sic] became the officially recognized licensees at the FCC of their stations.”¹⁸⁶ Guel notes that this was done “despite the fact that all payments were not yet complete.”¹⁸⁷

53. Guel concludes by “fully admit[ting] certain mistakes have been made, but [I] have tried my best to clean those up as soon as I could. I have never had any intention to mislead the FCC. . . . I have gotten by [sic] daughters and niece involved in the business . . . [p]lease do not criticize them for

¹⁸³ Guel Decl. at 3. We are aware of at least one other broadcast-related lawsuit involving Guel; see *supra* note 89, discussing *Unidad de Fe y Amor Corporation v. Iglesia Jesucristo Es Mi Refugio, Inc., Robert Gomez, HCCN, Inc., Antonio Cesar Guel*, No. C 08-4910 RS, 2009 WL 1813998 (N.D. Cal. June 25, 2009) (*Unidad*) (not reported). Guel does not provide the case name he avers “settled” in 2017, but his mention of K43AG and Comizion TV suggests he may be referencing *Gonzalez v. Iglesia*, notwithstanding the resolution of that case in 2016 was not by settlement, as Guel claims, but via a default judgment against Guel *et al.* (The court found defendants Guel *et al.* in default in 2015 and, as a result, all properly pleaded allegations by plaintiffs were deemed admissions. The court then entered a default judgment in 2016, finding that “Gomez and Guel made false representations to plaintiffs, that at the time they knew were false” with respect to their claimed ownership of K43AG and 2006 contract to sell K43AG to plaintiffs for \$550,000 and move the station to Los Angeles. By April 2010, Guel and Gomez had run into difficulty with the move, and by August 2010, plaintiffs began to suspect they were being defrauded.) See CDBS File No. BAPDVL-20160526ACZ (Assignment of Permit for K12RB-D from HFCN to MP Global, LLC) at Informal Objection (copy of court’s February 26, 2016 default judgment in *Gonzalez v. Iglesia*, No. BC 501 688).

¹⁸⁴ Guel Decl. at 3 (emphasis added) (we note that Alpert was representing Guel/HCCN in January 2007 with regard to assignments of K43AG and KSSY; see *supra* note 88). We presume Guel apparently is referring to *Gonzalez v. Iglesia*, but it is possible he is referring to *Unidad*. See *supra* note 89. *Unidad* revolved around an HCCN/Iglesia deal to sell two LPTV stations to another pastor in 2007. *Unidad* sued Guel and others in 2008, alleging fraud and unfair business practices; litigation centered on whether the parties had created a valid contract. The suit settled in 2009, with Guel *et al.* agreeing to pay *Unidad* \$5,000 per month until 2011. In February 2010 – just a month before Guel executed the APA with his then-17 year old niece – *Unidad* petitioned the court to enforce the settlement; the court declined, finding defendants were current with payments. But the court then issued an order in June 2010, warning Guel *et al.* of possible contempt if they failed to file a signed original of the settlement agreement. See <https://dockets.justia.com/docket/california/candee/5:2008cv04910/208289> (last visited Apr. 5, 2020). It is possible Guel and/or HCCN were involved in other lawsuits in the 2008-2010 timeframe; see, e.g., *Roy Mayhugh, KFLA-LD Channel 8 Los Angeles v. Hispanic Christian Community Network*, Complaint No. BC400404 (Superior Court of California, Los Angeles County, filed Oct. 22, 2008) (case involving a promissory note/collection; a judgment was entered on Jan. 26, 2010, but the case continued into March 2010 and appears to have closed on May 12, 2015 <https://www.lacourt.org/casesummary/ui/casesummary.aspx?casetype=civil#PTY> (last visited Mar. 31, 2022)).

¹⁸⁵ Guel Decl. at 3.

¹⁸⁶ *Id.* (emphasis added).

¹⁸⁷ *Id.*

mistakes that were made back when I was an owner. I do not have any more involvement with Hispanic Community Christian Network, Inc. . . . At this time, I am a consultant to radio and TV stations.”¹⁸⁸

III. DISCUSSION

54. Based on the totality of the record, there are substantial and material questions of fact as to: 1) whether Juarez abused Commission processes by filing a sham application¹⁸⁹ to enable HCCN or Guel to continue operating and controlling the Stations despite non-compliance with the foreign ownership limitations of section 310(b)(3), and by secretly agreeing to delay indefinitely filing the requisite consummation notice; 2) whether and when Juarez acquired control of and began operating the Stations consistent with the Act and/or the Rules and, based on that, whether Juarez engaged in an unauthorized transfer of control in violation of section 310 of the Act by either operating the Stations without legitimate authority or by ceding control of the Stations to HCCN;¹⁹⁰ 3) whether Juarez lacked candor and/or misrepresented facts to the Commission, including in the Assignment Application and in her 1.88 Letter Response; and (4) whether Juarez has the qualifications to be and remain a licensee.¹⁹¹ As a result, we issue this *Order to Show Cause Why an Order of Revocation Should Not Be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* to determine whether (a) the licenses of the Stations should be revoked; (b) whether the captioned applications for renewal of the licenses of the Stations should be granted, dismissed or denied; and/or (c) whether a forfeiture order should be issued to Juarez.

55. With respect to HCCN and its 100% direct stockholder Guel, there are substantial and material questions of fact as to whether HCCN and Guel should be considered one and the same entity for purposes of this proceeding. There are also substantial and material questions of fact as to whether HCCN and/or Guel have exercised and continue to exercise *de facto* control over the Stations. Accordingly, we issue an *Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* against HCCN and Guel to cease and desist from violating Commission rules and the Act, including making willfully inaccurate, incomplete, evasive, false, or misleading statements to the Commission in violation of section 1.17 of the Commission’s rules and engaging in unauthorized control and operation of broadcast stations in violation of section 301, 308, and 310 of the Act, and to determine and whether a forfeiture should be issued to HCCN and Guel. Moreover, we find that there are substantial and material questions of fact as to whether HCCN and/or Guel: 1) have misrepresented material information to the Commission and lacked candor; (2) have abused Commission processes first by filing an assignment application that lacked bona fides while maintaining *de facto* control of the Stations, and then by impermissibly and intentionally bifurcating ownership of the Stations for years by not timely filing the requisite consummation notice; and (3) are fit to be Commission licensees in light of these apparent violations, abuses, and lack of candor and/or misrepresentation of facts to the Commission. Accordingly, we issue an *Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* against HCCN and Guel to cease and desist from operating, controlling, managing, or providing any assistance to any stations; from preparing and/or filing applications or other documents regarding HCCN with the Commission; and, to the extent HCCN or Guel is allowed to assist any other licensee/permittee/applicant in any way with the operation or construction of any station, or to provide any assistance or input in any way in preparing or filing any application with the

¹⁸⁸ *Id.* at 4. Guel’s Declaration contains not a single reference to his son’s involvement in HCCN.

¹⁸⁹ A “sham” application is one where, for example, a legal entity serves as a surrogate applicant to acquire licenses that would then be operated by another, undisclosed entity, effectively concealing from FCC scrutiny the real party controlling the licenses/stations. *See, e.g., Revised CP Form*, 4 FCC Rcd at 3853, paras. 16, 23.

¹⁹⁰ *See, e.g.,* 47 U.S.C. § 310(d).

¹⁹¹ The Commission “may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency.” *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000).

Commission, from doing so without also providing a copy of any order issued in this proceeding that finds he lacks the character to be a Commission licensee in any and all filings with the Commission in every matter in which he participates in any way.

A. THERE ARE SUBSTANTIAL AND MATERIAL QUESTIONS CONCERNING JUAREZ’S QUALIFICATIONS TO BE A COMMISSION LICENSEE

1. Juarez Appears to Have Engaged in A Sham Transaction, Abused FCC Processes

56. Substantial and material questions of fact exist as to whether Juarez abused Commission processes and violated Commission rules by: 1) filing an application to induce the Commission to grant a sham assignment, whereby she was a surrogate licensee who ceded control of the Stations to HCCN and/or Guel, the *de facto* licensee, and 2) entering into an arrangement with HCCN to delay filing the requisite consummation notice until after she had paid for the Stations, during which time HCCN would remain the official, *de jure* licensee, but Juarez would purportedly control and operate the Stations.¹⁹²

57. With respect to the sham application, the APA attached to the 2010 Assignment Application contained a number of clauses representing each Party was legally qualified to enter into the contract to assign the Stations. In fact, however, Juarez appears to have been a 17-year old minor with no broadcast experience when she executed the APA – presumably without benefit of counsel – and filed it with the Commission using a misspelled legal name.¹⁹³ And HCCN, the licensee, could not legally hold the authorizations to the Stations because Guel, a non-U.S. citizen, held 100% direct ownership of HCCN’s stock. The revelation of Guel’s foreign citizenship, after multiple false HCCN certifications of compliance with section 310(b), apparently was the genesis of the HCCN-Juarez “transaction.”

58. Juarez also may have lacked sufficient funds to purchase the Stations. Notably, the APA specified Juarez was to pay HCCN \$320,000 for the Stations.¹⁹⁴ Juarez certified in the FCC Form 345 that she had “sufficient net liquid assets [] on hand or are available from committed sources to consummate the transaction and operate the station(s) for three months. . . .”¹⁹⁵ She did not disclose in the Assignment Application or APA that Guel – whom she claimed was facing financial challenges in 2010 – purportedly would finance her purchase through his company under a payment schedule that was withheld as purportedly confidential.¹⁹⁶ Juarez did not provide the purported “payment plan” in her

¹⁹² This undisclosed arrangement not only circumvented the requirement in section 1.65 of the Rules to timely notify the FCC of material changes to applications, and ignored the express conditions set out in the Grant, it also appears to have permitted Guel to retain a prohibited reversionary interest in the Stations after consummation.

¹⁹³ Using a misspelled name in lieu of an individual’s legal name can indicate fraud. *See, e.g., Hawthorne FM Partnership*, Summary Decision, 5 FCC Rcd 5194, paras. 9-10, 16-18, 25, 30, 32-35 (ALJ 1990) (finding that former attorney Thomas Root and licensee Sonrise Management had duped Gary A. Simpson as a party on various radio applications by listing a Gary “L.” Simpson as a general partner); *Ministerios*, 2018 WL 5004795 at *2, n.16 (individual who had misrepresented his citizenship filed FCC applications using the name “Eliud,” as opposed to Eluid, the applicant’s apparent legal name as reflected in court documents); *Dan Alpert*, Letter, 32 FCC Rcd 10228, 10232, n.31 (MB 2017) (radio applications that Guel, as consultant and certifying engineer, filed in 2013 on behalf of various entities were rife with the names and addresses of apparently fictitious individuals – noting in particular that the “allegedly corrected name of Pilar Gonzalez may also be incorrect, as this individual signs his name as Gonzales Pilar, Jr., i.e., with Gonzales as a first name, rather than Pilar (a feminine name) as a first name.”).

¹⁹⁴ *See* APA at 3, ¶ 2.1 (“In consideration of Seller’s performance of this Agreement, the amount paid for the Stations Assets shall be . . . (\$320,000,00, paid as provided in Schedule 2.1”).

¹⁹⁵ CDBS Lead File No. BALTTL-20100315AAS at Section III, item 9 (Financial Qualifications) (Juarez checked the “yes” box).

¹⁹⁶ The Parties withheld the payment schedule from the Assignment Application based on certifications that Schedule 2.1 contained private financial information and was properly redacted per the Commission’s *LUJ* decision as immaterial to the Commission. CDBS Lead File No. BALTTL-20100315AAS, Exh. 4. Under *LUJ*, parties may (continued....)

Response,¹⁹⁷ although the installment plan she references does not appear to contain any confidential terms.¹⁹⁸ These circumstances raise questions as to the existence of Schedule 2.1 and/or a payment plan and whether she intentionally withheld from Commission scrutiny her unwritten agreement to delay filing a notice of consummation until some unspecified date subject to Guel's control – and with Guel retaining control of FCC filings for the Stations in the meantime. Furthermore, Juarez has provided not a single document that she paid anything for the Stations, let alone that she paid the full purchase price (or when she did so), raising questions as to whether she paid any consideration for the Stations.

59. Even if the HCCN-Juarez transaction had been a legitimate sale transaction, it seems to have been designed to obtain FCC approval of a transaction in which HCCN retained a reversionary interest in the Stations, in violation of an FCC rule prohibiting any such interest. Section 73.1150(a) and (b) of the Rules (collectively, the Reversionary Interest Rule) prohibits any assignment or transfer of an interest in a broadcast station if there is an arrangement or understanding, express or implied, pursuant to which the seller retains a reversionary interest in the station.¹⁹⁹ Both HCCN and Juarez certified in the Assignment Application that the agreements “comply fully with the Commission's rules and policies” and that the documents submitted with the Assignment Application “embody the complete and final” understanding between the parties, except for the redaction of Schedule 2.1 based on the parties' claim that it contained “private financial information.”²⁰⁰ Although Guel claimed that the undisclosed HCCN-Juarez payment arrangement, with a deferred consummation subject to Guel's control of the closing documents, was normal, we are not aware of any case in which such a transaction was disclosed by the parties and approved by the FCC, and Guel cited no such case. Rather, in our experience, a transaction is normally consummated after FCC approval (within the period allowed by the FCC for consummation) and seller financing is normally evidenced by a promissory note from the buyer, backed up with liens held by the seller on the station assets until all payments are completed. In this case, HCCN and Juarez failed to disclose that HCCN was apparently retaining a reversionary interest in the Stations, in violation of the Reversionary Interest Rule, accompanied by a false certification by each party in the Assignment Application that the transaction complied with FCC rules and policies.²⁰¹

60. It further appears that Juarez was not financially qualified to operate the Stations. On the Assignment Application, Juarez certified she possessed net liquid assets or could obtain funds from

(Continued from previous page) —————

withhold non-material contract attachments or schedules that contain proprietary information not germane to FCC consideration, but parties are *not* permitted to exclude information essential to consideration of a proposed transaction. *LUI*, 17 FCC Rcd at 16982-84, paras. 6-9 (affirming staff assignment grant where parties withheld certain proprietary material not germane to FCC consideration and which did not constitute a separate or additional agreement). See also *Luis A. Mejia and MSG Radio, Inc.*, Forfeiture Order, 23 FCC Rcd 15242, 15245-46, paras. 11-14 (MB 2008) (imposing forfeiture where parties improperly cited *LUI* as basis to withhold a schedule regarding “excluded assets” in assignment application; the Bureau found the excluded schedule was essential to fully understanding the proposed transaction).

¹⁹⁷ See Response at Attach. 2.

¹⁹⁸ As evidenced with HCCN's 2006 and 2007 assignment applications with the California stations, HCCN did not withhold payment schedules requiring a down payment and subsequent installment payments. See *supra* note 88 re KSSY and K43AG. Based on the Parties' assertions that Juarez had agreed to a similar payment schedule, there does not appear to be any legitimate reason to justify redaction under *LUI*.

¹⁹⁹ 47 CFR § 73.1150(a) and (b).

²⁰⁰ Assignment Application, File No. BALTTL-20100315AAS, Section II, Question 6 and Section III, Question 5.

²⁰¹ See, e.g., Stephen F. Sewell, *Assignments and Transfers of Control of FCC Authorizations Under Section 310(d) of the Communications Act of 1934*, 43 Fed. Comm. L.J. 277, 330-31 (1991) (FCC staff normally review seller financing documents in any broadcast station sale to ensure compliance with the Reversionary Interest Rule. Here, staff were unaware that seller financing was involved because HCCN and Juarez withheld that information from the Assignment Application).

committed sources sufficient to not only consummate the transaction but also operate the Stations for three months. Juarez claims that she operated the Stations from July 2010 to November 2014, but provided no invoices for Station expenses during that time period, let alone proof of payment of any expenses. Yet in her 2018 Response, Juarez repeatedly references an unnamed individual – perhaps her father – who apparently was involved in paying Guel a deposit and then making the remaining monthly payments and helping purchase equipment for the Stations.²⁰² Given Guel’s claimed financial difficulties as the cited reason he sold the Stations, and the lack of any evidence that Juarez paid any consideration for them, it is unclear how she possessed the financial resources to purchase and operate the Stations as of July 2010, or thereafter.

61. It also appears that Juarez willfully ignored the terms of the Commission’s Grant regarding consummation. The Grant required consummation by July 25, 2010 with prompt notice to “the Commission by the seller or buyer showing the date the acts necessary to effect the transaction were completed.”²⁰³ The Grant further informed the Parties that the Commission would consider the assignment complete upon the filing of the consummation notice, at which point Juarez could begin operating the stations as the licensee.²⁰⁴ Yet no consummation notice (or the requisite ownership report) was filed until November 10, 2014, and at that time it was filed by counsel for HCCN, the company Guel controlled. The notice was filed after Guel had admitted in court proceedings he was not a U.S. citizen (and thus could not hold a greater than 20% direct stock ownership interest in a corporate FCC licensee) and the day before HCCN filed for bankruptcy protection. Although the Consummation Notice represents that the closing occurred on July 25, 2010, the deadline indicated in the Grant, the documents submitted by Juarez to substantiate that fact are notably undated.²⁰⁵ Moreover, Juarez, through counsel, did not obtain an FRN to conduct business with the FCC until December 1, 2014,²⁰⁶ three weeks after the four-year late Consummation Notice. No documented actions were taken by Juarez with respect to the Stations’ licenses prior to December 2014. The failure to properly and timely file the requisite notice and/or to produce documents reflecting the claimed July 25, 2010 consummation date raise questions as to the authenticity of the Consummation Notice, whether the transaction was ever in fact consummated, and whether Juarez intended it to be consummated at the time she filed the Assignment Application.

²⁰² Juarez Decl.

²⁰³ Grant.

²⁰⁴ *Id.*

²⁰⁵ Response at Attach. 1, Assignment of Authorizations. At the top of the document’s first page, the date of July 25, 2010, is typed in the body of the text and reads: “THIS ASSIGNMENT OF AUTHORIZATIONS . . . dated as of July 25, 2010, by HISPANIC CHRISTIAN COMMUNITY NETWORK, INC., a Texas corporation (“Assignor”) in favor of JENIFER JUAREZ (“Assignee”).” The signature page is a separate page. This format is used for the Assignment of Intangibles and the Bill of Sale. *Id.* We do not know if the two assignment documents and bill of sale attached to Alpert’s May 16, 2010, email to Cesarguelhccn@aol.com contained the typed-in date of July 25, 2010 and, if so, why Alpert would have sent documents in May with July dates already typed in, especially when the Buyer’s and Seller’s Certificates specified a typewritten entry of May 2010 with a blank space for the Parties to enter the date they actually executed the contracts. *Id.* at Buyer’s Officer’s Certificate, Seller’s Certificate. Furthermore, had the Parties **dated** their respective Certificate, each one would have attested that all representations and warranties set forth in the APA “were true and correct in all material respects when made and are true, correct and accurate in all material respects on and as of the **Closing Date**.” *Id.* (emphasis added). The Seller’s Certificate, if properly signed and dated, would have attested that “All covenants set forth in the Purchase Agreement to be performed on or prior to the Closing Date have been performed in all material respects.” *Id.* Likewise, the Buyer’s Certificate, if properly signed and dated, would have attested that “All covenants set forth in the Purchase Agreement to be performed by the Corporation on or prior to the Closing Date have been performed in all material respects.” The fact that neither Party dated their respective certificate suggests that Guel and Juarez had not performed all covenants and had not legally consummated the assignment.

²⁰⁶ See FCC Registration, FRN number 0024126237 for registrant “Juarez, Ms. Jennifer” with registration date 12/01/2014 <https://apps.fcc.gov/coresWeb/searchDetail.do?frn=0024126237> (last visited Mar. 3, 2020).

62. Taken together, these factors appear to describe an intentional plan to secure Commission consent for an illusory assignment. The record suggests that the Parties' proposed assignment was conceived not as a genuine arms-length sale to a bona fide purchaser, but rather a sham to permit HCCN to ostensibly "park" the Stations with Juarez, a young member of Guel's family with no broadcast experience. Substantial and material questions of fact exist as to whether Juarez participated in the sham transaction by serving as a surrogate for HCCN and Guel and thus abused Commission processes. The Parties' failure to disclose the unwritten agreement to allow HCCN or Guel to apparently retain a reversionary interest in the Stations indefinitely appears to be a separate abuse of Commission processes, designed to permit HCCN or Guel to retain a continued interest in (if not outright control of) the Stations despite HCCN's non-compliance with the foreign ownership limitations of section 310(b)(3) and despite a Commission rule prohibiting such a reversionary interest. We therefore designate for hearing appropriate issues to determine whether the transaction was a sham that Juarez facilitated by agreeing to serve as assignee and thereby allow HCCN or Guel to maintain control over the Stations, and whether the scheme to allow HCCN or Guel to apparently hold an undisclosed reversionary interest in the Stations was a separate abuse of Commission processes enabled by false certifications or lack of candor in the Parties' dealings with the FCC.

2. Juarez Appears to Have Engaged in Unauthorized Transfer of Control of the Stations

63. As described above,²⁰⁷ section 310(d) of the Act²⁰⁸ and section 73.3540 of the Commission's rules,²⁰⁹ require that a licensee request, and the Commission authorize, any transfer of control of a station's license. Therefore, ceding control of a station to anyone other than the licensee of the station is a violation of the Act and Commission rules. In determining whether an entity has *de facto* control of a broadcast applicant or licensee, we look to whether the entity in question establishes the policies governing station programming, personnel, and finances.²¹⁰

64. *Who Controlled the Stations Between 2010 and 2014?* Juarez has presented no reliable evidence to support her claimed control of the Stations between July 25, 2010 and November 10, 2014. In fact, the evidence we have gathered thus far belies this assertion. As an initial matter, Juarez did not obtain the requisite FRN until December 1, 2014, years after the purported consummation. More to the point, Guel (through HCCN) was the only party to file numerous applications affecting the Stations between July 2010 and December 2014, thus holding itself out to the public as the licensee. Additionally, extrinsic evidence Juarez did provide does not demonstrate she exerted any control over the Stations or set policy governing the Stations' operation between 2010 and 2014.²¹¹ Notably, she nowhere claims she set the policies governing the Stations' operations. Instead, Juarez appears to suggest that, to the extent the Stations were operating, they did so on their own, conceding that "I have not really had to put much time into the stations."²¹² As discussed more thoroughly below, there is scant evidence she controlled the

²⁰⁷ See *supra* para. 15.

²⁰⁸ See 47 U.S.C. § 310(d).

²⁰⁹ See 47 C.F.R. § 73.3540 (application for voluntary assignment or transfer of control).

²¹⁰ See, e.g., *Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306 (2002).

²¹¹ In her affidavit, Juarez states she was "the licensee and in control of the day to day operation of [sic] Stations" in a manner consistent with Commission precedent. Juarez Aff. The test for determining *de facto* control of broadcast stations does not revolve around who controls the stations' day-to-day operations, however; thus, Juarez's failure to provide any relevant evidence that she controlled the Stations' policies governing personnel, programming, and finances undercuts her representation that she exercised control of the Stations.

²¹² See Response at 3.

Stations' policies since July 2010. There thus are substantial and material questions of whether she has ever exercised any control of the Stations.

65. *Who Determines and Carries out Management Policy Decisions Regarding Programming, Personnel, and Finances?* In response to the Bureau's request that Juarez provide evidence of her control of "the policies governing programming, personnel, and finances" of the Stations, Juarez explains that "[t]here is not a great deal to show, since the stations operate on an automated basis."²¹³ Juarez offers no evidence that any policies governing programming, personnel, and finances exist or have ever existed, or that she has controlled or would control such policies. In fact, Juarez states she "receive[s] a great deal of help" from her uncle Guel with "contacts in the industry, contracts, programming, building the stations, moving the stations, etc.," and that she also has received "a great deal of help from my attorney and outside engineer, and my cousin, Maria Guel,"²¹⁴ which appears to suggest she may have relinquished control over the Stations to Guel and/or others. As a result, there remain substantial and material questions of fact as to who determines and carries out the policies governing the Stations' programming, personnel, and finances.

66. *Who Sets Policies Pertaining to Personnel?* Despite being the licensee of seven stations, Juarez claimed that, as of April 23, 2018, "I have no personnel."²¹⁵ Although she avers her uncle Guel and cousin Maria provide substantial help, as do an unnamed attorney and an engineer, she fails to explain the full nature and extent of such help provided by each and whether she sets the policies governing these individuals' "help." She also does not state whether she has ever had any other employees or volunteers in the past, and if so, whether she set the policies concerning their employment, supervision, and dismissal. This raises substantial and material questions of fact as to who is (and has been) responsible for setting policies regarding the employment, supervision, and dismissal of Station personnel.

67. *Who Sets Policies Pertaining to Programming?* The record is bereft of evidence demonstrating Juarez controls the policies governing programming of the Stations. She avers that "free programming is provided by satellite" without providing any details of actual programming aired by any of the Stations at any time in her claimed tenure as the licensee or how she selected any such programming.²¹⁶ She further avers that certain Stations were still analog as of April 2018 (*e.g.*, WESL-LP, WGVJ-LP, K13TU, KZAB-LP, KJTN-LP, K11 WE, KXTY-LP, and KTEQ-LP) and therefore programming could not be received "by most of the viewing audience, are not making money at the present time . . . and the stations have been silent for protracted periods of time."²¹⁷ Juarez states she receives "a great deal of help from my uncle in getting help with contacts in the industry, contracts, programming, building the stations, moving the stations, etc.," and that Guel "provides programming from some of the churches or pastors that he knows and is also our representative with some advertising agencies. We pay him a 10% of commissions on direct sales and 5% if it is sold through any agency."²¹⁸ Notably, Juarez does not reveal who actually sets the policies governing the Stations' programming, nor does she provide any evidence of what those programming policies might be. This raises substantial and material questions of fact as to who is (and has been) responsible for setting policies governing the Stations' programming.

²¹³ See Response at 3, Question 4.

²¹⁴ See *id.* at 4, Question 5.

²¹⁵ See *id.* at 3, Question 4.

²¹⁶ *Id.* Response at 3, Question 4.

²¹⁷ *Id.*

²¹⁸ *Id.* at 4, Question 5.

68. *Who Sets Policies Pertaining to Finances?* Juarez suggests that she is in control of the Stations' finances.²¹⁹ However, the only documents she provides in support of this assertion are seven invoices for legal services dated sporadically from January 2015 through December 2016.²²⁰ Juarez does not provide any records reflecting she paid these invoices, such as cancelled checks or bank records. She also fails to provide the Commission with any documentation reflecting who pays any of the Stations' other costs and expenses, including but not limited to real estate and business taxes, telephone service, utilities, tower/broadcast equipment, insurance, and programming. Juarez avers she – and another unnamed person – pays Guel 10% of commissions on direct sales for advertising and 5% if it is sold through any agency,²²¹ but she does not support these assertions with any documents related to revenue generated from her ownership of the Stations, or any tax obligations therefrom that would necessitate the filing of Federal or state tax returns. As a result, there are substantial and material questions of fact as to who controls the Stations' financial obligations and payments.

69. *Who Receives Payments from the Stations' Operations?* Juarez also fails to provide any documents reflecting who has received and/or been entitled to receive any monies or income from the Stations' operations. As noted above, Juarez did not provide the Commission with Federal and state tax returns. She also fails to provide any profit and loss statements or any documents reflecting the financial status and/or operations of the Stations. As a result, there remain substantial and material questions of fact not only as to whether the Stations generate monies and/or profits from their operation, but to whom such monies and/or profits are (and have been) paid.

70. Assuming the Parties consummated the sale of the Stations to Juarez in July 2010, these facts suggest Juarez has engaged in an unauthorized transfer of control by ceding *de facto* control of the Stations to HCCN or Guel for some or all of the period beginning in July 2010. We therefore designate for hearing appropriate issues to determine whether Juarez engaged in an unauthorized transfer of control and whether and when she allowed a non-licensee to operate and control the Stations in violation of the Act and Commission rules.

3. Juarez Appears to Have Misrepresented Facts and/or Lacked Candor Before the Commission

71. As noted above, the Commission and the courts have recognized that “[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing.”²²² Full and clear disclosure of all material facts in every application is essential to the efficient administration of our licensing process, and proper analysis of an application is critically dependent on the accuracy and completeness of information and data that only the applicant can provide. Misrepresentation and lack of candor raise serious concerns as to the likelihood that the Commission can rely on an applicant, permittee, or licensee to be truthful.²²³

72. *Misrepresentations and Lack of Candor in Application.* The record suggests that Juarez misrepresented material facts and/or made false statements in the 2010 Assignment Application, as well as lacked candor, in her dealings with the Commission. As an initial matter, she did not provide her legal name as required. Her failure to meet this basic requirement raises questions as to whether she intentionally used

²¹⁹ See *id.* at 3, Question 4 and Attach. 5.

²²⁰ See *id.* at Attach. 4.

²²¹ *Id.* at 4, Question 5.

²²² *Contemporary Media Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (citation omitted).

²²³ See 1986 *Character Policy Statement*, 102 FCC 2d at 1209-11. The fundamental importance of truthfulness and candor on the part of applicants and licensees in their dealings with the Commission is well established. See *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946); *Nick J. Chaconas*, Decision, 28 FCC 2d 231 (1971); *Lebanon Valley Radio, Inc.*, Decision, 35 FCC 2d 243 (Rev. Bd. 1972).

an altered name to obfuscate her ownership, because there does not appear to be any legitimate reason for Juarez to have certified an application with her name misspelled. This apparent violation also frustrates efforts to locate Commission records related to her, especially since she also failed to provide the requisite FRN. Juarez also certified that, except for the deletion of Schedule 2.1 from the APA because it contained allegedly private financial information, the APA attached as an exhibit to the Assignment Application embodied the full agreement of the Parties and that it complied with FCC rules and policies. Her signature on the Assignment Application certified that her responses, statements, and exhibits therein were material representations that were “true, complete, and correct” to the best of her knowledge and belief. However, her certification appears to be false. First, the undisclosed oral understanding between HCCN or Guel and Juarez apparently violated the Reversionary Interest Rule. Second, the deletion of Schedule 2.1 from the APA submitted with the Assignment Application was based on what appears to be a false or misleading claim that the Schedule contained “private financial information.”

73. Juarez and HCCN succeeded in keeping the FCC in the dark about these issues for several years. In response to the Bureau’s 2018 inquiry, Juarez revealed that she and Guel had an unwritten agreement to delay filing the requisite consummation notice until after some unspecified date when “payments were made” for the Stations. This undisclosed arrangement is just one of the ways in which Juarez failed to comply with the terms of the Grant, which required HCCN and Juarez to consummate the transaction within 90 days (*i.e.*, by July 25, 2010) and “promptly” notify the Commission.²²⁴ Had Juarez disclosed this arrangement to the Commission in 2010, the Bureau could not have granted the transaction because this arrangement apparently violated the Reversionary Interest Rule. Juarez would have had a motive to conceal this plan, namely to secure FCC consent to a transaction that would benefit her uncle but that otherwise could not have been granted. Thus, the facts appear to suggest a plan to conceal the true nature of the transaction in order to induce the Commission to grant the Assignment Application.

74. Now that we are aware of Juarez’s apparent youth at the time she signed the APA, her familial relationship with Guel, the claimed financing arrangement with Guel, and Juarez’s apparent lack of personal involvement in operating the Stations, we have substantial questions both about whether HCCN or Guel and Juarez undertook a legitimate sale of the Stations and about the veracity of Juarez’s certification in the Assignment Application that she had the financial ability to purchase and operate the Stations.²²⁵ She provided no evidence she paid any costs incurred to operate the Stations since July 2010 and no evidence that she actually made any payments of either the \$320,000 purchase price or interest on that amount. In the absence of such evidence, it is hard to accept the claim that Juarez agreed to pay, and over time did pay, \$320,000 for the Stations. Juarez claims Guel offered to sell her the Stations because “he was struggling financially due to the crisis that was going through the country at the time.”²²⁶ If Guel in fact were selling the Stations in the face of said financial struggles, it is hard to understand why he would finance the entire \$320,000 sale to his apparently teen-aged niece with no evident broadcasting experience or business background. Had the Parties disclosed these facts, the Bureau could have questioned their financial arrangement, in part because HCCN or Guel might have retained an impermissibly pervasive influence over the operation of the Stations or held a prohibited reversionary interest. Juarez’s failure to provide Schedule 2.1 and her certifications as to her financial abilities thus raise questions as to whether this was a legitimate transaction and whether Juarez intentionally withheld material details of the purported transaction so as to induce grant of an illusory assignment and then maintain a charade of having the Stations operated by a U.S. citizen.

²²⁴ Grant (BALTTL-20100315AAS, FCC Form 732, Authorization).

²²⁵ Had Juarez disclosed that she was not financially qualified when she filed the Assignment Application, we would have returned or dismissed the application. *See, e.g., Dean F. Abul and Keith W. Horton, et al.*, Hearing Designation Order, 6 FCC Rcd 4117, para. 3 (MMB 1991) (designating for comparative hearing construction permit applications, noting that “[a]ny applicant who knowingly is not financially qualified but deliberately checks ‘Yes’ [on the application] subjects itself to a potential misrepresentation” issue (citation omitted)).

²²⁶ Response at Attach. 2.

75. It further appears that Juarez lacked candor in her dealings with the Commission. By not disclosing either the verbal side agreement with Guel to delay filing the requisite consummation notice, or the Parties' purported payment plan, Juarez failed to provide material information that would have been essential to the Commission's review of the Assignment Application. It also appears that Juarez may have been relying upon and receiving additional support from her father and/or other unspecified individuals, to an unknown extent. Juarez's apparent failure to be completely forthcoming in the provision of information which could illuminate the Commission's decision to grant or deny the proposed assignment raises substantial and material questions as to whether she lacked candor in the Assignment Application.

76. *Misrepresentations and Lack of Candor in the 1.88 Letter Response.* There are material and substantial questions of fact as to whether Juarez lacked candor and/or provided false or misleading information to the Commission in her 2018 response to the Bureau's 1.88 Letter. Specifically, she apparently failed to comply with Bureau instructions that she answer questions regarding her control of the Stations, to include her failure to, inter alia: (a) provide truthful and/or accurate information that the Parties had in fact consummated the assignment on July 25, 2010, and Juarez had in fact controlled and operated the Stations since July 2010; (b) provide documents supporting her answers; and (c) identify all other attributable interests in broadcast stations (other than the 13 listed in the 1.88 Letter) and provide a sworn affirmation whether all statements in her response apply to any additional stations.

77. Juarez's failures to answer, fully and truthfully, Commission inquiries raise substantial and material questions as to whether Juarez lacked candor with the Commission. Most notably, Juarez failed to provide any evidence that she controlled the Stations between 2010 and 2014. In fact, the evidence she did provide demonstrates she did *not* control them in any way and thus undercuts her sworn declaration that she exercised control over the Stations' operations since 2010. This factor – coupled with the historical record that: (a) in August 2014, HCCN and HFCN filed applications for consent to assign the Stations' licenses from HCCN to HFCN while describing the proposed transaction as a "corporate reorganization" involving no financial consideration;²²⁷ (b) Juarez did not obtain an FRN until December 2014; (c) Juarez did not provide fully-executed closing certificates reflecting the date of the purported consummation; (d) Juarez did not file any ownership reports for the Stations prior to October 2015; and (e) Juarez did not provide any other contemporaneous financial evidence documenting her control of the Stations from July 2010 through November 2014 – suggests that Juarez may have attempted to evade answering fully and truthfully the Bureau's 2018 inquiry into who controlled the Stations since July 25, 2010.

78. Additionally, Juarez claims in her Response that Guel offered to finance her purchase of the Stations.²²⁸ She claims she and another person agreed to pay a deposit and the rest in monthly installments. Juarez, however, did not provide documentation to support these claims, as required by the Bureau's LOI. Juarez did not provide clear details in her Response as to all the individuals who might have helped finance the Stations, or offer specific details as to the support her cousins, attorney, and engineer may have provided. Due to these omissions, there are substantial and material questions as to whether Juarez has been fully candid and forthcoming with all material information sought in the 1.88 Letter. We therefore question Juarez's candor and have material and substantial questions as to the veracity of statements made in her Response and whether Juarez deliberately provided false and/or misleading information to avoid disclosing the truth and/or to divert the Commission from discerning the facts surrounding the claimed transaction, including any funds she paid.

79. Finally, there are substantial and material questions of fact regarding the veracity of the statements in the body of Juarez's Response that she (a) "was not personally aware of any time it was proposed" that the Stations be assigned to HFCN in 2014; if that was done, "it was not authorized by me

²²⁷ See *supra* para. 37.

²²⁸ Response at Attach. 2.

and I was not part of the application”; and (b) “[t]here are no other stations owned or controlled by me.” These statements are open to question, based on record evidence and certifications made by Maria Guel in applications filed with the FCC in the 2010-2018 timeframe stating that Juarez was one of three directors of HFCN.

80. With respect to Juarez’s professed lack of awareness of Guel’s attempt to re-assign the Stations to HFCN, it is possible she was genuinely ignorant of HCCN’s 2014 assignment applications. If Guel exercised complete dominion and control over the Stations in August 2014, he may well have withheld his plans from her.²²⁹ But it seems doubtful that Juarez would have been completely ignorant of the attempted assignment to HFCN if she was, in fact, one of three directors of that company (the buyer/transferee) at all relevant times. Although Juarez avers she does not own or control any other stations, HFCN has certified repeatedly that Juarez was a board member with a one-third attributable interest in stations licensed to HFCN since at least 2010 to the present²³⁰ and her cousin, Maria Guel – who Juarez avers has helped her greatly in operating the Stations – is also listed as a board member.²³¹ It thus strains belief that Juarez was completely unaware of that proposed August 2014 transaction involving both her uncle and cousin on whom she claims to rely. Indeed, Juarez had motive to deny knowledge of that abandoned transaction. If Juarez were to acknowledge awareness of Guel’s attempt to assign the Stations to HFCN, it would be tantamount to admitting that Guel was in *de facto* control of the Stations in 2014 and/or that he was operating them, and that Juarez had not, in fact, consummated the purported purchase of the Stations from HCCN. A hearing is thus necessary to enable the untangling of these conflicts, to assess the credibility of these parties, and to determine whether Juarez provided knowingly false statements to the Commission in 2018.

81. Juarez similarly appears to have lacked candor in responding to the 1.88 Letter by failing to provide complete, clear explanations. For example, Juarez repeatedly refers to her father and implies he was involved in initially financing and purchasing the Stations and also buying “our equipment for the stations and that is how we started our new adventure into this business.”²³² She does not, however, explain her father’s role in acquiring the Stations. She then claims her father concentrated on other matters, but later avers that Guel “helps *us*” keep the Stations on air and “is also *our* representative with some advertising agencies,” and further avers “[w]e pay [Guel] 10% commission on direct sales . . . [and] he also participated as a broker in the sale of an LPTV that *we* have sold. He has recommended different

²²⁹ After all, the record indicates Guel apparently was and had been actually controlling and operating the Stations at that time. The absence of any documentary evidence that Juarez operated the Stations before December 2014, contrasted against the affirmative evidence of Guel’s ongoing control of the Stations (*e.g.*, holding himself out as the licensee by, *inter alia*, filing various applications for the Stations through November 2014, as well as his 2018 disclosure that he was the “official” licensee until he filed the Consummation Notice), tends to suggest that he, not she, was in fact controlling and operating the Stations.

²³⁰ See *supra* notes 106, 107. See also Petition to Deny at Attachs. E, F (Certificate of Amendment filed with the Texas Secretary of State by HFCN on Feb. 16, 2010, named Juarez as HFCN’s treasurer; a Texas franchise tax report filed by HFCN on Jan. 28, 2013, specified Juarez’s term as an HFCN board member was to expire 5/15/2013).

²³¹ Conversely, if HFCN’s president, Maria Guel, withheld this information from Juarez in 2014, and Juarez’s 2018 statement as to her ignorance of the proposed corporate reorganization is true, then questions arise as to whether Guel and/or Maria may have colluded and have or are using Juarez’s name on FCC filings without her knowledge. If so, this could constitute a separate fraud on the Commission. See, *e.g.*, *Baton Rouge Progressive Network*, Memorandum Opinion and Order and Notice of Apparent Liability, 25 FCC Rcd 905 (MB 2010).

²³² Response at Attach. 2 (“My dad was always interested to see how Antonio was working in the communications industry.” “. . . at the end of 2008 we talked with Antonio that we wanted to know more about how we could start working in the communications industry.” Guel “offered to sell us some television channels and also offered us financing the channels through his company. We thought it was a great opportunity and agreed to pay a deposit and the rest in monthly payments.”)

brokers to put some of *our* stations [sic] for sale.”²³³ Juarez provides no details as to whom she is referring when she references “we” or “us,” or to the role that such person(s) may play in “helping” her run the Stations.

82. Juarez also failed to provide the date in July 2010 she claims to have signed the closing papers and failed to adequately explain why the closing Certificates she provided were signed but undated, although the document retained the blank space to indicate a day in May 2010 the Parties should have signed the Certificates. Similarly, she has no explanation as to why she agreed to delay filing the notice of consummation, yet purportedly operate the Stations anyway. Aside from referring us to Guel’s declaration, Juarez simply avers she “assumed that this was the proper procedure.”

83. Based on this record of Juarez’s apparent false certifications, misrepresentations, and lack of candor in both the 2010 Assignment Application and Response to the 1.88 Letter, we therefore designate for hearing appropriate issues to determine whether Juarez misrepresented material facts and/or lacked candor in her dealings with the Commission, either with an intent to deceive and/or in willful and repeated violation of section 1.17 of the Rules.

84. In light of the factors discussed above, the record also raises substantial and material questions of fact as to Juarez’s character, in terms of whether she has the propensity to deal honestly with the Commission in the future and to comply with the Act and our Rules and policies.²³⁴ The integrity of Commission processes cannot be maintained without honest dealings by those appearing before it.²³⁵ Acts of misrepresentation and lack of candor “not only violate[] the Commission’s Rules; [they] also raise[] immediate concerns over the licensee’s ability to be truthful in any future dealings with the Commission.”²³⁶ We thus view “misrepresentation and lack of candor in an applicant’s dealings with the Commission as serious breaches of trust”²³⁷ and can “treat even the most insignificant misrepresentation as disqualifying.”²³⁸ We therefore also designate for hearing appropriate issues to determine whether Juarez has the character qualifications to remain a Commission licensee.

B. GUEL AND HCCN SHOULD BE CONSIDERED ONE AND THE SAME

85. With respect to HCCN and its 100% direct stockholder Guel, there are substantial and material questions of fact as to whether HCCN and Guel should be considered one and the same entity for purposes of this proceeding and whether they should be jointly liable for any penalties and/or forfeitures that may result from a hearing. Although certain acts discussed herein were taken by HCCN in its capacity as licensee or applicant, Guel held a 100% direct ownership interest in HCCN and, as represented in reports filed with the Commission, apparently was the sole officer and director at least until October 2013.²³⁹ As the Commission has noted, where the ownership of stock is used to dominate and control an entity in such a manner and to such extent that the entity becomes a mere agency or instrumentality of the stockholder, separate corporate entities and structures may be disregarded.²⁴⁰ In

²³³ Response at 4, Question 5 (emphasis added).

²³⁴ See *1986 Character Policy Statement*, 102 FCC 2d at 1211, para. 61.

²³⁵ *Id.* at 1188-89, para. 21.

²³⁶ *Id.* at 1121, para. 61.

²³⁷ *Id.*

²³⁸ *Id.* at 1120, para. 60.

²³⁹ CDBS File No. BOA-20131220HCO (biennial ownership report filed Dec. 20, 2013) (certifying that, as of October 1, 2013, Guel was sole stockholder with 100% voting and equity rights in HCCN, and listing “Cesar A. Guel” as officer and director). This report certified no familial relationship between Antonio and Cesar Guel, but given the record as a whole, it appears Cesar A. Guel is Guel’s son.

²⁴⁰ See *Publix Network Corporation*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487, 11504-05, para. 39, n.79 (2002) (citation omitted) (designating issue as to whether various entities “should, (continued....)

other words, the Commission may “pierce the corporate veil” to determine if, as here, Guel’s control of HCCN was so complete that HCCN’s actions may legally be attributed to be Guel’s. In piercing the corporate veil, the Commission may also consider other factors, such as: (1) a common identity of officers, directors and shareholders; (2) sharing the same principal offices; and (3) closeness of relationship between entities.²⁴¹

86. The record here suggests that Guel and HCCN may be and are one and the same. Aside from Guel’s 100% control of HCCN’s stock during all relevant times, other factors reflect Guel’s virtually complete domination and control of HCCN: 1) Guel’s apparent sole ownership of HCCN from 2009²⁴² to at least 2011;²⁴³ 2) Guel’s apparent appointment of his son, Cesar, as HCCN’s sole officer and director, purportedly as of October 1, 2013;²⁴⁴ 3) Guel’s November 2014 signature as HCCN’s “general manager” on the bankruptcy petition, certifying he was the authorized agent acting on behalf of the debtor (*i.e.*, HCCN);²⁴⁵ 4) Guel’s ever-revolving yet shared addresses with HCCN and other Guel-family entities;²⁴⁶ and 5) Guel’s continued use of two email addresses associated with HCCN.²⁴⁷ We therefore designate appropriate issues to determine whether HCCN and Guel should be treated as one entity.

(Continued from previous page) —————
for purposes of this proceeding, be considered one and the same entity”) (*Publix*). See also *Sandwich Isles Communications, Inc.*, Forfeiture Order, 2020 WL 5905313, paras. 59-67 (2020).

²⁴¹ *Publix*, 17 FCC Rcd at 11504-05, para. 39.

²⁴² In 2010, HCCN reported Guel as its sole director, officer, and stockholder as of November 1, 2009. CDBS File No. BOA-20100723ATM (filed July 23, 2010) (HCCN and Guel address listed as 8500 N. Stemmons Freeway; Guel’s email address was CESARGUELHCCN@AOL.COM).

²⁴³ In 2012, HCCN reported Guel as its sole director, officer, and stockholder as of October 1, 2011. CDBS File No. BOA-20120503ABO (filed May 3, 2012) (listing same 8500 N. Stemmons address).

²⁴⁴ In 2013, HCCN reported Guel still held 100% of HCCN’s stock but was no longer an officer or director as of October 2013. CDBS File No. BOA-20131220HCO (filed Dec. 20, 2013) (also changing HCCN’s address to 5787 S. Hampton Rd.). According to the report, Cesar A. Guel had replaced Guel as a new sole officer and director as of October 1, 2013, with the Hyacinth Drive address (Guel’s residence) listed as Cesar’s address; see, e.g., CDBS File No. BALTTL-20061102ABW). *Id.* Cesar certified on the report that he, Cesar A. Guel, was not Antonio C. Guel’s child; information provided by Cesar Guel in 2018, however, suggests that he was Guel’s 19-year old son in 2013. See *supra* notes 81, 136. Other Commission records suggest additional apparent inaccuracies and/or intentionally false information. See, e.g., CDBS File No. BAPFT-20130118AIW (filed Jan. 18, 2013) (application for HCCN’s acquisition of a station from E-String Wireless, signed by Cesar Guel, president of HCCN, but listing an email address of cesarguelhccn@aol.com, which is the same email address Guel uses. See, e.g., CDBS File No. BLFT-20141031AAR (filed Oct. 31, 2014).

²⁴⁵ Petition to Deny Assignment of KEAM at Attach., p. 5 (supplemented Mar. 15, 2015) (also listing HCCN’s official address as of Nov. 2014 as 2727 LBJ Freeway, Suite 434, Dallas, Texas).

²⁴⁶ See, e.g., CDBS File No. BNPL-20000608ABZ (filed June 8, 2000; amended in 2004) (Antonio Guel of Comunidad Cristiana, with email address of COMCRISTIANA@AOL.COM listed as contact representative for applicant); CDBS File No. BALTTL-20050615ACE (HCCN acquisition of Yuma station; Guel certified HCCN address as Hyacinth Drive (Guel’s residence) and email of COMCRISTIANA@AOL.COM); CDBS File No. BALTVL-20080811AAB (filed Aug. 11, 2008) (HCCN assignment of stations to Iglesia Manmin Toda la Creacion USA Inc. listing HCCN addresses of both Hyacinth Drive and 8500 N. Stemmons Freeway and email of COMCRISTIANA@AOL.COM); CDBS File No. BALTTL-20100315AAS (Assignment Application; Guel certified HCCN address of 8500 N. Stemmons Freeway and email of CESARGUELHCCN@AOL.COM); FRN registration for 0006568448 (Cesar Guel, president, Comunidad Cristiana, with address of Hyacinth Drive and email of COMCRISTIANA@AOL.COM (initial registration of Feb. 2, 2002; updated Feb. 27, 2023); CDBS File No. BSTA-20100310ACN (filed Mar. 10, 2010) (Antonio Guel consultant with address of 8500 N. Stemmons Rd. and email of CESARGUELHCCN@AOL.COM); CDBS File No. BPDVL-20120417AAG (filed Apr. 17, 2012) (HCCN application for DWNGA-LD, Salisbury, MD, fac. ID 130442; Guel certified HCCN address of P.O. Box 542843 and email of CESARGUELHCCN@AOL.COM (interestingly, Guel did not provide his citizenship but certified HCCN complied with 47 U.S.C. § 310(b)); CDBS File No. BLDVL-20121219AEJ (filed Dec. 19, 2012) (DWNGA
(continued....)

C. GUEL AND HCCN HAVE APPARENTLY EXERCISED DE FACTO CONTROL OF THE STATIONS WITHOUT A LICENSE IN VIOLATION OF SECTION 301

87. We find that there are substantial and material questions of fact as to whether HCCN and/or Guel have exercised and continue to exercise *de facto* control over the Stations. Accordingly, we issue this *Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* against HCCN and Guel to cease and desist from violating Commission Rules and the Act, including making willfully inaccurate, incomplete, evasive, false, or misleading statements before the Commission in violation of section 1.17 of the Commission's rules and engaging in unauthorized control or operation of broadcast stations in violation of sections 301, 308, and 310 of the Act, and to determine and whether a forfeiture should be issued to HCCN and Guel.

88. Juarez did not obtain the requisite FRN until December 2014 and there is no reliable evidence she controlled or operated the Stations before that date.²⁴⁸ There is ample, historical evidence suggesting that HCCN may have controlled the Stations at least until November 2014 (when the notice of

(Continued from previous page)

covering license; Guel certified address of PO Box 542843 and email of CESARGUELHCCN@AOL.COM; CDBS File No. BALDTL-20140807ABF (filed Aug. 7, 2014) (HCCN-to-HFCN assignment; Cesar Guel, president, certified HCCN address of 2727 Lyndon B. Johnson Fwy and email of CESARGUELHCCN@AOL.COM. Maria Guel, president, certified HFCN address of PO Box 542843); CDBS File No. BDFCDTL-20140911AAZ (filed Sept. 11, 2014) (Guel, consultant to HCCN, at 2727 LBJ Fwy and email CESARGUELHCCN@AOL.COM; Cesar A. Guel certified HCCN address of 2727 LBJ Fwy and email of CESARGUELHCCN@AOL.COM).

HCCN appears to have gone dormant since its 2014 bankruptcy filing. But Guel, in his ongoing role as a consultant, appears to continue using locations/emails that overlap with HCCN and HFCN (the licensees in which his daughters – and Juarez – are listed as owners. See LMS File No. 0000171529 (filed Nov. 2021) (HFCN ownership report listing Maria C. and Ana K. Guel and Juarez as each holding 1/3 voting interests). For example, HFCN filed an application in 2023 listing 8330 LBJ Freeway, Suite 400, Dallas, TX as its address; see LMS File No. 0000210708 (filed Feb. 13, 2023). Guel currently uses this same address; see, e.g., LMS File No. 0000185909, partial response to Bureau letter of inquiry, from Esteban Handal, President, Iglesia Manmin (filed Aug. 24, 2022) (averring that Guel, who was responsible for the general management and construction of station WNDC, Salisbury, MD, used address 8330 LBJ Fwy, Suite 400, Dallas, TX and email CESARGUELHCCN@AOL.COM) (on Nov. 22, 2022, the Bureau cancelled WNDC's construction permit for failure to construct; petition for reconsideration pending). See also Letter from Carlos Alvarez, Broadcast Consulting & Processing, LLC (BCP), to Reimburse Team, TV Broadcaster Relocation Fund (Fund) (dated Oct. 14, 2022, as supplemented) (BCP was organized by Maria Guel in May 2022 and has no employees or directors; management is reserved to its sole member, Antonio Guel. BCP helps “not only with counseling” stations but also “the full process from obtaining the station all the way to construction and putting the station on the air” and submitting station invoices for reimbursement from the Fund. Alvarez, who did not identify his position, states BCP is located at 8330 LBJ Fwy, Suite 400, Dallas; he failed to provide the requested email addresses and phone numbers). We further note that another Guel-family entity, Mekaddesh Group Corporation (Mekaddesh), uses the 8330 LBJ Fwy, Suite 400 address. See, e.g., LMS File No. 0000211714 (filed Mar. 1, 2023). Mekaddesh also uses the 2605 Hyacinth Drive address; see, e.g., LMS File No. 0000171790 (filed Nov. 26, 2021) (ownership report listing Guel Family Trust at Guel's Hyacinth Drive address and Maria Guel as trustee). According to LinkedIn, Guel is Mekaddesh's General Manager; see <https://www.linkedin.com/in/antonio-cesar-guel-894579b3> (last visited June 5, 2023). See also Mekaddesh's website at <https://mekaddeshgroup.com/> (last visited June 5, 2023) (“We are a corporation that acquires mass media facilities and commercialize them through different forms such as social networks, tv, radio and more,” and advertises Mekaddesh's services, such as building radio and television stations and providing “Legal advice in process and services with the FCC.” The site lists Mekaddesh's location as 8330 LBJ Fwy, Dallas, TX).

²⁴⁷ See, e.g., CDBS File No. BAPDTL-20140605AGG (filed June 5, 2014) (Maria C. Guel, HFCN president, certifying HFCN's address as PO Box 542843 and email of COMCRISTIANA@AOL.COM; CDBS File No. BMPFT-20150204ACU (filed Feb. 4, 2015) (application filed by Iglesia Ebenezer, identifying Guel as consultant with address of 13155 Noel Rd. and email of CESARGUELHCCN@AOL.COM).

²⁴⁸ See *supra* paras. 47-49, 64-69.

consummation was filed). HCCN filed multiple FCC submissions regarding the Stations from 2010 through August 2014, publicly holding itself out as the licensee.²⁴⁹ There is inadequate and conflicting evidence as to whether HCCN and Juarez legally consummated the sale (e.g., no evidence that Juarez paid for the Stations, paid their operating expenses, or ever received income from the Stations' operations or reported any such income on her tax returns). Further, Juarez avers she has "not really had to put much time into the stations" and acknowledges that Guel acts as her "representative with some advertising agencies" and has "participated as a broker in the sale of an LPTV that [Juarez] sold."²⁵⁰ Guel avers that he continues to "have involvement with the licenses held by Jennifer Juarez."²⁵¹ He further avers that, "to avoid fraud by the buyers, a verbal arrangement was worked out . . . whereby [Juarez would] run the stations, but HCCN would remain officially the named licensee with the FCC until such time as the majority of the amounts owed was paid"²⁵² and that in November 2014, HCCN was facing bankruptcy and took steps to move various assets, including the Stations, off of HCCN's books even though not all payments owed to HCCN had been made.²⁵³ The record raises questions as to whether HCCN controlled the Stations from July 2010 through November 2014 (when the notice of consummation was filed) and has done so since that time in light of Juarez's admitted inexperience, inability to produce documents related to the Stations' operations, and apparently minimal familiarity with the Stations, contrasted against HCCN's and/or Guel's ongoing involvement with the Stations.

89. Given the record, there remain substantial and material questions of fact as to the extent of HCCN's and/or Guel's control of the Stations' affairs from July 2010 to the present and, if so, whether HCCN and/or Guel continued to violate section 310(b) of the Act since 2010 and section 73.3540 of the Rules. Accordingly, we issue this *Order to Show Cause Why a Cease and Desist Order Should Not be Issued* against HCCN and Guel to cease and desist from engaging in unauthorized control and operation of the Stations – or any broadcast stations – in violation of section 301 of the Act.

D. GUEL AND HCCN APPARENTLY VIOLATED COMMISSION RULES, ABUSED COMMISSION PROCESSES, ENGAGED IN MISREPRESENTATION AND LACK OF CANDOR, WHICH RAISE SUBSTANTIAL AND MATERIAL QUESTIONS CONCERNING HCCN'S AND GUEL'S FITNESS TO BE A LICENSEE

90. We find that there are substantial and material questions of fact as to whether HCCN and/or Guel (1) have misrepresented material information to the Commission and lacked candor; (2) have abused Commission processes first by filing an assignment application that lacked bona fides while apparently maintaining *de facto* control of the Stations, and then by impermissibly and intentionally bifurcating ownership of the Stations for years by not timely filing the requisite consummation notice; and (3) are fit to be Commission licensees in light of these apparent violations, abuses, and lack of candor and/or misrepresentation of facts to the Commission. Accordingly, we issue this *Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* against HCCN and Guel to cease and desist from operating, controlling, managing or providing any assistance to any stations; from preparing and/or filing applications or other documents regarding HCCN with the Commission; and, to the extent HCCN or Guel is allowed to assist any other licensee/permittee/applicant in any way with the operation or construction of any station, or to provide any assistance or input in any way in preparing or filing any application or form with the Commission, from doing so without also providing a copy of any order issued in this proceeding that

²⁴⁹ Response at 3, question No. 3. *See also supra* para. 37.

²⁵⁰ *See* Response at 4, response to Question 5.

²⁵¹ Guel Decl. at 4.

²⁵² *Id.* at 3.

²⁵³ *See supra* paras. 51-52.

finds HCCN or Guel lacks the character to be a Commission licensee in any and all filings with the Commission in every matter in which he participates in any way.

1. HCCN and Guel Apparently Abused FCC Processes and Appear to Have Engaged in A Sham Transaction

91. In apparent violation of section 312 of the Act, discussed above,²⁵⁴ HCCN and Guel apparently abused Commission processes and violated Commission rules and the Act by filing an application for consent to assign the licenses of Stations it was not legally authorized to hold. In filing the Assignment Application, HCCN apparently sought to use a surrogate as a purported owner of the Stations and thereby induce the Commission to grant a sham assignment that would allow HCCN or Guel to continue to act as the *de facto* licensee.²⁵⁵ As Guel tells it, HCCN's assets were in jeopardy in 2014, presumably as a result of the *Gonzalez* litigation involving stations KSSY and K43AG. This apparently led to HCCN's filing of the Consummation Notice the day before HCCN filed for bankruptcy.²⁵⁶ Ostensibly transferring the Stations to Juarez in 2010 but not timely consummating the sale would have benefitted HCCN by shielding HCCN's assets from potential default in his civil suits, while at the same time enabling HCCN/Guel's continued control of the Stations indefinitely, despite HCCN's non-compliance with the foreign ownership limitations of section 310(b)(3) of the Act.

92. Furthermore, the record raises questions as to whether HCCN/Guel intended to comply with the terms of the APA submitted to the FCC, and instead operated according to an oral side agreement withheld from the Commission. Specifically, the APA recited a significant number of material terms that Guel knew or should have known were inaccurate, including a covenant that HCCN would expeditiously complete the transaction and comply with FCC conditions.

93. As an initial matter, Guel's assertion that he did not know his lack of U.S. citizenship and 100% direct ownership of HCCN's stock resulted in foreign ownership exceeding what is permissible under section 310(b)—and thus disqualified HCCN from holding FCC licenses—is not credible for multiple reasons. First, Guel does not claim he was unaware of the fact of his foreign citizenship. Yet Guel repeatedly certified in numerous FCC applications and ownership reports filed by HCCN over a period of years that he was a U.S. citizen—despite prominent warnings on those applications that false statements may constitute a crime punishable by fine, imprisonment, or license revocation.²⁵⁷ These certifications, which involved scores of stations, were false. Had Guel disclosed his non-U.S. citizenship, he would have revealed that HCCN was in non-compliance with the foreign ownership limitations of section 310(b)(3) of the Act and thus ineligible to hold broadcast licenses;²⁵⁸ he therefore had a compelling motive to conceal his true foreign citizenship.

94. Second, in his Declaration, Guel claims ignorance of section 310(b) statutory restrictions on foreign ownership. This does not appear credible. The historical record undercuts Guel's assertion in

²⁵⁴ See *supra* para. 17.

²⁵⁵ See, e.g., *Religious Broadcasting Network*, Initial Decision, 2 FCC Rcd 6561, 6566-67, paras. 54-61 (ALJ 1987) (*RBI*) (finding real party-in-interest where applicant transferred his ownership interest to relatives and remained in control by means of a consulting agreement and direct and indirect control over assignee's purse strings); see also *supra* note 89 (discussing Guel's involvement in *Unidad*, the 2009 fraud/breach of contract case where Unidad petitioned the court in February 2010 to enforce the settlement out of fear Guel *et al.* might default).

²⁵⁶ See *supra* note 183 (discussing the 2016 *Gonzalez* court's finding that Guel was liable for fraud).

²⁵⁷ See, e.g., CDBS File Nos. BDCCDTL-20061027ADF at sec. II.2 (filed Oct. 27, 2006) (application for digital companion channel for KEGG-LP; Guel certified he was a U.S. citizen); BALED-20070619AAS at sec. III.4 (filed June 19, 2007) (HCCN acquisition of KTNR; Guel certified he was a U.S. citizen). HCCN also certified Guel was a U.S. citizen in ownership reports. See, e.g., CDBS File Nos. BOS-20071211ACL; BOA-20090323AAH; BOA-20100723ATM; BOA-20120503ABO; BOA-20131220HCO (HCCN ownership of 40 LPTV/translator stations).

²⁵⁸ See 47 U.S.C. § 310(b)(3).

his 2018 Declaration that a prior attorney failed to advise that Guel's 100% direct ownership of HCCN would disqualify HCCN from holding broadcast authorizations. In what appears to be one of Guel/HCCN's early forays into television station ownership, HCCN filed two applications to acquire KYUM: 1) an initial application filed June 15, 2005; and 2) a supplemental application filed August 2, 2005.²⁵⁹ Neither application indicates Guel was represented by counsel. Indeed, Guel expressly acknowledged in the initial application that "an attorney was not used to prepare" the parties' sales contract.²⁶⁰ The parties subsequently amended that application to file a revised purchase agreement that makes no mention of legal representation for Guel/HCCN.²⁶¹ Yet Guel certified in his initial 2005 Yuma Acquisition application that HCCN complied with foreign ownership limits.²⁶² It thus appears Guel acted on his own in certifying that HCCN complied with section 310(b) of the Act, and not in reliance on counsel as he now claims. Second, even if HCCN had consulted with counsel before filing the initial 2005 Yuma application, licensees have a duty to know and comply with the Commission's rules and the Act.²⁶³ Moreover, efforts to shift blame to agents, including counsel, do not excuse a licensee's failure to observe the Rules or statutory obligations.²⁶⁴ Thus, even if HCCN had been represented by a prior attorney who had in fact provided faulty advice,²⁶⁵ that would not negate HCCN's duty to comply with

²⁵⁹ CDBS File No. BALTTL-20050615ACE at Attach., Asset Purchase Agreement, filed June 15, 2015 and amended August 2, 2005 (noting the parties had amended their original asset purchase agreement). The Bureau granted consent to the proposed assignment on August 4, 2005.

²⁶⁰ See *id.* at Attach., Asset Purchase Agreement, as amended on August 2, 2005 (the amended agreement made no mention of HCCN/Guel being represented by counsel and, in fact, left blank a section to indicate who (other than HCCN/Guel) should receive copies of documents).

²⁶¹ Neither the original nor amended application provides an FRN for HCCN, which did not obtain an FRN until Oct. 11, 2005—more than two months after Commission consent to the proposed sale. See FCC FRN search for HCCN FRN 0014120505, at <https://apps.fcc.gov/cores/searchDetail.do?frn=0014120505&csfrToken=> (last visited Feb. 22, 2023). HCCN used this FRN in subsequent filings for KYUM. See, e.g., CDBS File No. BRTTL-20060531ADR (KYUM renewal) (Guel certified HCCN's compliance with section 301(b) and provided the name of counsel on the application).

²⁶² See Guel Declaration; see also *supra* para. 23 and note 85. Commission records indicate that HCCN registered for an FRN (number 0013410998) on May 2, 2005 (updated on May 31, 2005) – before the Yuma application was filed – but the FRN was not included on the application.

²⁶³ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) ("[O]ne may not 'claim ignorance of the law as a defense'" (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted).

²⁶⁴ *Triad Broadcasting Company*, Memorandum Opinion and Order, 96 F.C.C.2d 1235,1242, para. 16 (1984) (well-established principle that "advice of either a legal counsel or a contract engineer cannot excuse a clear breach of duty of a Commission licensee," citing *Asheboro Broadcasting Co.*, 20 FCC 2d 1, (1969) (legal counsel)). See also *KLDT-TV 55, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd. 3198 3199, para. 7 (1995) ("Allegedly faulty advice of counsel will not excuse a licensee's failure to comply with the rules"); *Vista Services Corporation*, Forfeiture Order, 15 FCC Rcd 20646, 20650 para. 9, n.24 (2000) ("Employers are routinely held liable for breach of statutory duties, even where the failings are those of an independent contractor").

²⁶⁵ See, e.g., *Mt. Rushmore Broadcasting, Inc.*, Forfeiture Order, 25 FCC Rcd 95 (EB 2010).

statutory obligations of the Act, and in no way explains or excuses Guel's false certifications as to his citizenship or HCCN's non-compliance with section 310(b) of the Act.²⁶⁶

95. Finally, licensees are expected to correct errors when they learn of them and to update pending applications of any material changes.²⁶⁷ Here, Guel's attorney, Alpert, was apparently in receipt of a letter as early as May 27, 2014, providing documentation that Guel was not a U.S. citizen.²⁶⁸ The letter advised Alpert of Guel's 2014 sworn admission as to his lack of U.S. citizenship.²⁶⁹ HCCN, however, not only filed applications certifying compliance with statutory limits on foreign ownership after Guel's disclosure, HCCN failed to amend those 2014 HCCN renewal applications that were pending²⁷⁰ for months after Guel claims he learned in 2014 about the implications of his status as a non-U.S. citizen on holding an FCC license (that is, his 100% direct stock ownership of HCCN meant HCCN was not in compliance with statutory foreign ownership limitations of section 310(b)(3)). This dereliction suggests HCCN intended to continue the pretense that it held the authorizations legally until all dispositions of stations (including the purported HCCN-Juarez transaction) could be "consummated" with belated consummation notices to the FCC.²⁷¹

96. Further, the APA required HCCN to notify Juarez of any pending litigation or other type of judicial matter that could adversely affect the Stations. At the time HCCN executed the APA, however, HCCN was defending against the *Unidad* civil suit in 2009 and was still under the court's purview in February and June 2010 to ensure HCCN paid the settlement²⁷² (which if HCCN failed to do could jeopardize the financial viability of HCCN). Yet HCCN and Juarez executed the APA in March 2010, in the midst of that ongoing litigation. There thus are questions as to whether HCCN informed Juarez of this litigation when the APA was signed and whether she was aware of this potential liability. HCCN also was defending against another lawsuit in 2014, which Guel admits triggered the bankruptcy filing for HCCN and also the 2014 attempt to assign the Stations to HFCN. Juarez, however, denied any awareness of those applications. Nor could she explain why the Consummation Notice was filed in 2014, instead referring the Bureau to Guel's declaration. If Juarez's statements are true, it appears HCCN had not notified her of the 2014 litigation and its effect on the Stations, which raises additional questions as to whether the APA and assignment to Juarez were illusory *ab initio* and designed to permit HCCN to operate the Stations indefinitely, or at least until a time propitious for HCCN to ostensibly "consummate" the purported transaction with Juarez.

²⁶⁶ Indeed, the record indicates that when HCCN filed 10 renewal applications on June 2, 2014, Guel's lack of U.S. citizenship had already been exposed, yet HCCN certified in those applications that it complied with section 310(b) of the Act. *See, e.g.*, CDBS File Nos. BRDTL-20140602AUI.

²⁶⁷ *See, e.g., Overmyer Communications Co.*, Decision, 54 FCC 2d 1045, 1076, para. 25 (Rev. Bd. 1975) (continuing duty to correct erroneous statement and failure to do so "compounds the initial fraudulent misrepresentation and failure to disclose"); 47 CFR § 1.65.

²⁶⁸ Petition of Michael Couzens to Deny Renewal of KJPO-LD, CDBS File No. BRDTL-20140602AUI, et al., at Attach. B, Supplementary Declaration of Michael Couzens 1-2 (filed Sept. 2, 2014).

²⁶⁹ *Id.* (Couzens provided a true copy of a letter from him to Alpert, dated May 24, 2014, in which Couzens stated that Alpert had "actual knowledge of Guel's lack of U.S. citizenship, since 2009 if not before" and that if he (Alpert) continued to file such applications, he (Alpert) would be doing so with "provable actual knowledge of the falsity.").

²⁷⁰ *See, e.g.*, HCCN renewal applications with CDBS File Nos. BRDTL-20140602AUH; BRTTL-20140807ABQ.

²⁷¹ Guel's claim that his current attorney, Alpert, informed him of the implications of his status as a non-U.S. citizen on holding FCC licenses is open to question based on HCCN's failure to amend applications pending at the time of this purported revelation and Alpert's representation of HCCN at the time those applications were filed.

²⁷² *See supra* notes 89 and 255.

97. The APA further specified that Juarez was to pay HCCN \$320,000 for the Stations.²⁷³ The Parties, however, withheld the payment schedule from the Assignment Application. Instead, they certified that Schedule 2.1 contained private financial information and was properly redacted under the Commission's *LUJ* decision as immaterial to the Commission.²⁷⁴ The Bureau did not learn of this until 2018, however, after the transaction had purportedly been consummated.²⁷⁵ As evidenced by HCCN's 2006 and 2007 assignment applications with the California stations, however, HCCN did not withhold payment schedules requiring a down payment and subsequent installment payments,²⁷⁶ and there does not appear to be any legitimate reason to justify redaction in the Assignment Application under *LUJ*.²⁷⁷ The absence of any record evidence that Juarez made any payments (let alone all payments, or when), and the Parties' failure to provide Schedule 2.1, thus raise questions as to whether Juarez ever paid any consideration as purportedly required by the APA. It also raises questions as to whether HCCN/Guel intentionally and spuriously cited *LUJ* as a basis to conceal the terms of a non-existent or improper payment arrangement and thus induce grant of an illusory assignment.

98. The record further suggests that HCCN/Guel ignored the APA's terms governing the closing. The Parties had agreed to close the transaction within 10 days after the FCC's final order consenting to the assignment and to comply with the terms of the Grant, and that time was of the essence in performing every provision of the contract. There is nothing in the record to indicate why the Parties missed the APA's June 25, 2010 closing deadline. Significantly, the Parties even apparently failed to properly execute the closing documents by the Grant's July 25, 2010 deadline,²⁷⁸ despite the Parties' representations in their respective 2018 affidavits/declarations that they had done so. It thus appears that the transaction was never properly consummated under the terms of the APA or according to Commission rules. HCCN's attempted 2014 assignment of the Stations to HFCN further suggests that HCCN continued to control them and that the transaction with Juarez had been abandoned (assuming it was ever legitimate).

99. Other factors indicate there was no actual consummation. As Guel avers in 2018, "to avoid fraud by the buyers, a verbal arrangement was worked out . . . whereby [Juarez would] run the stations, but **HCCN would remain officially the named licensee with the FCC until such time as the majority of the amounts owed was paid.**"²⁷⁹ Guel further avers that in November 2014, Juarez had not completed paying for the Stations and was "in the process of completing" the transaction, so she "was not

²⁷³ See APA at 3, section 2.1 ("In consideration of Seller's performance of this Agreement, the amount paid for the Stations Assets shall be Three Hundred and Twenty Thousand Dollars (\$320,000.00, paid as provided in Schedule 2.1"). We note that HCCN also should or would have had reason to question Juarez's apparent inability to pay \$320,000 and fund three months of operating 16 Stations located in eight states. According to Juarez, she and her father met at family events with Guel before she agreed to enter into the proposed transaction. As her uncle, Guel presumably had at least a general idea as to her age and financial resources. Moreover, Guel had access to an attorney and thus could have explored the legality of whether executing a contract with a young niece with no broadcasting experience and apparently not represented by counsel was a legitimate arms-length agreement (which he apparently did in 2005, when he transferred the Yuma station to Centro Cristiano Vida Abundante, Inc. See CDBS File No. BALTTL - 20060531AEQ). In light of this record, it appears HCCN chose Juarez to serve as a surrogate in their purported transaction precisely because of her youth, inexperience, and familial ties to Guel, which would facilitate HCCN's ongoing control of the Stations.

²⁷⁴ CDBS Lead File No. BALTTL-20100315AAS, Exh. 4.

²⁷⁵ See Juarez Response at Attach. 2.

²⁷⁶ See *supra* note 88 re KSSY and K43AG.

²⁷⁷ Under *LUJ*, parties may withhold proprietary information not germane to FCC consideration, but asset purchase agreements are essential to consideration of a proposed transaction. See *Luis A. Meija and MSG Radio, Inc.*, Forfeiture Order, 23 FCC Rcd 15242 (MB 2008), *recon. denied*, 26 FCC Rcd 11444 (MB 2011).

²⁷⁸ See *supra* paras. 48-49.

²⁷⁹ Guel Declaration at 3 (emphasis added).

the officially recognized licensee” of the Stations.²⁸⁰ Juarez provided no evidence she paid anything for the Stations. Thus, if HCCN was, as Guel admits, the “official licensee” of the Stations in November 2014, then the Parties had not consummated their transaction to assign the licenses to Juarez in 2010. Given that Guel’s status as a non-U.S. citizen was exposed on May 19, 2014, it appears that his filing a consummation notice in November 2014 was intended to revive an apparently nonexistent or defunct assignment to Juarez and thereby enable HCCN’s continued, post-bankruptcy operation of the Stations regardless of Guel’s status as a non-U.S. citizen.

100. The record suggests that HCCN and or Guel apparently masterminded a scheme to secure FCC consent for an illusory assignment of the Stations to Guel’s young, inexperienced niece, and abused Commission processes by filing a deceptive application. Additionally, the record raises questions as to whether HCCN facilitated and furthered its apparently fraudulent control of the Stations by colluding with Juarez in an undisclosed agreement to intentionally delay filing the purported consummation, contrary to our Rules and the specific terms of the Grant. This would constitute a separate abuse of Commission processes.

101. We therefore designate for hearing appropriate issues to determine whether HCCN and Guel abused FCC processes and engaged in an apparently sham transaction.

2. Whether HCCN and Guel Have Engaged in Misrepresentation, Lack of Candor

102. The record suggests that HCCN and Guel engaged in misrepresentation and/or lacked candor with the Commission. Section 1.17 of the Rules prohibited HCCN from intentionally providing material factual information in an FCC application that is incorrect, or intentionally omitting material information that is necessary to prevent any material factual statement from being incorrect or misleading.²⁸¹ Moreover, section 1.65 of the Rules required HCCN to promptly amend pending applications if the information therein was no longer substantially accurate and complete in all material respects.²⁸² Licensees must comply with this Rule to ensure the efficient administration of the Commission’s licensing process and proper analysis of applications. Because Guel injected himself into the Bureau’s investigation by providing Juarez with a declaration in support of her Response to the 1.88 Letter, he is subject to the Rules regarding candor and honesty before the Commission.²⁸³

103. *Misrepresentations and Lack of Candor in Assignment Application.* Guel and HCCN’s apparently false certifications in the Assignment Application echo and amplify those made by Juarez with respect to their purported completeness and accuracy. HCCN’s apparently false certifications likewise appear to have been intentionally false and/or designed to mislead the FCC. HCCN/Guel, like Juarez, certified that the APA embodied the full agreement of the Parties. The record before the Commission suggests it did not. Instead, it suggests that the Parties may have knowingly withheld their scheme to delay filing the consummation notice. Unlike Juarez, however, HCCN and Guel, its President and sole

²⁸⁰ See *id.* at 2-3.

²⁸¹ 47 CFR § 1.17(a); see *supra* paras. 12-13.

²⁸² 47 CFR § 1.65.

²⁸³ See 47 CFR § 1.17(b)(3) (any “person performing without Commission authorization an activity that requires Commission authorization” is subject to this section); 1.17(b)(4) (“[a]ny person that has received a . . . letter of inquiry from the Commission or its staff, or is otherwise the subject of a Commission or staff investigation” must adhere to 1.17(a)’s requirements). Both by submitting FCC applications as a principal of HCCN and by providing a declaration in response to the 1.88 Letter, Guel became subject to section 1.17’s requirements. He also appears to have been operating the Stations without authorization. As described above in para. 17, the Commission may issue a cease and desist order against a non-licensee in order to prevent individuals – like Guel, who appears to have controlled broadcast stations without proper Commission authority – from continuing to violate and evade FCC rules.

owner, had extensive experience with buying/selling stations and was represented by communications counsel. These facts suggest that HCCN concocted this scheme to shield its continued, illicit operation of the Stations, particularly since HCCN faced losing the Stations. HCCN's and Guel's experience in filing numerous assignment applications, and the probability that his attorney drafted the APA, suggest that his citing *LUJ* as a basis to withhold the Parties' payment schedule was an intentional feint to secure Commission consent to what appears to have been an illusory transfer of stations to Juarez that included a hidden reversionary interest held by HCCN/Guel. As discussed above, HCCN and Guel had been involved in a number of transactions assigning stations in which fraud was ultimately adjudged or alleged to have occurred. HCCN and Guel thus had direct, personal knowledge that failure to comply with Commission licensing practices could result in loss of a station and/or sanction.²⁸⁴ In light of these factors, it would appear that HCCN and Guel had compelling motives to conceal relevant information from the FCC. There are thus questions concerning whether HCCN/Guel's certification that the APA was complete and accurate and embodied the Parties' full agreement was knowingly and intentionally false.

104. *Misrepresentation in Other Commission Filings.* Licensees are expected to know and comply with our Rules, which includes providing true, complete, and correct information in FCC applications.²⁸⁵ Applicants seeking to acquire broadcast licenses must attest to compliance with statutory foreign ownership limits, and broadcast licensees must file periodic ownership reports disclosing their citizenship. In June 2005, HCCN certified in the KYUM assignment application that HCCN complied with statutory foreign ownership limits, despite the fact that it was non-compliant due to the 100% direct ownership interest held by Guel, a non-U.S. citizen.²⁸⁶ Guel also made false representations about his citizenship when he signed an HCCN ownership report on November 30, 2007, and certified that he was a U.S. citizen.²⁸⁷ The report was filed pursuant to HCCN's acquisition of a Texas radio station, KTNR(FM).²⁸⁸ The KTNR(FM) assignment application was filed on June 19, 2007 and HCCN certified that HCCN complied with statutory limits on foreign ownership.²⁸⁹ HCCN, however, had not completed Section III, Block 4 of the application, which required disclosure of Guel's citizenship. On September 13, 2007, the parties filed an amendment in which Guel, as President of HCCN, entered his citizenship as "US" and certified to the truth and accuracy of his representations.²⁹⁰ There is nothing in the record to suggest that Guel was unaware that he was not a U.S. citizen. Indeed, Guel nowhere claims he did not

²⁸⁴ See, e.g., *Roberto Gomez*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 10618 (MB 2009); *Unidad de Fe y Amor Corporation v. Iglesia Jesucristo Es Mi Refugio, Inc.*, *Robert Gomez, HCCN, Inc., Antonio Cesar Guel*, No. C 08-4910 RS, 2009 WL 1813998 (N.D. Cal. June 25, 2009); *Jose Gonzalez et al. v. Iglesia Jesucristo Es Mi Refugio, Inc. et al.*, No. BC 501688, Los Angeles County Superior Court).

²⁸⁵ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), *recon. den.*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); see also *Commil USA, LLC v. Cisco Systems, Inc.*, 135 S. Ct. 1920, 1930 (2015) ("In the usual case, 'I thought it was legal,' is no defense."). See *Belo Broadcasting Co.*, Decision, 68 FCC 2d 1479, 1490, para. 33 (1978) (applicant primarily responsible for accuracy of its application, especially where applicant has not shown he was an unwitting victim of counsel's conduct, and the record established that applicant "either endorsed, *sub silentio*, the actions of his attorney or actually participated in the deception, e.g., by failing to notify counsel and the Commission" of material information and/or by failing to take steps to rectify filings with the Commission which he knew were incorrect).

²⁸⁶ See *supra* para. 23 (discussing Guel's acquisition of KYUM, CDBS File No. BALTTL-20050615ACE). Guel repeated the false certification when he filed HCCN's ownership report for KYUM in May 2006. CDBS File No. BRTTL-20060531ADR (HCCN ownership report filed May 31, 2006).

²⁸⁷ CDBS File No. BOS-20071211ACL (HCCN ownership report for KTNR(FM) filed Dec. 11, 2007).

²⁸⁸ See CDBS File No. BALED-20070619AAS (Form 314, Application for Consent to Assignment of Broadcast Station from Good News Broadcasting of Texas to HCCN) (filed June 19, 2007).

²⁸⁹ *Id.*

²⁹⁰ *Id.*, amended Sept. 13, 2007.

know his true citizenship.

105. Significantly, Guel repeatedly certified in applications filed by HCCN over many years that HCCN was in compliance with the foreign ownership limitations of section 310(b), which would have been accurate only if his interest was 20% or less, when in fact his actual direct interest was 100%.²⁹¹ Guel's consistent and repeated false certifications of HCCN's compliance with foreign ownership limitations of 47 U.S.C. § 310(b)²⁹² suggest he knew full well that the Commission could not grant his applications if he disclosed his true citizenship. Guel also made false certifications as to his own citizenship in HCCN's May 2012 and December 2013 ownership reports.²⁹³ Moreover, HCCN made false certifications of compliance with 47 U.S.C. § 310(b) in the April 2013 and April and June 2014 renewal applications, including at a time when Guel concedes he was aware of the limitations on holding an FCC license presented by his status as a non-U.S. citizen.²⁹⁴ Thus, Guel has apparently made intentionally false certifications and misrepresented material information to the Commission.

106. Guel as President of HCCN appears to have made a number of other dubious or outright false certifications in applications filed with the FCC. For example, HCCN's 2013 ownership report represented that, as of October 1, 2013, Cesar was its sole officer and director and was not related to Guel. That certification appears to have been false because Cesar is Guel's son. Moreover, in an April 2013 renewal application, Cesar certified he was HCCN's president and sole officer/director. According to corporate documents HCCN filed with state officials, however, HCCN reported that for the 2013 reporting year, Cesar was president and Maria C. and Ana K. Guel were treasurer and secretary, respectively.²⁹⁵ Although it is unclear why Guel would permit these particular false certifications in FCC filings, he may have been attempting to minimize his illicit control and influence over the Stations.

107. *Misrepresentations and Lack of Candor in 1.88 Letter Response.* With respect to his 2018 Declaration, Guel stated under penalty of perjury in 2018 that he only learned, sometime in 2014, as a result of litigation, of the limitations on holding an FCC license presented by his status as a non-U.S. citizen. He further avers that his attorney, Alpert, "very strongly told" him of this.²⁹⁶ As discussed above in paragraphs 93 through 95, however, Guel never claims he was mistaken as to the fact of his foreign citizenship, and the record indicates that it is highly unlikely that Guel did not know until 2014 that it disqualified him from holding a direct stockholder interest in HCCN in excess of 20%. The record is clear that Guel misrepresented his citizenship in FCC filings prior to 2014. And 2014 is when Guel allegedly refused to answer interrogatories regarding his citizenship in the *Gonzalez* suit until directed by the court to do so.²⁹⁷ Guel's declaration fails to reveal the date of his purported epiphany, but he officially acknowledged his citizenship to the court on May 19, 2014. Yet neither Guel, HCCN, nor attorney Alpert, ever corrected the then-pending KZAB-LP and KJTN-LP renewal applications HCCN filed April 1, 2014, as required by section 1.65 of the Rules, to reflect HCCN's noncompliance with the statutory

²⁹¹ See, e.g., HCCN ownership report CDBS File No. BOA-20100723ATM. See also CDBS File No. BALED-20070619AAS at sec. III-9 (Guel certified he was a U.S. citizen). See also *supra* para. 23 (in the 2005 Yuma Acquisition, Guel certified compliance with the foreign ownership limits of section 310 of the Act).

²⁹² See, e.g., CDBS File Nos. BAPTTL-20070517AJC at III.8; and BALTVL-20080124ADQ at III.8.

²⁹³ CDBS File No. BOA-20120503ABO; CDBS File No. BOA-20131220HCO.

²⁹⁴ See *supra* paras. 37 and 51.

²⁹⁵ See *supra* note 140.

²⁹⁶ Alpert does not appear to have been counsel of record for Guel in the *Gonzalez* case. See Petition to Deny at Attach. A (listing Victor J. Daniels as counsel for Guel, *et al.*).

²⁹⁷ It is unclear why Guel refused to disclose his citizenship, but accurate citizenship information is required on numerous FCC applications and forms, and those documents are accessible to the public via online FCC databases. Just as flight from a crime can indicate consciousness of guilt, Guel's refusal to disclose his citizenship may indicate consciousness of culpability on this front.

foreign ownership limitations, given Guel's status as a non-U.S. citizen and holder of a direct stockholder interest in excess of 20%. More damning are the renewal applications filed on June 2, 2014, each of which certified HCCN's compliance with statutory foreign ownership limitations – *after* Guel had already disclosed he was not a U.S. citizen and his attorney apparently was aware of such fact. Based on all of the foregoing factors, it thus appears that Guel's 2018 Declaration that he only learned in May 2014 of the implications of his status as a non-U.S. citizen under section 310(b) lacks candor or is knowingly false.

108. Guel's explanation as to why HCCN continued to file applications for the Stations after the purported July 2010 closing with Juarez is not credible. Guel recounts that "whenever applications and Reports needed to be filed for any of those in-transition stations" during the July 2010 to August 2014 period, HCCN "continued to help file the applications, and it filed those applications under its name."²⁹⁸ Guel avers that "I was still the President of Hispanic Christian Community Network, Inc. at that time, so I let the applications (and required Reports) be filed with my electronic signature."²⁹⁹ Record evidence says otherwise.

109. As discussed above, HCCN filed a renewal application in April 2013 that was signed by Cesar on March 31, 2013, as HCCN's president. In HCCN's 2013 ownership report, Cesar certified that, as of October 1, 2013, Guel was no longer an officer or director and that he, Cesar, was HCCN's sole officer and director (that report also falsely certified that Cesar and Guel were not related; Cesar is in fact Guel's son).³⁰⁰ In light of filings made by HFCN and HCCN in that timeframe, and the conflicting or false information Guel provided in his 2018 Declaration that he was President of HCCN from July 2010 through August 2014, we cannot reconcile the historical record with Guel's statements regarding the circumstances of why HCCN continued filing applications after Juarez had purportedly controlled and operated the Stations since July 2010.

110. With regard to his reasons for filing the August 2014 HCCN-HFCN assignment applications, Guel explains "to protect the licenses, make all ownership legal under Commission rules, and to protect the interest of those parties that already were in the process of purchasing those licenses, there momentarily was an intention to assign those licenses to a corporation owned and controlled by a third-party family member (Hispanic Family Christian Network, Inc.), which would then complete the transactions."³⁰¹ This statement raises considerable doubt as to its truthfulness. First, the applications were prepared, filed, and pending for more than four months, which hardly qualifies as evidence of a "momentary" intent. Second, the scheme clearly conflicts with the version of facts Guel offers the Commission, namely that the transaction with Juarez was consummated in June 2010. By filing those 2014 applications, Guel was publicly holding out HCCN as owner/licensee of the Stations.

111. In light of these illogical, conflicting, and inaccurate statements, Guel's 2018 Declaration appears to be knowingly false and evasive and lacking in candor and designed to deceive or mislead the FCC, in willful and repeated violation of sections 1.17 of the Rules. We therefore designate for hearing appropriate issues to determine whether HCCN and Guel engaged in misrepresentation and/or lack of

²⁹⁸ Guel Decl. at 2.

²⁹⁹ *Id.*

³⁰⁰ In 2013, the Commission was not aware of the Guels' family relationship based on apparently false certifications in various applications. The Guel siblings confirmed their familial relationship in response to a 2018 Bureau inquiry. *See supra* note 138, discussing CDBS File No. BALED-20180516ABH. This would not be the first time that Guel provided incomplete or inaccurate information in FCC filings. In February 2013, Guel filed applications containing apparently false or fictitious information as to the applicants' corporate members, resulting in the Bureau's Audio Division issuing Guel a letter of inquiry in 2014 regarding dubious certifications on radio applications. Guel failed to properly answer. *See, e.g., Dan Alpert, Esq., Letter*, 32 FCC Rcd 10228 (MB 2017) (affirming staff dismissal of applications certified by Guel, consultant, due to irregularities regarding the authenticity of the applicants).

³⁰¹ Guel Decl. at 2.

/candor before the Commission.

3. Misrepresentation and Lack of Candor, Rule Violations, and Abuse of Commission Processes Raise Substantial and Material Questions of Guel's and HCCN's Character to be a Licensee

112. Finally, “[t]he integrity of the Commission’s processes cannot be maintained without honest dealing with the Commission by licensees.”³⁰² We thus view “misrepresentation and lack of candor in an applicant’s dealings with the Commission as serious breaches of trust”³⁰³ and can “treat even the most insignificant misrepresentation as disqualifying.”³⁰⁴ Based on the record before us, HCCN and Guel have apparently violated the Act and the Rules and have a propensity for filing false certifications and inaccurate, incomplete, and/or evasive information with the Commission. We therefore conclude that there are substantial and material questions of fact as to whether HCCN and Guel possess the “propensity to deal honestly with the Commission and comply with the Communications Act or the Commission’s rule or policies.”³⁰⁵ Although neither HCCN nor Guel appear to be a current applicant or an officially recognized licensee/permittee, Guel’s admitted continued involvement with the Stations, and his apparent *de facto* control of the Stations, warrant a determination of HCCN’s and Guel’s character and whether they possess the requisite qualifications to be or become a Commission licensee, and whether they can deal truthfully with the FCC, either directly or as a party/consultant to, or participant in, other applications. Thus, even though Guel is not currently a *de jure* licensee, there is a substantial likelihood of his continued deceptive activities that bear upon the potential operation of any other station Guel may seek to acquire, either through the creation of fictitious entities or through “consulting” services, particularly to entities held by his family members. The allegations at issue here involve Guel and HCCN’s truthfulness and reliability. Under these circumstances, we find it appropriate to prohibit Guel’s acquisition and/or control of any licenses pending the outcome of the hearing.³⁰⁶ We therefore issue this *Order to Show Cause Why a Cease and Desist Order Should Not be Issued, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* against HCCN and Guel to cease and desist from operating, controlling, managing or providing any assistance to any stations; from preparing and/or filing applications or other documents regarding HCCN with the Commission; and, to the extent HCCN or Guel is allowed to assist any other licensee/permittee/applicant in any way with the operation or construction of any station, or to provide any assistance or input in any way in preparing or filing any application with the Commission, from doing so without also providing a copy of any order issued in this proceeding that finds HCCN or Guel lacks the character to be a Commission licensee in any and all filings with the Commission in every matter in which it/he participates in any way.

IV. CONCLUSION

113. Accordingly, **IT IS ORDERED** that, pursuant to sections 308, 309(d), 309(e), 309(k), and 312(a)-(c) of the Act, 47 U.S.C. §§ 308, 309(d), 309(e), 309(k), and 312(a)-(c), the above-captioned applications and licenses **ARE DESIGNATED FOR HEARING** before an FCC administrative law judge, at a time and location specified in a subsequent Order, upon the following issues:

- (a) To determine whether Jennifer Juarez abused Commission processes by misrepresentation, concealment, or otherwise.
- (b) To determine whether Jennifer Juarez abused Commission processes by entering into an

³⁰² 1986 Character Policy Statement, 102 FCC 2d at 1211, para. 61.

³⁰³ *Id.*

³⁰⁴ *Id.* at 1210, para. 60.

³⁰⁵ *Id.* at 1188-89, para. 21.

³⁰⁶ See *Terry Keith Hammond*, Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, 21 FCC Rcd 10267, para. 26 (MB 2016).

undisclosed agreement to delay indefinitely the filing notice of the Parties' purported consummation.

- (c) To determine when and whether Jennifer Juarez is and/or has been exercising affirmative control of KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, KRPO-LD, and WESL-LP.
- (d) To determine whether Antonio Cesar Guel and Hispanic Christian Community Network, Inc. is (and/or has been, during the most recent license term) a real-party-in-interest to the captioned applications for Stations KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, KRPO-LD, and WESL-LP.
- (e) To determine whether there has been a *de facto* transfer of control of KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, KRPO-LD, and WESL-LP to Antonio Cesar Guel or Hispanic Christian Community Network, Inc. in violation of section 310(d) of the Act, 47 U.S.C. § 310(d) and sections 73.1150(a), (b), and 73.3540 of the Commission's rules, 47 CFR §§ 73.1150(a), (b), and 73.3540.
- (f) To determine whether Jennifer Juarez engaged in misrepresentation and/or lack of candor in applications and communications with the Commission or otherwise violated sections 1.17, 1.65, and 73.1015 of the Commission's rules involving KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, KRPO-LD, and WESL-LP.
- (g) To determine, in light of the evidence adduced regarding issues (a)-(f) and (i)-(j), whether the captioned license renewal applications should be granted with such terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted, or denied due to failure to satisfy the requirements of section 309(k)(1) of the Act, 47 U.S.C. § 309(k)(1), and the licenses cancelled.
- (h) To determine, in light of evidence adduced regarding the foregoing issues (a)-(f) and (i)-(j) whether Jennifer Juarez possesses the character qualifications to be or remain a Commission licensee and whether the licenses for KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, KRPO-LD, and WESL-LP should be revoked.
- (i) To determine whether Antonio Cesar Guel and Hispanic Christian Community Network, Inc. should, for purposes of this proceeding, be considered one and the same entity.
- (j) To determine whether Antonio Cesar Guel and/or Hispanic Christian Community Network, Inc. have exercised and continue to exercise *de facto* control over KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, KRPO-LD, and WESL-LP.
- (k) To determine whether Antonio Cesar Guel and/or Hispanic Christian Community Network, Inc. have misrepresented material information to the Commission and/or lacked candor.
- (l) To determine whether Antonio Cesar Guel and/or Hispanic Christian Community Network, Inc. have abused Commission processes first by filing an assignment application that lacked bona fides while maintaining *de facto* control of the KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, KRPO-LD, and WESL-L, and then by impermissibly and intentionally bifurcating ownership of KHDE-LD, KJTN-LP, KZAB-LP, KZTE-LD, KTEQ-LP, KRPO-LD, and WESL-LP for years by not timely filing the requisite consummation notice.
- (m) To determine, in light of evidence adduced regarding issues (i), (k), and (l), whether Antonio Cesar Guel and/or Hispanic Christian Community Network, Inc. shall be ordered to cease and desist from violating Commission Rules and the Act, including making willfully inaccurate, incomplete, evasive, false, or misleading statements before the Commission in violation of section 1.17 of the Commission's rules, 47 CFR § 1.17, and engaging in unauthorized control and operation of broadcast stations in violation of sections 301, 308, and 310 of the Act, 47

U.S.C. §§ 301, 308, and 310.

- (n) To determine, in light of evidence adduced regarding issues (i), (k), and (l), whether Antonio Cesar Guel and/or Hispanic Christian Community Network, Inc. shall be ordered to cease and desist from operating, controlling, managing or providing any assistance to any stations;
- (o) To determine, in light of evidence adduced regarding issues (i), (k), and (l), whether Antonio Cesar Guel and/or Hispanic Christian Community Network, Inc. shall be ordered to cease and desist from preparing and/or filing applications or other documents regarding Hispanic Christian Community Network, Inc. with the Commission;
- (p) To determine, in light of evidence adduced regarding issues (i), (k), and (l), whether Antonio Cesar Guel and/or Hispanic Christian Community Network, Inc., to the extent Antonio Cesar Guel or and/or Hispanic Christian Community Network, Inc. is allowed to assist any other licensee/permittee/applicant in any way with the operation or construction of any station, or to provide any assistance or input in any way in preparing or filing any application with the Commission, shall be ordered to cease and desist from doing so without also providing a copy of any order issued in this proceeding that finds Hispanic Christian Community Network, Inc. or Antonio Cesar Guel lacks the character to be a Commission licensee in any and all filings with the Commission in every matter in which he participates in any way.
- (q) To determine, in light of evidence adduced regarding issues (i), (k), and (l), whether Antonio Cesar Guel and and/or Hispanic Christian Community Network, Inc. possesses the character qualifications to be Commission licensees.

114. **IT IS FURTHER ORDERED** that, pursuant to sections 312(b) and (c) of the Act, 47 U.S.C. §§ 312 (b) and (c), and sections 1.91 and 1.92 of the Commission's rules, 47 CFR §§ 1.91, 1.92, Antonio Cesar Guel and Hispanic Christian Community Network, Inc. **ARE DIRECTED TO SHOW CAUSE WHY THEY SHOULD NOT BE ORDERED TO CEASE AND DESIST:**

- (a) from violating Commission Rules and the Act, including making willfully inaccurate, incomplete, evasive, false, or misleading statements before the Commission in violation of section 1.17 of the Commission's rules, 47 CFR § 1.17, and engaging in unauthorized control and operation of broadcast stations in violation of sections 301, 308, and 310 of the Act, 47 U.S.C. §§ 301, 308, and 310;
- (b) from operating, controlling, managing or providing any assistance to any stations;
- (c) from preparing and/or filing applications or other documents regarding Hispanic Christian Community Network, Inc. with the Commission; and
- (d) to the extent Antonio Cesar Guel or Hispanic Christian Community Network, Inc. is allowed to assist any other licensee/permittee/ applicant in any way with the operation or construction of any station, or to provide any assistance or input in any way in preparing or filing any application with the Commission, from doing so without also providing a copy of any order issued in this proceeding that finds Antonio Cesar Guel or Hispanic Christian Community Network, Inc., lacks the character to be a Commission licensee in any and all filings with the Commission in every matter in which he participates in any way.

115. **IT IS FURTHER ORDERED** that, pursuant to section 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 312(c), and sections 1.91(b) and (c) of the Commission's rules, 47 CFR §§ 1.91(b) and (c), to avail themselves of the opportunity to be heard and to present evidence at a hearing in this proceeding, Antonio Cesar Guel and Hispanic Christian Community Network, Inc., in person or by an attorney, **SHALL FILE** with the Commission, within twenty (20) days of the mailing of this *Order to Show Cause Why A Cease and Desist Order Should Not Be Issued, Order to Show Cause Why an Order of Revocation Should Not Be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture*, a written appearance stating that he will appear at the hearing and present evidence on the issues specified above at a hearing. If Antonio Cesar

Guel or Hispanic Christian Community Network, Inc. waive their rights to a hearing pursuant to section 1.92(a)(1) or (a)(3) of the Rules, 47 CFR §§ 1.92(a)(1) or (a)(3), they may submit a timely written statement denying or seeking to mitigate or justify the circumstances or conduct complained of in the order to show cause.³⁰⁷

116. **IT IS FURTHER ORDERED** that, pursuant to sections 1.91 and 1.92 of the Commission's rules, 47 CFR §§ 1.91 and 1.92, that if Antonio Cesar Guel or Hispanic Christian Community Network, Inc. fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission.

117. **IT IS FURTHER ORDERED** that, in addition to the resolution of the foregoing issues, it shall be determined, pursuant to section 503(b)(1) of the Act, 47 U.S.C. § 503(b)(1), whether an **ORDER OF FORFEITURE** should be issued against Jennifer Juarez in an amount not to exceed the statutory limit for the willful and/or repeated violation of each rule section above, including sections 1.17, 1.65, 73.1015, 73.1150, and 73.3540 of the Commission's rules, 47 CFR §§ 1.17, 1.65, 73.1015, 73.1150, and 73.3540, and each statutory provision noted above, including sections 310(b) and (d) of the Act, 47 U.S.C. §§ 310(b) and (d), for which the statute of limitations in section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), has not lapsed.

118. **IT IS FURTHER ORDERED** that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to sections 503(b)(1) of the Act, 47 U.S.C. § 503(b)(1), whether an **ORDER OF FORFEITURE** should be issued against Antonio Cesar Guel and/or Hispanic Christian Community Network, Inc. in an amount not to exceed the statutory limit for the willful and/or repeated violation of each rule section above, including section 1.17 of the Commission's rules, 47 CFR § 1.17, and each statutory provision noted above, including sections 301 and 308 of the Act, 47 U.S.C. §§ 301 and 308, for which the statute of limitations in section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), has not lapsed.

119. **IT IS FURTHER ORDERED** that, pursuant to sections 309(d) and 312(c) of the Act, 47 U.S.C. §§ 309(d), 312(c), and sections 1.91(c), and 1.221(c) of the Commission's rules, 47 CFR §§ 1.91(c) and 1.221(c), to avail herself of the opportunity to be heard and to present evidence at a hearing in this proceeding, Jennifer Juarez, in person or by an attorney, **SHALL FILE** with the Commission, within twenty (20) days of the mailing of this *Order to Show Cause Why A Cease and Desist Order Should Not Be Issued, Order to Show Cause Why an Order of Revocation Should Not Be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture*, a written appearance stating that she will appear at the hearing and present evidence on the issues specified above.

120. **IT IS FURTHER ORDERED** that, pursuant to section 1.221(c) of the Commission's rules, 47 CFR § 1.221(c), if Jennifer Juarez fails to file within the time specified above a written appearance, a petition to dismiss without prejudice, or a petition to accept for good cause shown an untimely written appearance, the captioned applications shall be dismissed with prejudice for failure to prosecute.

121. **IT IS FURTHER ORDERED**, pursuant to sections 1.91 and 1.92 of the Commission's rules, 47 CFR §§ 1.91 and 1.92, that if Jennifer Juarez fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days,

³⁰⁷ The Commission will not accept such a statement if it is not submitted within the time period set out in 1.91(c), absent some well-justified explanation of why it was filed late.

the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission. If Jennifer Juarez waives her right to a hearing pursuant to section 1.92(a)(1) or (a)(3), 47 CFR §§ 1.92(a)(1) or (a)(3), she may submit a timely written statement denying or seeking to mitigate or justify the circumstances or conduct complained of in the order to show cause.³⁰⁸

122. **IT IS FURTHER ORDERED** that the Chief, Enforcement Bureau, shall be made a party to this proceeding without the need to file a written appearance.

123. **IT IS FURTHER ORDERED** that, in accordance with section 312(d) of the Act, 47 U.S.C. § 312(d), and section 1.91(d) of the Commission's rules, 47 CFR § 1.91(d), the **BURDEN OF PROCEEDING** with the introduction of evidence and the **BURDEN OF PROOF** with respect to the issues (h), (i), and (k)-(q) of Paragraph 113, above, **SHALL BE** upon the Commission's Enforcement Bureau.

124. **IT IS FURTHER ORDERED** that, pursuant to section 309(e) of the Act, 47 U.S.C. § 309(e), and section 1.254 of the Commission's rules, 47 CFR § 1.254, the **BURDEN OF PROCEEDING** with the introduction of evidence and the **BURDEN OF PROOF** shall be upon Jennifer Juarez as to issues (a)-(g) and (j) at Paragraph 113 above.

125. **IT IS FURTHER ORDERED** that, in accordance with section 312(d) of the Act, 47 U.S.C. § 312(d), and section 1.91(d) of the Commission's rules, 47 CFR § 1.91(d), the **BURDEN OF PROCEEDING** with the introduction of evidence and the **BURDEN OF PROOF** shall be upon the Commission as to issues (a)-(d) at Paragraph 114 above.

126. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this document **SHALL BE SERVED** on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy **SHALL BE ADDRESSED** to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

127. **IT IS FURTHER ORDERED** that the parties to the captioned application shall, pursuant to section 311(a)(2) of the Act, 47 U.S.C § 311(a)(2), and section 73.3594 of the Commission's rules, 47 CFR § 73.3594, **GIVE NOTICE** of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the satisfaction of such requirements as mandated by section 73.3594 of the Commission's rules, 47 CFR § 73.3594.

128. **IT IS FURTHER ORDERED** that copies of this *Order to Show Cause Why A Cease and Desist Order Should Not Be Issued, Order to Show Cause Why an Order of Revocation Should Not Be Issued, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture* shall be sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to:

Antonio Cesar Guel
2605 Hyacinth Drive
Mesquite, TX 75181

³⁰⁸ The Commission will not accept such a statement if it is not submitted within the time period set out in 1.91(c), absent some well-justified explanation of why it was filed late.

Hispanic Christian Community Network, Inc.
8500 N. Stemmons Freeway
Suite 5050
Dallas, TX 75247

Jennifer Juarez
1138 N. Tillery Avenue
Dallas, TX 75211

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 N. 21st Road
Arlington, VA 22201

129. **IT IS FURTHER ORDERED** that the Secretary of the Commission shall cause to have this Order to Show Cause Why A Cease and Desist Order Should Not Be Issued, Order to Show Cause Why an Order of Revocation Should Not Be Issued, Hearing Designation Order, and Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau



PUBLIC NOTICE

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

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

DA No. 23-679

Report No. SAT-01750

Friday August 11, 2023

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-STA-20230718-00178	E S3164	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 08/10/2023

On August 10, 2023, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC for a period of 30 days, for the Galaxy 37 space station to conduct in-orbit testing at the 147.95° W.L. orbital location in the 3700-4200 MHz, 11700-12200 MHz (space-to-Earth), 5925-6425 MHz and 14000-14500 MHz (Earth-to-space) frequency bands. Intelsat is also authorized to conduct telemetry, tracking and command to maintain Galaxy 37 at 147.95° W.L., and during drift to its permanent location of 127.0° W.L. using the 14000-14500 MHz (Earth-to-space) and 11700-12200 MHz (space-to-Earth) bands, including the following initial center frequencies: 14000.5 MHz, 14498.25 MHz (Earth-to-space), 12197.5 MHz and 12199.5 MHz (space-to-Earth).

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

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

In the Matter of)	
)	
H&H Enterprises	)	Facility ID No.: 14153
	)	NAL/Acct. No.: 202341420028
Licensee of Station KVVb-LD, Lucerne Valley, California	)	FRN: 0021441670
	)	LMS File No. 0000203465

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

Adopted: August 11, 2023**Released: August 11, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of H&H Enterprises (Licensee), for renewal of its license for Station KVVb-LD, Lucerne Valley, California (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 August 1, 2022, the first day of the fourth full calendar month prior to the Station's license expiration date of December 1, 2022.⁴ However, the Licensee did not file the Application until November 10, 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 H&H Enterprises for Renewal of License, LMS File No. 0000203465 (filed Nov. 10, 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 August 1, 2022, as required by section 73.3539(a) of the Rules.¹⁰ The Application was filed on November 10, 2022, over three months 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 low power television station, the Station is providing a secondary service.¹⁵

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 11.

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 H&H Enterprises 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*, H&H Enterprises **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 H&H Enterprises PO Box 1808 Victorville, CA 92393. A copy shall also be sent to Station's counsel, Anne Goodwin Crump, Esq., by electronic mail to crump@fhhlaw.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 Street NE
Washington, DC 20554

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

DA 23-681

Released: August 11, 2023

**WIRELINE COMPETITION BUREAU SEEKS COMMENT ON EXTENDING WAIVER
OF LETTER OF CREDIT RULES FOR CONNECT AMERICA FUND PHASE II
AUCTION (AUCTION 903)**

WC Docket Nos. 10-90, 14-58
AU Docket No. 17-182

Comments Due: September 11, 2023
Reply Comments Due: September 26, 2023

Recognizing the impact of the coronavirus (COVID-19) pandemic on financial markets and on the ability of providers to successfully conduct their operations, the Wireline Competition Bureau (Bureau) waived the Commission's letter of credit (LOC) rules for Connect America Fund Phase II auction (Auction 903) and Rural Broadband Experiments (RBE) support recipients in 2020 and 2021.¹ Recipients of support from both programs were permitted to comply with the less extensive letter of credit rules established by the Commission for the Rural Digital Opportunity Fund (RDOF).² In December 2022, the Bureau, while acknowledging the improving financial conditions that existed throughout the Nation, extended that waiver, on a limited basis, until the end of 2023.³

From June 2020 through December 2022, all Auction 903 support recipients were permitted to comply with the RDOF LOC rules.⁴ In 2023, however, because of the improvement in financial conditions, the Bureau concluded that a waiver of the Auction 903 LOC rules was only appropriate for Auction 903 support recipients that had met each of their previous program deadlines.⁵

¹ See *Connect America Fund, et al.*, Order, 35 FCC Rcd 6556, 6556, para. 1 (WCB 2020) (*2020 Letter of Credit Waiver Order*); *Connect America Fund, et al.*, Order, 36 FCC Rcd 16633, 16633, para. 1 (WCB 2021) (*2021 LOC Credit Waiver Extension*).

² *2020 Letter of Credit Waiver Order*, 35 FCC Rcd at 6556, para. 1; *2021 LOC Credit Waiver Extension*, 36 FCC Rcd at 16633, para. 1.

³ See *Connect America Fund, et al.*, Order, DA 22-1304 (WCB 2022) (*2022 Letter of Credit Waiver Extension Order*) (extending the limited waiver of the Commission's CAF II letter of credit rules until December 31, 2023 for CAF II support recipients that have met their deployment and reporting obligations).

⁴ *2020 Letter of Credit Waiver Order*, 35 FCC Rcd at 6556, para. 1; *2021 LOC Credit Waiver Extension*, 36 FCC Rcd at 16635-6, para. 8.

⁵ *2022 Letter of Credit Waiver Extension Order* at 3-4, paras. 8-11; *Wireline Competition Bureau Seeks Comment on Waiver of Letter of Credit Rules for Connect America Fund Phase II (Auction 903) and Rural Broadband Experiments Support Recipients*, Public Notice, DA 22-879, at 3-4, paras. 8-11 (WCB 2022) (*2022 Letter of Credit Waiver Public Notice*).

With this Public Notice, the Bureau seeks comment on the merits of extending beyond December 31, 2023 the waiver of the letter of credit rules for Auction 903 support recipients that have met each of their deadlines and whether, and to what extent, the pandemic or other factors continue to affect the operations of telecommunications services providers and the condition of financial markets and supply chains. Are there still unique financial challenges that providers are facing that interfere with their ability to obtain the letters of credit required under the Auction 903 rules? Are there additional dynamics now that may not have been present when we first granted the letter of credit waiver? If so, we encourage commenters to provide specific details about the experiences they face and how these have or have not changed since the original waiver was granted.

All Auction 903 recipients were required to submit their first annual location report by March 1, 2021 and are required to file updated location information by March 1 each year thereafter. These carriers are also required to have built out to 60% of their locations in a state by December 31, 2023. We seek comment on whether a tailored approach to extending the LOC waiver is still justified. Based on the Bureau's experience in the past year and commitment to program integrity, we believe our approach must distinguish between those recipients that have deployed and reported as required and those that have not. Therefore, if we extend the waiver, we propose to do so only for Auction 903 support recipients that have met each of their previous deployment and certification deadlines, along with meeting the next mandatory build out deadline, as demonstrated by reporting in the HUBB by March 1, 2024, of deployment to at least 60% of their locations as of December 31, 2023. Put differently, any Auction 903 recipient that has missed a single deadline would remain ineligible for this waiver, as would any Auction 903 recipients that miss deadlines in the coming year.

We propose requiring those carriers that do not meet the 60% milestone to have a letter of credit meeting the original Auction 903 requirements when their current LOCs expire.⁶ Similarly, we propose that Auction 903 support recipients that did not timely file their first location report or that fail to timely file a subsequent location report be automatically excluded from any waiver of the Auction 903 letter of credit requirements. Further, we propose that Auction 903 support recipients who maintain a reduced (e.g., at one year of support) letter of credit in accordance with the RDOF rules be required to increase the letter of credit's value to comply with the Auction 903 rules if they do not pass a USAC verification.⁷ We seek comment on this approach and any other related issues regarding balancing the risk of lessening the Auction 903 letter of credit requirements while protecting the integrity of the Universal Service Fund.

Additionally, we note that the progress that Auction 903 recipients have made in their deployment obligations may be an indication that economic conditions throughout the Nation are rebounding. While we seek comment on extending the waiver until December 31, 2024, we caution that the LOC waiver relief is temporary and providers should not expect additional waivers after the end of conditions adversely impacting the operations of telecommunications services providers and the condition of financial markets and supply chains. After the end of such conditions and LOC waivers, the LOC requirements will then comport with the rules in place at the time of bidding and with awardees' expectations.⁸

⁶ 2022 *Letter of Credit Waiver Extension Order* at 4-5, para. 13.

⁷ Consistent with our 2022 waiver order, we note that "verification 'involves an iterative process in which USAC and recipients engage in an ongoing process that leads to verification,' and that a final determination from USAC is necessary before a recipient is determined not to have met its deployment obligations." 2022 *Letter of Credit Waiver Extension Order* at 4, n.32.

⁸ 47 CFR § 54.315(c); *See Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-58, 14-259, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5998, para. 139 (2016) ("While we understand that the [LOC] requirement will impose costs on participants, we expect that all entities will factor the cost of letters of credit into their bids.").

Finally, because the deployment terms for all RBE support recipients have passed, we propose limiting this waiver only to Auction 903 support recipients that have met each of their previous deployment obligations. We seek comment on this proposal.

Filing Requirements. Interested parties may file comments on or before **September 11, 2023** and reply comments on or before **September 26, 2023**.⁹ All filings should refer to **WC Docket Nos. 10-90, 14-58, and AU Docket No. 17-182**. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments and replies may be filed electronically using the internet by accessing ECFS: <http://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. 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. 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 St, 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

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.

Ex Parte Rules. Proceedings in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). 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

⁹ See 47 CFR § 1.4(j) (filing dates that would otherwise fall on a holiday shall be filed on the next business day).

¹⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020). In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission's electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law.

¹¹ See 47 CFR §§ 1.1200(a), 1.1206.

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.

For further information, please contact Nathan Eagan, Assistant Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or by email at Nathan.Eagan@fcc.gov.

- FCC -

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

In the Matter of)	
)	
His Word Broadcasting Co.	)	Facility ID No.: 27268
	)	NAL/Acct. No.: 202341420029
Licensee of Station KHWB-LD, Eugene, Oregon	)	FRN: 0011489424
	)	LMS File No. 0000204237

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

Adopted: August 11, 2023**Released: August 11, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of His Word Broadcasting Co. (Licensee), for renewal of its license for Station KHWB-LD, Eugene, Oregon (Station).¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Station. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Station's license should have been filed by October 3, 2022, the first day of the fourth full calendar month prior to the Station's license expiration date of February 1, 2023.⁴ However, the Licensee did not file the Application until November 25, 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 His Word Broadcasting Co. for Renewal of License, LMS File No. 0000204237 (filed Nov. 25, 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). The filing deadline was Saturday, October 1, 2022, which as a weekend is considered a "holiday" making the filing due on the next business day – Monday, October 3, 2022. See 47 CFR § 1.4.

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 October 3, 2022, as required by section 73.3539(a) of the Rules.¹⁰ The Application was filed on November 25, 2022, over one month 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 low power television station, the Station is providing a secondary service.¹⁵

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 11.

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 His Word Broadcasting Co. 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*, His Word Broadcasting Co. **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 His Word Broadcasting Co. P.O. Box 72917 Springfield, OR 97475. A copy shall also be sent to Station's representative, Aaron Taylor, by electronic mail to aaron@mycrossfire.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 Street NE
Washington, DC 20554

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

DA 23-683

Released: August 11, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES COMPLETION OF OMB REVIEW AND KEY DATES FOR AFFORDABLE CONNECTIVITY PROGRAM TRANSPARENCY DATA COLLECTION

WC Docket No. 21-450

On November 15, 2022, the Commission adopted a *Report and Order* establishing the Affordable Connectivity Program (ACP) Transparency Data Collection to collect information related to the price, subscription rates, and plan characteristics of the internet service offerings of participating providers, as required by the Infrastructure Investment and Jobs Act.¹ In the *Report and Order*, the Commission directed the Wireline Competition Bureau (Bureau) to establish a compliance date, or data submission deadline, which could be no sooner than ninety days after the Commission announces that the Office of Management and Budget (OMB) has completed its review required under the Paperwork Reduction Act (PRA).² The *Report and Order* also directed the Bureau to announce a “snapshot” date for the data collection.³ By this Public Notice, the Bureau announces that OMB completed its PRA review on August 11, 2023.⁴

Accordingly, we establish a compliance date, or data submission deadline, for the collection of November 9, 2023, based on a reference or snapshot date of August 1, 2023. ACP providers must submit data through the ACP Data Collection System hosted by the Universal Service Administrative Company (USAC). Providers can begin submitting data on September 8, 2023. USAC will provide a staging environment, training, and office hours ahead of the opening of the data submission for providers to navigate the data submission process. More information about the ACP Transparency Data Collection is available at: <https://www.usac.org/about/affordable-connectivity-program/participate-in-acp/annual-requirements/>.

The Commission will publish a corresponding effective date notice and rule revision for the ACP Transparency Data Collection rules in the Federal Register shortly.

For technical questions or issues relating to accessing or submitting data, please email ACProgram@usac.org. For other questions concerning the ACP Transparency Data Collection, please email ACPdatacollection@fcc.gov.

- FCC -

¹ *Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 22-87, para. 1 (2022) (*Report and Order*).

² *Id.* at 31, 54, paras. 60, 129; 47 CFR § 54.1813(g).

³ *Report and Order* at 32-33, para. 64 (establishing snapshot date).

⁴ OMB Control No. 3060-1310.

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

In the Matter of)	
)	
Treasure County T.V. District	)	Facility ID Nos. 67607, 67608
	)	NAL/Acct. No. 202341420030
Licensee of Stations K08OW-D and K13PO-D,	)	FRN: 0014293500
Hysham, Montana	)	LMS File No. 0000184881

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

Adopted: August 11, 2023

Released: August 11, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Treasure County T.V. District (Licensee), for renewal of its licenses for K08OW-D and K13PO-D, Hysham, Montana (Stations).¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand three thousand dollars (\$3,000).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Stations' licenses should have been filed by December 1, 2021, the first day of the fourth full calendar month prior to the Stations' license expiration date of April 1, 2022.⁴ However, the Licensee did not file the Application until February 15, 2022. The Licensee noted in an attachment to its Application that the late filing was "inadvertently overlooked" due to changes in personnel. Licensee goes on to state that it "has recently hired an individual to manage the details of the TV District and expect [sic] to keep all filings current with the FCC going forward."

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

¹ Application Treasure County T.V. District for Renewal of License, LMS File No. 0000184881 (filed Feb. 15, 2022). K08OW-D and K13PO-D are each television translators. In this case, the Licensee filed for the joint renewal of the licenses of the Stations in a single renewal application.

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020).

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 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 \$3,000. 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 February 15, 2022, over two months 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 for two (2) stations, as required by section 73.3539(a) of the Rules.¹³ The Licensee indicates that the failure to timely file the Application was inadvertent due to a change in personnel. We note that inadvertence is, at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.¹⁴ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁵ we will reduce the forfeiture from the base amount to \$1,500 per station for the Stations’ failure to file a timely renewal application, because, as television translators, the Stations are providing a

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

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

¹⁵ *Supra* note 11.

secondary service.¹⁶ Furthermore, as translators, the Stations are not originating programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application included two (2) stations the total proposed forfeiture amount is \$3,000.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁷ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁸ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁹

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules²⁰ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²¹ Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²² and sections 1.80 and 0.283(d) of the Commission’s Rules,²³ that Treasure County T.V. District is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the**

¹⁶ See, e.g., *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (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.”).

¹⁷ 47 U.S.C. § 309(k).

¹⁸ 47 U.S.C. § 309(k)(1).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ 47 CFR § 73.3539(a).

²¹ For example, we do not find here that the Licensee’s operation of the 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).

²² 47 U.S.C. § 503(b).

²³ 47 CFR §§ 1.80 and 0.283.

amount of three thousand dollars (\$3,000) for its apparent willful violation of section 73.3539(a) of the Commission's Rules.²⁴

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,²⁵ within thirty (30) days of the release date of this *NAL*, Treasure County T.V. District **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁶ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/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

²⁴ 47 CFR § 73.3539(a).

²⁵ 47 CFR § 1.80.

²⁶ Payments made using CORES do not require the submission of an FCC Form 159.

²⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.³⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³¹

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.³²

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Treasure County T.V. District, P.O. Box 111 Hysham,

²⁹ See 47 CFR § 1.1914.

³⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

³¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

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

Montana, 59038. A copy shall also be sent to the Stations' consultant, Susan Hansen, by electronic mail to stcl@comcast.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of)	
)	
Civic Light, Inc.	)	Facility ID No.: 11608
	)	NAL/Acct. No.: 202341420031
Licensee of Station KZTC-LD, San Diego,	)	FRN: 0019988336
California	)	LMS File No. 0000203462

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

Adopted: August 11, 2023**Released: August 11, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Civic Light, Inc. (Licensee), for renewal of its license for Station KZTC-LD, San Diego, California (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 August 1, 2022, the first day of the fourth full calendar month prior to the Station's license expiration date of December 1, 2022.⁴ However, the Licensee did not file the Application until November 10, 2022. The Licensee noted in an attachment to the Application that the late filing was inadvertent due to staffing changes. License goes on to state that it "has retained communications counsel and will be cognizant of applicable commission deadlines going forward."

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

¹ Application Civic Light, Inc. for Renewal of License, LMS File No. 0000180320 (filed Nov. 10, 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).

forfeiture penalty.⁵ 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.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 August 1, 2022, as required by section 73.3539(a) of the Rules.¹⁰ The Application was filed on November 10, 2022, over three months 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 claimed that the late filing was inadvertent due to changes in Station staff. We note that inadvertence is, “at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”¹⁴ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁵ we will reduce the forfeiture from the base amount to \$1,500 for the failure to file a timely renewal application, because, as a low power television station, the Station is providing a secondary service.¹⁶

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

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

¹⁵ *Supra* note 11.

¹⁶ See, e.g., *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (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, (continued....)

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.¹⁷ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁸ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁹

8. We find that the Licensee's apparent violation of section 73.3539(a) of the Rules²⁰ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²¹ Further, based on our review of the Application, we find that the 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,²² and sections 1.80 and 0.283(d) of the Commission's Rules,²³ that Civic Light, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars (\$1,500)** for its apparent willful violation of section 73.3539(a) of the Commission's Rules.²⁴

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,²⁵ within thirty (30) days of the release date of this *NAL*, Civic Light, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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.”).

¹⁷ 47 U.S.C. § 309(k).

¹⁸ 47 U.S.C. § 309(k)(1).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ 47 CFR § 73.3539(a).

²¹ For example, we do not find here that the Licensee's operation of the 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).

²² 47 U.S.C. § 503(b).

²³ 47 CFR §§ 1.80 and 0.283.

²⁴ 47 CFR § 73.3539(a).

²⁵ 47 CFR § 1.80.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁶ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant

²⁶ Payments made using CORES do not require the submission of an FCC Form 159.

²⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁹ See 47 CFR § 1.1914.

to sections 1.16 and 1.80(g)(3) of the Rules.³⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³¹

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.³²

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Civic Light, Inc. 2999 Morningside Street San Diego, CA 92139. A copy shall also be sent to Station's counsel, David A. O'Connor, esq., by electronic mail to doconnor@wbklaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

³¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

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

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

In the Matter of)	
)	
M33 Media LLC	)	Facility ID No.: 190581, 190582
	)	NAL/Acct. No.: 202341420032
Licensee of Stations WUWB-LD, West Branch,	)	FRN: 0023332307
Michigan and WURO-LD, Roscommon, Michigan	)	LMS File No. 0000152853, 0000152854

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

Adopted: August 11, 2023

Released: August 11, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the applications (Applications) of M33 Media LLC (Licensee), for renewal of its licenses for WUWB-LD, West Branch, Michigan and WURO-LD, Roscommon, Michigan (Stations).¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand three thousand dollars (\$3,000).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The applications for renewal of the Stations' license should have been filed by June 1, 2021, the first day of the fourth full calendar month prior to the Stations' license expiration date of October 1, 2021.⁴ However, the Licensee did not file the Applications until July 14, 2021. The Licensee did not provide an explanation for the late filings.

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 Applications of M33 Media LLC for Renewal of License, LMS File No. 0000152853, 0000152854 (filed July 14, 2021).

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 \$3,000. In this case, the Licensee failed to file the Applications on or before June 1, 2021, as required by section 73.3539(a) of the Rules.¹⁰ The Applications were filed on July 14, 2021, over one month 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 for two (2) stations, as required by section 73.3539(a) of the Rules.¹³ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁴ we will reduce the forfeiture from the base amount to \$1,500 per station for the Stations’ failure to file a timely renewal application, because, as low power television stations, the Stations are providing a secondary service.¹⁵ Because the Applications include two (2) stations the total proposed forfeiture amount is \$3,000.

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 11.

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 Applications 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 Applications, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Applications.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²¹ and sections 1.80 and 0.283(d) of the Commission's Rules,²² that M33 Media LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars (\$3,000)** for its apparent willful violation of section 73.3539(a) of the Commission's Rules.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*, M33 Media LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

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

²¹ 47 U.S.C. § 503(b).

²² 47 CFR §§ 1.80 and 0.283.

²³ 47 CFR § 73.3539(a).

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 M33 Media LLC P.O. Box 219 380 Borden Rd Rose City, MI 48654. A copy shall also be sent to Stations' representative, Richard C Goetz, by electronic mail to rickg@rlmediasystems.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 Street NE
Washington, DC 20554

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

DA No. 23-687

Released: August 11, 2023

97.5 LICENSEE TX, LLC SEEKS FOREIGN OWNERSHIP RULING PURSUANT TO SECTION 310(b)(4) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED

PLEADING CYCLE ESTABLISHED

MB Docket No. 23-275

Comment Date: September 11, 2023

Reply Date: September 26, 2023

97.5 Licensee TX, LLC (97.5 Licensee)¹ filed a petition for declaratory ruling requesting that the Federal Communications Commission (Commission) find, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, (Act)² and section 1.5000(a)(1) of the Commission's rules,³ that it would serve the public interest to allow 97.5 Licensee to accept foreign investment in excess of the 25% benchmarks set forth in section 310(b)(4).⁴ Specifically, 97.5 Licensee seeks a Commission ruling to (1) permit 100% aggregate foreign investment (voting and equity) in the company, and (2) specifically approve⁵ Lorena Margarita Perez Toscano, a citizen of Mexico, to hold 100% of the equity and voting interests in the licensee's controlling U.S. parent.⁶

¹ Petition for Declaratory Ruling of 97.5 Licensee TX, LLC, Application File No. 0000216454 (filed June 9, 2023) (Petition). The Petition was filed in conjunction with the application submitted by 97.5 Licensee TX, LLC seeking Commission consent to the transfer of control of the limited liability company, the licensee of KBNA-FM, El Paso, TX (Facility ID No. 67066), KAMA(AM), El Paso, TX (Facility ID No. 36948), and KQBU(AM), El Paso, TX (Facility ID No. 67065). See Application of 97.5 Licensee TX, LLC for Consent to Transfer Control, Application File No. 0000216454 (filed June 9, 2023).

² 47 U.S.C. § 310(b)(4); *Review of Foreign Ownership Policies for Broadcast, Common Carrier, and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (2016 Foreign Ownership R&O).

³ 47 CFR § 1.5000(a)(1); 2016 Foreign Ownership R&O, 31 FCC Rcd 11272.

⁴ 47 U.S.C. § 310(b)(4) ("No broadcast station or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.").

⁵ Under section 1.5001(i)(1) of the Commission's rules, petitioners for a declaratory ruling are required to identify and seek specific approval for any foreign individual, entity, or group that holds or would hold, directly and/or indirectly, more than 5% of equity and/or voting interests, or a controlling interest, in the petitioner's controlling U.S. parent, subject to certain exemptions, including an exemption that increases the specific approval threshold to 10% for certain institutional investors. 47 CFR § 1.5001(i)(1).

⁶ Petition at 1.

97.5 Licensee seeks this declaratory ruling in connection with the proposed transfer of control of stations KBNA-FM, El Paso, TX (Facility ID No. 67066), KAMA(AM), El Paso, TX (Facility ID No. 36948), and KQBU(AM), El Paso, TX (Facility ID No. 67065), licensed to 97.5 Licensee. As detailed in the Petition and the related application for transfer of control, presently 97.5 Licensee (a U.S. limited liability company registered in Texas) is wholly owned by 97.5 Holdings Inc. (a U.S. corporation registered in Texas), which in turn is wholly owned (100% voting and 100% equity) by Luz Maria Rygaard, a U.S. citizen. As a result of the proposed transfer of control, ownership of 100% of the voting and 100% of the equity interest of 97.5 Holdings Inc. would be transferred to Lorena Margarita Perez Toscano, a Mexican citizen.⁷

As the proposed transfer of control would result in the ownership of 97.5 Holdings Inc. changing from 100% U.S. owned to 100% foreign owned, the Petition seeks a declaratory ruling to increase 97.5 Holdings Inc.'s aggregate foreign ownership interests from a combined pre-transfer interest of 0.0% equity and 0.0% voting, to a post-transfer aggregate foreign ownership interest of 100%, equity and voting.⁸ In addition, the Petition seeks specific approval⁹ for Lorena Margarita Perez Toscano, a Mexican citizen, to hold a 100% direct equity and voting interest in 97.5 Holdings Inc., the licensee's controlling U.S. parent.¹⁰

97.5 Licensee asserts that grant of the Petition will serve the public interest as it would further the Commission's stated goals of encouraging foreign investment in U.S. broadcast stations and the continuation of operations of such stations.¹¹ Further, 97.5 Licensee asserts that it "is, and will remain, a minority-owned broadcaster of Spanish-language radio programming to the Latino community in the El Paso, Texas region."¹² The Petition also asserts that the transferee's capital contributions and broadcast experience will enable the licensee to continue its operations and enhance its provision of locally produced, Spanish-language programming.¹³ Accordingly, the parties submit that grant of the Petition would serve the public interest.

Pursuant to Commission practice, the Petition will be referred to 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 97.5 Licensee.¹⁴

⁷ *Id.* at 1-5.

⁸ 47 CFR §§ 1.5000(a)(1), 1.5001(h)(1).

⁹ 47 CFR § 1.5001(i).

¹⁰ *See supra* note 5.

¹¹ Petition at 5-6.

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *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). *See also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997) (*Foreign Participation Order*), recon. denied, 15 FCC Rcd 18158 (2000).

EX PARTE STATUS OF THIS PROCEEDING

Pursuant to section 1.1200(a) of the Commission's rules,¹⁵ the Commission may adopt modified or more stringent *ex parte* procedures in particular proceedings if the public interest so requires. We announce that this proceeding will be governed by permit-but-disclose *ex parte* procedures that are applicable to non-restricted proceedings under section 1.1206 of the Commission's rules.¹⁶

Parties making oral *ex parte* presentations are directed to the Commission's *ex parte* rules. Parties are reminded that memoranda summarizing the presentation must contain the presentation's substance and not merely list the subjects discussed.¹⁷ More than a one- or two-sentence description of the views and arguments presented is generally required.¹⁸ Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well.¹⁹

GENERAL INFORMATION

The petition for declaratory ruling referred to in this Public Notice has been accepted for filing upon initial review. The Commission reserves the right to return any filing if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Interested persons must file comments no later than **September 11, 2023**. Replies must be filed no later than **September 26, 2023**.

To allow the Commission to fully consider all substantive issues regarding the Petition in as timely and efficient a manner as possible, commenters should raise all issues in their initial filings. 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.²⁰ 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.

All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 23-275, as well as the specific file number of any relevant individual application or other matters to which the filings pertain.

Submissions in this matter may be filed electronically (i.e., through ECFS) or by filing paper copies.

- *Electronic Filers:* Documents may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier or by first-class or overnight U.S.

¹⁵ 47 CFR § 1.1200(a).

¹⁶ 47 CFR § 1.1206.

¹⁷ See 47 CFR § 1.1206(b)(1).

¹⁸ See *id.*

¹⁹ 47 CFR § 1.1206(b).

²⁰ 47 CFR §§ 1.46(a), 73.3584(e).

Postal Service mail.²¹ 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.

One copy of each pleading must be delivered electronically, by e-mail, or if delivered as paper copy, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to: (1) Albert Shuldiner, Audio Division, Media Bureau, at albert.shuldiner@fcc.gov; (2) Christopher Clark, Audio Division, Media Bureau, at christopher.clark@fcc.gov; and (3) Brendan Holland, Audio Division, Media Bureau, at brendan.holland@fcc.gov. Any submission that is e-mailed to Albert Shuldiner, Christopher Clark, and Brendan Holland should include in the subject line of the e-mail: (1) MB Docket No. 23-275; (2) the name of the submitting party; and (3) a brief description or title identifying the type of document being submitted (e.g., MB Docket No. 23-275, [name of submitting party], Comments).

Copies of the Petition and any subsequently filed documents in this matter are available electronically through the Commission's Electronic Filing Comment System (ECFS), which may be accessed on the Commission's Internet website.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov; phone: (202) 418-0530.

For further information, contact Albert Shuldiner, Audio Division, Media Bureau, at (202) 418-2726. Press inquiries should be directed to Janice Wise, Media Bureau, (202) 418-8165 or (888) 835-5322.

This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules.²²

-FCC-

²¹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

²² 47 CFR §§ 0.61 and 0.283.



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 23-688

Released: August 11, 2023

COMMENTS SOUGHT ON PETITION FOR EXTENSION OF WAIVER OF THE REQUIREMENT FOR A CERTIFIED PROFESSIONAL ENGINEER TO CERTIFY BROADBAND DATA COLLECTION AVAILABILITY DATA

WC Docket No. 19-195

Comment Date: 10 days after publication in the Federal Register

Reply Comment Date: 20 days after publication in the Federal Register

The Broadband Data Task Force, Wireless Telecommunications Bureau, Wireline Competition Bureau, and the Office of Economics and Analytics (Bureaus), seek comment on a Petition for Extension of Waiver (Petition) filed by the Competitive Carriers Association (CCA) and USTelecom – The Broadband Association (USTelecom and, together with CCA, Petitioners).¹ Petitioners request that the Bureaus renew for an additional three filing cycles the *BDC Limited Waiver*, which temporarily waives the requirement that Broadband Data Collection (BDC) filings be verified by a licensed Professional Engineer (PE), thus allowing BDC submissions to be certified by an otherwise qualified engineer who does not hold the PE credential.²

The Commission's rules require that a certified PE or a corporate engineering officer review and certify the accuracy of the broadband availability data submitted by mobile and fixed providers as part of the BDC.³ This requirement was adopted to ensure that filers have engaged in the analysis necessary to meet Congress's objective of developing more accurate broadband coverage data.⁴ In particular, the Commission requires each mobile and fixed service provider to include certifications as to the accuracy of its data submissions by a certified PE or corporate engineering officer, in which the engineer certifies

¹ Petition for Extension of Waiver of Competitive Carriers Association and USTelecom – The Broadband Association, WC Docket No. 19-195 (filed August 4, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/10804811316251>.

² *Establishing the Digital Opportunity Data Collection; Competitive Carriers Association Petition for Declaratory Ruling or Limited Waiver Regarding the Requirement for a Certified Professional Engineer to Certify Broadband Data Collection Maps*, WC Docket No. 19-195, Declaratory Ruling and Limited Waiver, DA 22-733 (July 8, 2022) (*BDC Limited Waiver*). The *BDC Limited Waiver* waived for three BDC filing cycles (i.e., data as of June 30, 2022, December 31, 2022, and June 30, 2023) the requirement that BDC certification be completed by a licensed PE, and instead allow wireless carriers that do not have access to a licensed PE to certify data with a radio frequency engineering professional with specified qualifications. *Id.* The *BDC Limited Waiver* also applied to government entities and third parties to the extent they choose to file verified broadband availability data. *Id.* The Petition asks that the *BDC Limited Waiver* be renewed or extended for an additional three filing cycles (i.e., data as of December 31, 2023, June 30, 2024, and December 31, 2024). Petition at 7-8.

³ 47 CFR § 1.7004(d).

⁴ *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report and Order, 36 FCC Rcd 1126, 1145, para. 45 (2021) (*Third Order*).

“that he or she has examined the information contained in the submission and that, to the best of the engineer’s actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct and in accordance with the service provider’s ordinary course of network design and engineering.”⁵ This certification is in addition to the corporate officer certification required by the Broadband DATA Act and the Commission’s *Second Order and Third Further Notice*.⁶

In the July 2022 *BDC Limited Waiver*, the Bureaus found that granting a limited waiver of the rule was “consistent with the policy objectives of the rule because providers will still be required, under the terms of the limited waiver we adopt, to have an engineer review and certify their BDC submissions to help ensure the accuracy of the broadband data they submit” and that the limited waiver “only modifies the engineering certification requirement to allow providers to use otherwise-qualified engineers who are not certified PEs to make the required certifications.”⁷

Petitioners assert that the “BDC process under the waiver has been effective, with no impact to the quality or accuracy of the BDC filings, and there remains an ongoing industry need for a waiver of the PE requirement.”⁸ The Petition says the industry, particularly smaller providers, is still experiencing hardships regarding the scarcity of PE licensure in the workforce and continues to face “significant challenges” meeting the PE certification requirement.⁹ The Petition also asserts that broadband providers can provide accurate broadband data without certification by licensed PEs.¹⁰ Petitioners therefore request that the Commission renew or extend the *BDC Limited Waiver*, or otherwise grant a new waiver, of the requirement that BDC certification be completed by a licensed PE for three additional data filing cycles and continue to allow providers that do not have access to licensed PEs to certify data with an engineering professional with the same qualifications specified in the *BDC Limited Waiver*.¹¹

We seek comment on these and other issues raised by the Petition as they may impact both fixed and mobile broadband service providers.

⁵ 47 CFR § 1.7004(d); Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act); 47 U.S.C. § 642(b)(4); *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, 7486, para. 61 (2020).

⁶ *Third Order*, 36 FCC Rcd at 1144-45, para. 43; 47 U.S.C. § 642(b)(4). For government and other third-party entities who submit verified broadband availability data, the engineering certification must also include a certification by a certified professional engineer that he or she is employed by the government or other third-party entity submitting the verified broadband availability data and has direct knowledge of, or responsibility for, the generation of the government or other entity’s Broadband Data Collection coverage data. *Id.* at 1152, para. 63; *see also* 47 CFR § 1.7004(d).

⁷ *BDC Limited Waiver* at 9.

⁸ Petition at 2.

⁹ Petition at 4.

¹⁰ Petition at 5.

¹¹ Petition at 7-8. *See supra* note 2.

Filing Requirements. Interested parties may file comments on or before the date indicated on the first page of this document.¹² All filings must refer to **WC Docket No. 19-195**. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS).¹³

- Electronic Filers: Comments may be filed electronically using the Internet by accessing 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-19.¹⁴

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 & 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.¹⁵ 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

¹² See 47 CFR §§ 1.2, 1.405, and 1.419.

¹³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

¹⁴ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

¹⁵ See 47 CFR §§ 1.1200 *et seq.*

filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf).¹⁶ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, please contact Will Holloway, Broadband Data Task Force, at william.holloway@fcc.gov.

-FCC-

¹⁶ *Id.* § 1.1206(b).

**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: August 11, 2023

Released: August 11, 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 On July 31, 2023, the Bureau released an Order in response to motions filed by Skywave Networks LLC (Skywave) and FlexRadio Systems (FlexRadio),³ and declined to extend the deadlines for submitting comments to the SMC Petition.⁴ In denying the Skywave and FlexRadio petitions, the Bureau noted the preliminary nature of the proceeding, in which the Commission is considering whether to act on a petition for rulemaking, as opposed to considering substantive changes to its rules.⁵ The Bureau reasoned that parties would have the opportunity to fully participate in the proceeding in the event the Commission opts to issue a Notice of Proposed Rulemaking.⁶

2. On August 4, 2023, SMC filed a motion to extend the deadline for submitting replies to comments filed regarding the SMC Petition by fifteen days.⁷ SMC argues that it discovered that its counsel has a conflict of interest with one of the parties that filed comments in opposition to the SMC Petition.⁸ SMC thus requests an extension of the deadline, until September 1, 2023, to reply so that it may

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 of Skywave Networks LLC, RM-11953, at 1 (filed July 25, 2023), <https://www.fcc.gov/ecfs/document/10724138643054/1>; Motion for Extension of Time of FlexRadio Systems, RM-11953 (filed July 26, 2023), <https://www.fcc.gov/ecfs/document/107260562510210/1>.

⁴ *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*, RM-11953, Order, 2023 WL 4930836 (WTB 2023) (Skywave/FlexRadio Order).

⁵ *Id.* at 1.

⁶ *Id.*

⁷ Motion for Extension of Time and Request for Waiver of the Shortwave Modernization Coalition, RM-11953 (filed Aug. 4, 2023), <https://www.fcc.gov/ecfs/document/10804220828846/1> (SMC Motion).

⁸ *Id.* at 3.

retain new counsel and respond to the opposing commenter.⁹ SMC argues that extending the deadline for replies would not prejudice any other party to this proceeding or affect the Commission's ability to consider the record.¹⁰ Finally, SMC argues that, if necessary, these facts warrant a waiver of section 1.405(b) of the Commission's rules pursuant to the Commission's section 1.3 waiver standard.¹¹

3. As set forth in section 1.46 of the Commission's rules, extensions of time shall not be routinely granted.¹² As noted, the Bureau recently declined to extend the comment deadline associated with the SMC Petition, based in part on the preliminary nature of the proceeding.¹³ We find that this reasoning applies equally to the instant request for relief. As SMC acknowledges, interested parties will have the opportunity to fully participate in the proceeding if the Commission issues a Notice of Proposed Rulemaking.¹⁴ Given the current stage of the proceeding and the timing of the SMC Motion, we do not find the circumstances sufficiently unique or unusual to justify either extending the deadline for reply comments pursuant to section 1.46, or granting a waiver of section 1.405(b).¹⁵

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, 1.3, and 1.46 of the Commission's rules, 47 CFR §§ 0.131, 0.331, 1.3, and 1.46, the SMC Motion for Extension of Time and Request for Waiver filed on August 4, 2023, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt

Chief, Wireless Telecommunications Bureau

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 5–6 (citing 47 CFR § 1.3).

¹² 47 CFR § 1.46(a).

¹³ See *Skywave/FlexRadio Order* at 1.

¹⁴ *SMC Petition* at 4–5.

¹⁵ See 47 CFR § 1.3 (permitting waiver of the Commission's rules for good cause shown); see also *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“...a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest”).



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-23-690

Released: August 11, 2023

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU, IN COORDINATION WITH MULTIPLE OTHER BUREAUS, ISSUES PROCEDURES FOR PROVIDING EMERGENCY COMMUNICATIONS IN AREAS IMPACTED BY THE WILDFIRES IN HAWAII

The Public Safety and Homeland Security Bureau, in coordination with the Media Bureau, Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, and Wireline Competition Bureau announces procedures to help communications service providers initiate, resume, and maintain operations in response to the wildfires impacting the Hawaiian Islands. Bureau-specific guidance is provided below. For additional information, applicants should contact the appropriate Bureau-specific staff identified below.

Those seeking special temporary authority (STA) are reminded of the need to conform to the requirements of section 1.2002 of our rules implementing the Anti-Drug Abuse Act of 1988.¹ Specifically, requests must include the following certification: “Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.” Presentations that directly relate to the emergency posed by the Hawaii wildfires are exempt from the restrictions of the Commission’s *ex parte* rules, subject to the provisions of section 1.1204(a)(3) of those rules.²

- **Media Bureau Guidance**

- **Special Temporary Authority:** Emergency requests for STA prompted by the effects of the Hawaii wildfires and filed pursuant to section 73.1635 of the Commission’s rules³ may be submitted by informal letter or email or, if necessary, by telephone. Licensees of AM & FM radio stations and TV stations may file requests electronically through the Licensing Management System (LMS). All requests must provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:

- **Media Bureau Contact During Business Hours:**

- **Part 73 (Radio Broadcast Services) Subparts A-H; J (as applicable):**
 - For Television Services, Kevin Harding, 202-418-7077, Kevin.Harding@fcc.gov
 - For FM Radio Services, Dale Bickel, 202-418-2706, Dale.Bickel@fcc.gov
 - For AM Radio Services, Jerome Manarchuck, 202-418-7226, Jerome.Manarchuck@fcc.gov

¹ 47 CFR § 1.2002.

² 47 CFR § 1.1204(a)(3).

³ 47 CFR § 73.1365.

- **Part 76 (Multichannel Video and Cable Television Service):**
 - Sean Mirzadegan, 202-418-7111, Sean.Mirzadegan@fcc.gov
- **Part 78 (Cable Television Relay Service):**
 - Jeffrey Neumann, 202-418-2046, Jeffrey.Neumann@fcc.gov
- **Media Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- Licensees are reminded that the Commission's rules address operations during periods of emergency for licensees authorized under each of the rule parts for Broadcast Television Services, Broadcast Radio Services, and Multichannel Video and Cable Services. These service-specific rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.⁴
- **Office of International Affairs Guidance**
 - **Special Temporary Authority (Submarine Cables, International 214s, and International High Frequency Broadcast Station):** Emergency requests for STA related to this event may be submitted by e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the ICFS at <http://licensing.fcc.gov/myibfs>. The Office will handle all STA requests as expeditiously as possible.
 - To ensure the Office has a complete record of the action, applicants who do not file through the ICFS should follow-up the initial request with an electronic version submitted through the ICFS as soon as possible. In this filing, operators shall note in the first description field on the electronic STA form that this is a Hawaii wildfire request and the date the initial request was granted.
- **Office of International Affairs Contact During Business Hours:**
 - **Submarine Cables and International 214s:**
 - Stacey Wise-Ashton, 202-418-2214, Stacey.Ashton@fcc.gov
 - Gabrielle Kim, 202-418-0730, Gabrielle.Kim@fcc.gov
 - Karen Johnson, 202-418-7706, Karen.Johnson@fcc.gov
 - **International High Frequency Broadcast Station:**
 - James McLuckie, 202-418-2149, James.McLuckie@fcc.gov
 - Shawna Prebble, 202-418-0740, Shawna.Prebble@fcc.gov
- **Office of International Affairs Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Public Safety and Homeland Security Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of the Hawaii wildfires and filed pursuant to section 1.931 of the Commission's rules may be submitted by email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or to receive an oral STA during regular business hours, licensees may contact the following personnel: After business hours, contact the FCC Operations

⁴ 47 CFR §§ 73.1250, 73.1680, 73.3542.

Center, below.

- **Public Safety and Homeland Security Bureau Contact During Business Hours:**
 - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
 - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
 - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
- **Public Safety and Homeland Security Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Space Bureau Guidance**
 - **Special Temporary Authority (Satellite Earth and Space Stations):** Emergency requests for STA related to this event may be submitted by letter, e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the International Communications Filing System (ICFS) at <https://licensing.fcc.gov/myibfs>. All requests shall provide the technical parameters of the proposed operation and a point of contact. The Bureau will handle all STA requests on an expedited basis. Consistent with section 309(c)(2)(G) of the Communications Act, as amended, the Bureau may grant STA requests for up to 30 days.⁵
 - **Space Bureau Contact During Business Hours:**
 - **Satellite Space Stations and Earth Stations:**
 - Kathryn Medley, 202-418-1211, Kathryn.Medley@fcc.gov
 - Merissa Velez, 202-418-0751, Merissa.Velez@fcc.gov
 - Franco Hinojosa, 202-418-7274, Franco.Hinojosa@fcc.gov
 - **Space Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireline Competition Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for relief, including STA, prompted by the effects of the Hawaii wildfires may be submitted by email or, if necessary, by telephone. Providers may file requests electronically through the Electronic Comment Filing System (ECFS) but should also provide copies of any submissions simultaneously via email to the appropriate FCC staff identified below. Requests shall include supporting details concerning the relief requested, including any technical parameters and contact information.
 - **Wireline Competition Bureau Contact During Business Hours:**
 - **Emergency Requests Pertaining to Discontinuance Under Section 214 of the Communications Act, or to Network Change Notification Requirements:**
 - Rodney McDonald, 202-418-7513, Rodney.McDonald@fcc.gov
 - **Emergency Requests Pertaining to Transfer of Control Under Section 214 of the Communications Act:**
 - Michele Berlove, 202-418-1477, Michele.Berlove@fcc.gov
 - **Emergency Requests Pertaining to Numbering Resources:**
 - Michelle Sclater, 202-418-0388, Michelle.Sclater@fcc.gov

⁵ 47 USC § 309(c)(2)(G).

- **All Other Wireline Provider Requests:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireline Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireless Telecommunications Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of the Hawaii wildfires filed pursuant to section 1.931 of the Commission's rules may be submitted by informal letter or email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:
 - **Wireless Telecommunications Bureau Contact During Business Hours:**
 - **Parts 22, 24, and 27 (excluding the Broadband Radio Service and Educational Broadband Service):**
 - Keith Harper, 202-418-2759, Keith.Harper@fcc.gov
 - **Parts 27 (Broadband Radio Service and Educational Broadband Service only), 74, and 101 (excluding Public Safety):**
 - Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov
 - **Parts 80, 87, 90 (excluding Public Safety), 95, and 97:**
 - Joshua Smith, 717-338-2502 or 202-436-6222, Joshua.Smith@fcc.gov
 - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
 - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
 - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
 - **Wireless Telecommunications Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

Licensees are reminded that sections 22.307, 90.407, and 101.205 of the Commission's rules address operations during periods of emergency for licensees authorized under these rule parts. These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STA requests can call the FCC's Operations Center, which is open 24 hours a day, 7 days a week, at 202-418-1122 or by email at FCCOPS@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Questions and information requests may be directed to the Commission's main telephone numbers:

- Voice (toll-free): 1-888-225-5322 (1-888-CALL-FCC)
- American Sign Language Videophone (toll-free): 1-844-432-2275

-FCC-



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA-23-691

Released: August 11, 2023

FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO THE WILDFIRES IN HAWAII

The Federal Communications Commission (FCC) is available to address emergency communications needs 24 hours a day, including throughout the weekend, especially relating to the effects of the wildfires in Hawaii.

In light of the coming weekend, the Public Safety and Homeland Security Bureau reminds emergency communications providers, including broadcasters, cable service providers, wireless and wireline service providers, satellite service providers, emergency response managers and first responders, and others needing assistance to initiate, resume, or maintain communications operations to contact the FCC Operations Center for assistance at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA-23-692

Released: August 11, 2023

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS ENROLLED USERS ABOUT THE AVAILABILITY OF PRIORITY SERVICES IN AREAS IMPACTED BY THE WILDFIRES IN HAWAII

The Public Safety and Homeland Security Bureau (PSHSB) reminds enrolled users about the availability of priority services, which help support communications and continuity of operations. Current users should understand how to activate the priority treatment so they are prepared to use the services, if necessary, during emergency response activities related to the wildfires in Hawaii.

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency manages three programs that enable National Security and Emergency Preparedness (NSEP) personnel to effectively communicate when networks are damaged, degraded, or congested. These programs include:

- Government Emergency Telecommunications Service (GETS) for wireline voice communications;
- Wireless Priority Service (WPS) for wireless communications; and
- Telecommunications Service Priority (TSP) for prioritized restoration and provisioning of communications facilities.

PSHSB reminds current users of the following information and best practices, which will increase the effectiveness of the programs:

- Make regular practice/test calls for GETS and WPS.
- Preprogram *272 for key numbers in your phone's contact list.
- Download the GETS/WPS dialer application for smartphones.
- Do not use GETS or WPS to dial 911.
- Test WPS after all phone changes.
- Keep your GETS card with you at all times.
- You may experience silence after entering your destination number.
- Using WPS and GETS together may help in certain circumstances.

For other helpful information, please see CISA's [Helpful Tips for Users of WPS and GETS](#).

PSHSB also encourages other entities and organizations that are not currently enrolled, but that may qualify, to consider participating in the priority services programs. These programs are available to qualified personnel from both the public and private sectors that perform NSEP functions. Entities from the following categories may qualify to participate:

- All levels of government (federal, state, local, tribal, territorial);

- Non-governmental organizations; and
- Organizations within critical infrastructure sectors, including certain private sector entities.

For more information about the priority services programs, please visit:

<https://www.fcc.gov/general/public-safety-homeland-security-policy-areas-priority-services> and
<https://www.cisa.gov/priority-telecommunications-services>.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA-23-693

Released: August 11, 2023

FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS AFFECTED BY THE WILDFIRES IN HAWAII

The Public Safety and Homeland Security Bureau (PSHSB) encourages all entities involved with debris clearing operations and utility repairs related to the effects of the wildfires in Hawaii to take all steps necessary to avoid damaging critical communications facilities and infrastructure.

The wildfires have caused widespread damage and significant impacts to communications services and infrastructure in Hawaii. Wildfires and other natural disasters present numerous challenges for those working to restore essential phone and Internet services. For example, debris clearing operations to remove downed trees, replace damaged utility poles, and open roadways often result in significant, non-storm related damage to critical communications infrastructure. Such damage can disrupt communications that support the safety and life and property, including 911 calls and first responder communications.

PSHSB encourages those entities working to clear debris, repair utility lines, and restore services to ensure their activities do not damage critical communications. Crews clearing downed trees and damaged utility poles should exercise caution to not cut or damage telephone or television cables that may be entangled in the debris. Similarly, entities conducting debris and restoration efforts that require digging are reminded to coordinate with appropriate authorities to ensure buried utilities can be located to avoid damage. Teams on the ground should take proactive steps to preserve and maintain critical communications and take immediate action, if necessary, to mitigate the effects of any damage that may occur to facilities or infrastructure.

For assistance, please contact the FCC Operations Center at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.



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 23-694

Released: August 14, 2023

URBAN RATE SURVEY TIMELINE FOR 2024

WC Docket No. 10-90

The Office of Economics and Analytics (OEA) and the Wireline Competition Bureau (WCB) hereby initiate the urban rate survey for 2024.¹ The information collected in this survey will be used to develop voice and broadband reasonable comparability benchmarks that will be in place in 2024.

In accordance with the *URS Order*, to set next year's benchmarks, we will be collecting the rates offered by a random sample of providers of fixed services identified using December 2022 data filed in the FCC Broadband Data Collection (BDC) tool. We will collect separate samples for fixed voice and fixed broadband services, in up to 500 urban census tracts for voice services and up to 2,000 urban census tracts for broadband services.² Because some providers serve many urban census tracts, these providers may receive surveys for multiple census tracts. Notifications that a provider is required to complete a survey were sent via email to each selected provider's BDC contact person and certifying official on **August 4, 2023**. The survey consists of an online reporting form, which will be accessible only to the selected providers. The email notification provided detailed information on how to access and complete the survey online and how to obtain technical assistance. Completed surveys will be due by **Sept 5, 2023**.

Additional information on the urban rate survey, including the *URS Order* referenced in this Public Notice, can be found on the Commission's urban rate survey webpage at <https://www.fcc.gov/general/urban-rate-survey-data-resources>.

For questions about the urban rate survey, please contact Craig Stroup in the Industry Analysis Division of the Office of Economics and Analytics at Craig.Stroup@fcc.gov or (202) 418-0989. For additional information about this Public Notice, please contact Suzanne Yelen at Suzanne.Yelen@fcc.gov or (202) 418-0626.

-FCC-

¹ In April 2013, WCB adopted an Order setting the form and content for the annual survey of urban rates for fixed voice and fixed broadband residential services. *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 4242 (WCB/WTB 2013) (*URS Order*).

² For this year's survey, on our own motion, we again find good cause to waive, to the extent necessary, the use of 2010 census tracts, as specified in the *URS Order*. See *id.* at 4244, para. 10; see also *Urban Rate Survey Timeline for 2023*, WC Docket No. 10-90, Public Notice, DA 22-859, at 1 n.2 (OEA/WCB Aug. 15, 2022). While we are using 2020 census tract boundaries for this year's survey, earlier this year, WCB released a public notice seeking comment on the use of 2020 census tract boundaries, as well as various other issues pertaining to future surveys. See *Wireline Competition Bureau Seeks Comment On Modifying The Calculation Of Broadband Benchmarks*, WC Docket No. 10-90, Public Notice, DA 23-274 (WCB May 8, 2023).

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

In the Matter of)	
)	
Jones Communications LTD	)	Facility ID 30281
Licensee of WVFG(FM),	)	FRN: 0007717309
Uniontown, Alabama		

ORDER TO PAY OR TO SHOW CAUSE

Adopted: August 14, 2023

Released: August 14, 2023

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

I. INTRODUCTION

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

II. DISCUSSION

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

3. For fiscal year (FY) 2021, the deadline for paying regulatory fees was September 27, 2021;³ and for FY 2022, it was September 30, 2022.⁴ When Licensee failed to pay or only partially paid its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act⁵ and section 1.1164 of the Rules,⁶ and interest, penalties, and administrative costs required by section 3717 of the Debt Collection Improvement Act of 1996 (the

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

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

³ *Regulatory Fee Window is Extended to Monday, September 27, 2021*, Public Notice, DA 21-1201, 36 FCC Rcd 13907 (OMD September 24, 2021).

⁴ *Fiscal Year 2022 Regulatory Fee Filing Deadline is Extended to Friday, September 30, 2022, for All Regulatory Fee Payors*, Public Notice, DA 22-1023, 2022 WL 4597483 (OMD Sep. 28, 2022).

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

⁶ 47 CFR § 1.1164.

DCIA), section 9A(c)(2) of the Act and section 1.1940 of the Rules.⁷

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt of \$1,372.94 for FY 2021 and \$1,478.34 for FY 2022. Additional charges will continue to accrue on these debts until they are paid in full. The Commission sent Licensee demand letters in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.⁸ When Licensee did not pay these regulatory fee debts, the Commission transferred the debts to the United States Department of Treasury for collection.⁹ At the Commission's request, the United States Department of Treasury has returned the FYs 2021 and FY 2022 regulatory fee debts to the Commission for further collection.

5. The Commission has authority under section 9A(c)(4) of the Act and section 1.1164(f) of the Rules to revoke licenses and authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require Licensee to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fee debt has been made or show cause why the payment is inapplicable or should be waived or deferred.¹⁰ Licensee is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Station.

6. Under section 9A(c)(4)(C) of the Act and section 1.1164(f) of the Rules,¹¹ an adjudicatory hearing will not be designated unless Licensee presents a substantial and material question of fact. Further, disposition of any adjudicatory hearing will be based upon written evidence only, and Licensee will bear the burden to introduce evidence and to provide proof in any such hearing.¹² Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.¹³

7. To the extent that Licensee is a respondent in other administrative proceedings, both before this agency and other federal agencies, action in this proceeding is without prejudice to action in those proceedings.¹⁴ Further, the existence of any such proceedings and matters raised therein are not considered in this proceeding.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283 and 1.1164(f) of the Rules,¹⁵ Jones Communications LTD is hereby **ORDERED**

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

⁸ See 31 U.S.C. § 3711; 31 CFR § 901.2.

⁹ See 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917.

¹⁰ The Commission may waive, reduce, or defer payment of fee debt where good cause is shown and where waiver, reduction or deferral would promote the public interest. The Commission interprets this provision narrowly, granting relief only when a requesting party has shown extraordinary circumstances outweighing the public interest in recovering the cost of the Commission's regulatory services. A party seeking a waiver for financial hardship must conclusively prove financial hardship, providing copies of all such financial documents as are necessary to show that it lacks sufficient funds to pay its regulatory fees and maintain its service to the public. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket 19-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8207-08, paras. 49-51 (2019).

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

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

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

¹⁴ See, e.g., *Jones Communications LTD*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 4208 (MB 2021) (\$3,000 forfeiture proposed for untimely filing of renewal application); Forfeiture Order, 36 FCC Rcd 9802 (MB 2021) (affirming \$3,000 forfeiture).

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

TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FYs 2021 and 2022, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable or should otherwise be waived or deferred.

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

ABA Routing Number 021030004

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

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

Jones Communications LTD must provide the Payer FRN (if different than the FRN referenced above) and a contact phone number.

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

10. **IT IS FURTHER ORDERED** that Jones Communications LTD must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form may be obtained at [http://www.fcc.gov/Forms/Forms 159/159.pdf](http://www.fcc.gov/Forms/Forms%20159/159.pdf). When completing the FCC Form 159, Jones Communications LTD must enter its FRN in block number 23A (call sign/other ID) and enter the following payment codes for the fiscal years involved in block number 24A (payment type code): 2141 (for FY 2021) and 2241 (for FY 2022).

11. Any written response must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to section 1.16 Commission's rules.¹⁶ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.¹⁷ A courtesy copy emailed to Alexander.Sanjenis@fcc.gov will assist in processing the response.

- 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.

¹⁶ 47 CFR § 1.16.

¹⁷ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to Jones Communications LTD c/o Charles Jones Jr., 511 Elmore Drive, Demopolis, AL 36732.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-696

Released: August 14, 2023

WIRELINE COMPETITION BUREAU RELEASES ADDITIONAL INFORMATION FOR ILLUSTRATIVE RESULTS FOR ENHANCED ALTERNATIVE CONNECT AMERICA COST MODEL

WC Docket No. 10-90

The Wireline Competition Bureau (Bureau) announces the release of additional location information for the illustrative results for the Enhanced Alternative Connect America Cost Model (Enhanced A-CAM) (v2.6.0) program recently adopted by the Commission.¹ The new location information has been incorporated into the previously released results and is available at: <https://docs.fcc.gov/public/attachments/DOC-395840A1.xlsx>.

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*).



PUBLIC NOTICE

Federal Communications Commission
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Internet: <https://www.fcc.gov>
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DA 23-697

Released: August 14, 2023

FCC ANNOUNCES MEMBERSHIP OF THE RECHARTERED NORTH AMERICAN NUMBERING COUNCIL AND THE DATE OF ITS FIRST MEETING

WC Docket No. 23-1

In this Public Notice, the Wireline Competition Bureau announces that, consistent with the Federal Advisory Committee Act,¹ Federal Communications Commission (FCC or Commission) Chairwoman Jessica Rosenworcel has appointed members to serve on the North American Numbering Council (NANC or Council) during the two-year term of its renewed charter running from September 2023 to September 2025. Chairwoman Rosenworcel has appointed the Honorable Karen Charles, Commissioner of the Massachusetts Department of Telecommunications and Cable, and the National Association of Regulatory Utility Commissioners' representative to the Council, to serve as Chairwoman of the rechartered NANC. Chairwoman Rosenworcel has also appointed Bridget Alexander White, Staff Director – Business Development, JSI, and Highline's representative to the Council, to serve as Vice Chairwoman. In addition, Chairwoman Rosenworcel has selected Christi Shewman, Special Counsel, Competition Policy Division, Wireline Competition Bureau to serve as the Designated Federal Officer (DFO) and Rhonda Lien, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, to serve as Deputy Designated Federal Officer (Deputy DFO). A full list of the members appointed to serve during the rechartered NANC's term is attached to this Public Notice.

The first meeting of the rechartered NANC will take place on **Wednesday, October 25, 2023, beginning at 2:00 p.m. ET** via video conference and will be available to the public via the Internet at <http://www.fcc.gov/live>. At its first meeting, the NANC members will introduce themselves and receive guidance from the Commission's Offices of General Counsel and Managing Director concerning federal advisory committee best practices. This agenda may be modified at the discretion of the NANC Chairwoman and the DFO.

The NANC meeting is open to the public on the Internet via live feed from the FCC's web page at <http://www.fcc.gov/live>. Open captioning will be provided for these events. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530. Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. **Comments to the NANC should be filed in WC Docket No. 23-1.**

¹ 5 U.S.C. 10.

More information about the NANC is available at <https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council>. You may also contact Christi Shewman, Designated Federal Officer, at christi.shewman@fcc.gov or 202-418-0646.

– FCC –

**NORTH AMERICAN NUMBERING COUNCIL
2023-2025**

Christi Shewman, Designated Federal Officer (DFO)
Rhonda Lien, Deputy DFO

Chairwoman:

The Honorable Karen Charles, Commissioner, Massachusetts Department of Telecommunications and Cable
Representing National Association of Regulatory Utility Commissioners

Vice Chairwoman:

Bridget Alexander White, Staff Director – Business Development, JSI
Representing Highline

Voting Members:

10x People, LLC

Lisa Marie Maxson, Chief Executive Officer
Alternate: John Nakamura, Chief Revenue Officer

800 Response Information Services, LLC

Heather Barrows, Vice President, Operations

Ad Hoc Telecom Users Committee

Susan Gately, Consultant

AT&T

Dr. Ola Oyefusi, Director, Federal Regulatory
Alternate: George Guerra, Senior Manager - Network Support, Engineering & Operations

Alliance for Telecommunications Industry Solutions

Jackie Wohlgenuth, Director of Global Standards Development
Alternate: Thomas Goode, General Counsel

Bandwidth

Greg Rogers, Head of Global Policy and Regulatory Affairs
Alternate: Lisa Jill Freeman, Vice President & Regulatory Compliance Officer – Office of the General Counsel

Brightspeed

Jeff Lanning, Vice President-Federal Government Affairs

Competitive Carriers Association

Angela Simpson, General Counsel and Senior Vice President, Legal and Regulatory Affairs
Alternate: Alexandra Mays, Assistant General Counsel & Director, Regulatory Affairs

Charter Communications, Inc.

Glenn Clepper, Senior Director, Telephone Regulatory
Alternate: Kathy Troughton, Director, Telephone Regulatory

Comcast Corporation

Thomson Obasuyi, Senior Engineer

Alternate: Beth O'Donnell, Corporate Executive Director, Regulatory Affairs

CTIA

Amy Bender, Vice President, Regulatory Affairs

Electronic Privacy Information Center

Christopher Frascella, Fellow

Google LLC

Craig Lennon, Global Partnerships Lead - Business Communications and Infrastructure

Alternate: Ms. Tracy Holick, Manager of Voice Infrastructure

Highline

Bridget Alexander White, Staff Director – Business Development, JSI

INCOMPAS

Christopher L. Shipley, Executive Director of Public Policy

Lumen

Philip Linse, Director, Public Policy

Maine Public Utilities Commission

Michael Johnson, Utility Analyst

National Association of Attorneys General

Ms. Tracy Nayer, Special Deputy Attorney General in the North Carolina Attorney General's Office

Alternate: Amanda Wentz, Assistant Attorney General in the Arkansas Attorney General's Office

National Association of Regulatory Utility Commissioners

Hon. Karen Charles, Commissioner, Massachusetts Department of Telecommunications and Cable

National Association of State Utility Consumer Advocates

Ms. Barrett Sheridan, Assistant Consumer Advocate, Pennsylvania Office of Consumer Advocate

New Mexico Public Regulation Commission

Brady Tolleson, Public Utilities Economist

Alternate: Mike Ripperger, Telecommunications Bureau Chief

North Dakota Public Service Commission

Victor Schock, Director of Public Utilities

Alternate: GERALYN SCHMALTZ, Administrative Officer

NTCA–The Rural Broadband Association

Brian Ford, Vice President – Federal Regulatory

Alternate: Tamber Ray, Regulatory Counsel

Peerless Network, Inc.

Patrick Phipps, Director, Regulatory Affairs

Public Service Commission of the District of Columbia

Lara Howley Walt, Senior Attorney Advisor

Sinch Voice

Allyson Blevins, Senior Director, Numbering Policy

SIP Forum

Richard Shockey, Chairman, Board of Directors

TDS Telecommunications LLC

Paul Nejedlo, Senior Administrator-Number Management

Telnyx

David Casem, Chief Executive Officer

Alternate: Sarah Halko, Director of Regulatory and Industry Affairs

T-Mobile

Rosemary Leist, Senior Manager, Wireless Numbering Policy

Alternate: Scott Freiermuth, Principal Corporate Counsel, Government Affairs

USTelecom – The Broadband Association

Josh Bercu, Vice President, Policy and Advocacy

Verizon

Ms. Dana Crandall, Distinguished Engineer - Network Engineering & Operations

Alternate: Ms. Dyan Adams, Distinguished Engineer - Network Engineering & Operations

Special Members (Non-Voting):

iconectiv, LLC (non-voting)

Mr. Chris Drake, Senior Vice President, Corporate and Business Development

Alternate: Cathy McMahon, Senior Director, Account Management and Industry Relations

Somos, Inc. (non-voting)

Joel Bernstein, Vice President, Regulatory and Public Policy

Alternate: Florence Weber, Senior Director of NANPA



Federal Communications Commission
Washington, DC 20554

August 15, 2023

DA 23-698

SMALL ENTITY COMPLIANCE GUIDE

Amendment of Section 15.255 of the Commission's Rules

FCC 23-35
ET Docket No. 21-264
Adopted May 18, 2023

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Guide is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking docket. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)
TTY: 1-888-TELL-FCC (1-888-835-5322)
Videophone: 1-844-4-FCC-ASL (1-844-432-2275)
Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order* in FCC 23-35, ET Docket No. 21-264 adopted in May 2023¹, the Commission revised section 15.255 of the Commission's rules allowing unlicensed field disturbance sensor (FDS) devices (e.g., radars) to operate in the 57-71 GHz band (60 GHz band), while simultaneously ensuring coexistence with both other unlicensed technologies in the band and with passive sensors in the 57.0-59.3 GHz Earth Exploration Satellite Service (EESS) band.

Specifically, the *Report and Order*:

1. Allows both mobile and fixed FDS/radars operation in the entire 57-71 GHz band;
2. Clarifies the relationship between radars and FDS applications and modifies the rules to expand mobile FDS operations within the 60 GHz band, including within the 61.0-61.5 GHz sub-band, where higher powered operations are currently permitted, but only for fixed use;
3. Permits various Effective Isotropic Radiated Power (EIRP) levels along with specific duty cycle restrictions related to specific segmentations of the band for FDS devices that limit their operating frequencies to the 57-64 GHz portion of the 57-71 GHz band. The *Report and Order* found these distinctions offer the best opportunity for new and existing unlicensed devices to successfully co-exist in the 60 GHz band. These limits are illustrated in Tables 1 and 2 in the Compliance Requirements section below;
4. Permits FDS operation for on-board unmanned aircraft (UA) flying at altitudes less than 121.92 meters (400 feet) above ground level, limited to the 60-64 GHz band, at up to 20 dBm peak EIRP subject to a 50% duty cycle, as illustrated in Table 3 below.

These rule changes establish clear technical and operational provisions for multiple band segments. For example, under the adopted rules, new fixed and mobile FDS devices are permitted to implement modulation techniques such as pulse or frequency-modulated continuous-wave (FMCW) as a means of facilitating new use cases such as installation on low-flying unmanned aircraft. Further, the adopted rules will support safety-related novel use cases that will likely see widespread deployment, such as vehicle occupant detection, chest movement detection to determine breathing patterns, and eye lid movement detection to determine driver alertness. These new applications for FDS/radars will significantly help small entities in developing products to meet the various needs of the American public in band segments that have demonstrated great potential for innovative products and services. Additionally, expanding the flexibility of unlicensed FDS/radars in the 60 GHz band will provide an advantage to small entities seeking to access this spectrum without the complication or cost of needing to obtain a license by operating FDS/radars in other frequency bands.

¹ *Amendment of Section 15.255 of the Commission's Rules*; ET Docket No. 21-264, Report and Order, FCC 23-35, released May 19, 2023) (*Report and Order*).

II. COMPLIANCE REQUIREMENTS

A. General Information

In the 60 GHz band, FDS devices are regulated under section 15.255 of part 15 of the Commission's rules.² Part 15 of the FCC rules contains the technical requirements for radio frequency (RF) devices that may be operated without an individual license. All part 15 devices are required to accept harmful interference from other authorized operations, and are prohibited from causing harmful interference to other authorized operations.³

Under the part 15 rules, low-power intentional radiators (popularly known as "unlicensed devices") are permitted to operate without an individual license where such use is not anticipated to cause harmful interference to authorized users of the radio spectrum.⁴ Additionally, part 15 intentional radiators must be certified by a designated Telecommunication Certification Body (TCB) before they can be imported into or marketed within the United States, whereas most unintentional radiators can be authorized through a self-approval process in which the manufacturer has the equipment tested to ensure it complies with the part 15 rules, but they do not have to obtain certification through a TCB. However, scanning receivers and radar detectors are required to be certified before they can be imported into or marketed within the United States.

B. General Requirements for FDS/Radars Operating under Section 15.255

1. FDS/radars operating under section 15.255 must be labeled with an FCC identification number as required by section 2.925 and the statement required by section 15.19(a)(3) indicating that the device complies with part 15 of the rules, may not cause harmful interference and must accept any interference received.
2. FDS/radars operating under section 15.255 must provide information to the user as specified in section 15.21.
3. FDS/radars operating under section 15.255 must comply with the frequency stability requirements specified in section 15.255(h).
4. FDS/radars operating under section 15.255 must comply with the spurious emission requirements specified in section 15.255(d).
5. Applications for equipment authorization of FDS/radars operating under section 15.255 must contain a statement confirming compliance with the radio frequency radiation exposure requirements specified in sections 1.1307(b), 2.1091 and 2.1093 for both fundamental emissions and unwanted emissions.⁵

² 47 CFR § 15.255.

³ 47 CFR § 15.5(b).

⁴ The fundamental operating conditions under part 15 are that the operator of a part 15 device has no vested right to continued use of any given frequency, must accept interference that may be caused by the operations of authorized users or other unlicensed devices, and must not cause harmful interference it causes. Should harmful interference occur, the operator is required to immediately correct the interference problem, even if correction of the problem requires ceasing operation of the part 15 equipment causing interference. See 47 CFR § 15.5.

⁵ See 47 CFR § 15.255(g).

6. Measurement procedures that have been found to be acceptable to the Commission in accordance with 47 CFR § 2.947 may be used to demonstrate compliance.⁶

C. FDS/Radars Operating throughout the 57-71 GHz Band

The revised section 15.255 rules allow all FDS/radars, whether mobile or fixed, to operate in the entire 57-71 GHz band at the existing +10 dBm EIRP limit without any additional restrictions (e.g., duty cycle limit, or transmitter conducted output power limit).

[CONTINUED ON NEXT PAGE]

⁶ See 47 CFR § 15.255(i).

D. FDS/Radars Other than Pulse FDS/Radars Operating in the 57-64 GHz Band

FDS/radars are allowed to operate at higher EIRP limits within the 57-64 GHz band subject to certain limitations based on band segmentations, as illustrated in Table 1 below.

Table 1 – Requirements for FDS/Radars other than Pulse Radars

Mode	Frequency Range	Use Cases	Power Limit (Peak EIRP)	Off-Time Requirement: off-times (≥ 2 ms) must sum to at least X ms per 33 ms interval
Field disturbance sensors/radars excluding outdoor drones /UA	57.0 - 59.4 GHz	All	20 dBm for indoor; 30 dBm for outdoor applications, including vehicular	None
	57.0 - 61.56 GHz	All	3 dBm	None
	57.0 - 61.56 GHz	All	20 dBm	16.5 ms off time per 33 ms
	57.0-64.0 GHz	All	14 dBm	25.5 ms off time per 33 ms
	57.0-64.0 GHz	Fixed outdoor or vehicular uses (except in-cabin)	20 dBm	16.5 ms off time per 33 ms

1. Switching between requirements in frequency ranges is allowed in successive 33 ms frames (for example, operation in 57-61.56 GHz under applicable parameters in the first 33 ms frame followed by operation in 57-64 GHz under applicable parameters in the second 33 ms frame, *etc.*).

2. No separate duty cycle requirements are imposed on active 60 GHz transmitters beyond what is stated in the right-most column.

3. Fixed operation includes temporarily or permanently fixed operations. Vehicular uses include operations where the device is installed within or on the exterior of a vehicle intended for outdoor use (such that any indoor use is incidental – for example, an automobile in a parking garage) but excludes all in-cabin applications or operations.

E. Pulse FDS/Radars Operating in the 57-64 GHz Band

Although the rules are intended to cover radars using various types of modulation techniques, the revised rules establish a separate rule for pulse FDS/radars with pulse durations of less than 6 ns, as specified in Table 2 below.

Table 2 – Pulse Radars Requirements

Technical Parameter ⁵	Permissible Pulse Radar Operations
Operating frequency high	64 GHz
Operating frequency low	57 GHz
Duty cycle	10%, evaluated in any 0.3 μ s time window
Average EIRP	13 dBm, evaluated in any 0.3 μ s time window, and the average integrated EIRP within 61.5 to 64.0 GHz shall not exceed 5 dBm in any 0.3 μ s time window
Pulse duration	< 6 ns
Peak EIRP	Peak RF emissions must not exceed 20 dB greater than the maximum permitted average emission limit applicable to the equipment under test

F. FDS/Radars Operating On-board Unmanned Aircraft (UA) in the 60-64 GHz Band

FDS/radars are permitted to operate on-board unmanned aircraft (e.g., drones) flying at altitudes less than 121.92 meters (400 feet) above ground level in the 60-64 GHz band at the required specifications in Table 3 below.

Table 3 –Requirements for FDS/Radars On-Board Unmanned Aircraft

Mode	Frequency Range	Use Cases	Power Limit (Peak EIRP)	Off-Time Requirement: off-times (≥ 2 ms) must sum to at least X ms per 33 ms interval
Outdoor drones/UA	60-64 GHz	Drones/UA	20 dBm	16.5 ms off time per 33 ms

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

All rule changes in the *Report and Order* are effective as of August 23, 2023 (30 days after the Federal Register publication date of July 24, 2023). FDS/radar devices that are approved by TCBs beginning six months after the effective date of the *Report and Order* must comply with the new rules. At the conclusion of this transition period, all waivers for 60 GHz FDS/radars that are currently in effect shall be terminated. However, any 60 GHz FDS/radar device that was certified to operate under waiver that does not cause harmful interference can continue to operate until its natural replacement. Any equipment that is subsequently modified, however, must be brought into compliance with the new rules.

V. INTERNET LINKS

A copy of the *Report and Order* is available at:

<https://www.fcc.gov/document/fcc-empowers-short-range-radars-60-ghz-band-0>.

A copy of the Federal Register Summary of the *Report and Order* is available at:

<https://www.govinfo.gov/content/pkg/FR-2023-07-24/pdf/2023-15367.pdf>

Measurement procedures of unlicensed wireless devices, including 60 GHz FDS/radars operating under § 15.255 of the rules, may be found in ANSI C63.10-2020, *American National Standard Of Procedures For Compliance Testing Of Unlicensed Wireless Devices*, available at:

<https://webstore.ansi.org/standards/ieee/ieeeansic63102020>.

The FCC maintains a web-based system that is used to submit inquiries to its Laboratory, as well as to search for previous rule interpretations and frequently asked questions. This system, called the OET Knowledge Database (KDB), can be accessed at [OET Knowledge Database \(KDB\) \(fcc.gov\)](https://oet.fcc.gov).

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

In the Matter of)	
)	
Connect America Fund—Alaska Plan	)	WC Docket No. 16-271
)	
Establishing the Digital Opportunity Data	)	WC Docket No. 19-195
Collection)	
)	
)	
)	

ORDER

Adopted: August 15, 2023

Released: August 15, 2023

By the Wireless Telecommunications Bureau, Office of Economics and Analytics:

I. INTRODUCTION

1. By this order, the Wireless Telecommunications Bureau (WTB) and the Office of Economics and Analytics (OEA) require the eight mobile participants in the Alaska Plan to file mobile wireless coverage data consistent with the FCC Form 477 reporting requirements annually until March 1, 2028. WTB and OEA sought comment on such a proposal in the *Alaska Form 477 Notice*, where they noted that it would allow for like comparisons to the previous deployment data on which these providers based their performance commitments.¹ In contrast, if the Commission relied solely on data obtained through the Broadband Data Collection (BDC) after it sunset the use of FCC Form 477,² it would not allow such comparisons.³ We adopt our proposal and require the Alaska Plan's mobile participants to file annual deployment data that is consistent with the FCC Form 477 requirements, as specified in the Appendix, *infra*, with the first annual filing due 3 months from release of this order for mobile participants' coverage as of December 31, 2022.⁴ After this first filing, mobile participants' annual filing reflecting coverage as of the end of the year will be due March 1 of each year, through March 1, 2028.

II. BACKGROUND

2. The Alaska Plan required mobile-provider participants to submit performance plans committing to cover delineated populations in eligible, remote areas of Alaska with a specified

¹ *Comment Sought on Continued Filing of Alaska Plan FCC Form 477 Mobile Deployment Data; Waiver of Interim PR-USVI Mobile Milestone Filing and Information Provided for Final Milestone Filing*, WC Docket Nos. 16-271, 18-143, 19-195, Public Notice, DA 23-259 (rel. WTB, WCB, OEA Mar. 27, 2023) (*Alaska Form 477 Notice*), <https://docs.fcc.gov/public/attachments/DA-23-259A1.pdf>.

² *See generally Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, FCC 22-93 (rel. Dec. 9, 2022) (*Form 477 Sunset Order*).

³ *See generally Connect America Fund et al.*, WC Docket Nos. 10-90, 16-271, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*) (establishing the Alaska Plan: a ten-year plan that runs from January 1, 2017 until December 31, 2026 to improve or maintain broadband and voice in remote Alaska).

⁴ *Alaska Form 477 Notice*, DA 23-259, para. 5.

technology at a minimum expected speed, subject to the available middle-mile infrastructure.⁵ These performance plans were based on mobile coverage consistent with the FCC Form 477 reporting requirements.⁶ The Commission replaced FCC Form 477 mobile deployment data reporting with the BDC data reporting requirements in 2022.⁷ Unlike the FCC Form 477 data collection, which allowed carriers to file coverage polygons based on their own propagation models, the BDC specifies how certain parameter values of the propagation models should be set for the coverage polygon.⁸ The BDC thus prescriptively set many of the parameters that previously were within the providers' discretion, and, as the *Alaska Form 477 Notice* stated, "[t]he propagation models and the speeds in [the Alaska Plan mobile providers'] approved performance plans often do not align with BDC requirements."⁹

3. In the *Form 477 Sunset Order*, the Commission recognized that it relies upon coverage data from the FCC Form 477 in proceedings, such as the Alaska Plan, to assess, *inter alia*, deployment of broadband services.¹⁰ To ensure that the Commission can continue to rely on the relevant FCC Form 477 coverage data where required for the Alaska Plan, the Commission delegated authority to WTB and OEA "to provide instructions to mobile providers that participate in the Alaska Plan on how to submit coverage data after the sunset of the Form 477 broadband deployment data collection, including whether to use the BDC filing system for submission of data currently submitted using the Form 477 filing system that are specific to Alaska."¹¹

4. On March 27, 2023, WTB and OEA released the *Alaska Form 477 Notice*, which proposed that mobile participants in the Alaska Plan file deployment data consistent with FCC Form 477 instructions.¹² The *Alaska Form 477 Notice* specified that such deployment data would be filed annually until March 1, 2028, to allow for like comparisons throughout the ten-year period of the Alaska Plan, with an additional year of data after the final commitment.¹³ Two entities filed comments in response to this

⁵ See generally *Alaska Plan Order*, 31 FCC Rcd at 10159-74, paras. 66-106; *Wireless Telecommunications Bureau Approves Performance Plans of the Eight Wireless Providers That Elected to Participate in the Alaska Plan*, WC Docket No. 16-271, Public Notice, 31 FCC Rcd 13317, Appx. (WTB 2016) (*Wireless Commitments Notice*) (accepting the eight mobile-provider participants' original performance plans); see also, e.g., 47 CFR §§ 54.317(f), 54.320(d)(1)(ii) (requiring compliance action by the gap in "population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan").

⁶ *Alaska Form 477 Notice*, DA 23-259, para. 4 (citing *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103 (requiring use of FCC Form 477 for evaluation of commitments); *Wireless Commitments Notice*, 31 FCC Rcd at Appx. (providing technology commitments using 2016 FCC Form 477 technology codes).

⁷ See generally *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Order, FCC 22-93 (rel. Dec. 9, 2022) (*Form 477 Sunset Order*) (discussing the effort to replace Form 477 deployment data with Broadband Data Collection data).

⁸ Compare FCC Form 477, Instructions for Filings as of December 31, 2019-June 30, 2022 at 24-25, 31, <https://us-fcc.app.box.com/v/Form477InstThruJune2022>; FCC Form 477, Instructions For Filings Through June 30, 2019 at 23-24, 30, <https://us-fcc.app.box.com/v/Form477InstThruJune19> with Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data at 49-71 (Feb. 7, 2023), <https://us-fcc.app.box.com/v/bdc-availability-spec>.

⁹ *Alaska Form 477 Notice*, DA 23-259, para. 5.

¹⁰ See *Form 477 Sunset Order*, FCC 22-93, para. 14.

¹¹ See *Form 477 Sunset Order*, FCC 22-93, para. 14.

¹² *Comment Sought on Continued Filing of Alaska Plan FCC Form 477 Mobile Deployment Data; Waiver of Interim PR-USVI Mobile Milestone Filing and Information Provided for Final Milestone Filing*, WC Docket Nos. 16-271, 18-143, 19-195, Public Notice, DA 23-259 (rel. WTB, WCB, OEA Mar. 27, 2023) (*Alaska Form 477 Notice*), <https://docs.fcc.gov/public/attachments/DA-23-259A1.pdf>.

¹³ *Alaska Form 477 Notice*, DA 23-259, para. 5.

proposal: The Alaska Remote Carrier Coalition (ARCC)¹⁴ and Alaska Telecom Association (ATA).¹⁵ Together, these entities represent all of the Alaska Plan's eight mobile participants, with the six of the eight represented by both organizations. In its comments, the ARCC endorses the proposal in the *Alaska Form 477 Notice* without requesting any changes.¹⁶ ATA supports the continued use of FCC Form 477 coverage data to assess Alaska Plan mobile providers' compliance with their performance obligations, but it raises concern about the burden associated with annual filings and the need for providers to have sufficient notice of the filing deadline.¹⁷

III. DISCUSSION

5. We adopt our proposal to require mobile participants in the Alaska Plan to submit coverage data consistent with the FCC Form 477 reporting requirements, as specified in the Appendix, *infra*, annually until March 1, 2028.¹⁸ The coverage milestones to which these participants committed in their approved performance plans would not be accurately captured by the BDC data. Accordingly, we find it appropriate to require annual filings of deployment data consistent with the FCC Form 477 for the duration of the plan in order to allow apples-to-apples comparisons of mobile coverage data that show whether these providers have met their commitments.

6. We find that continued annual filing of this coverage data is necessary to administer the mobile-wireless portion of the Alaska Plan. The BDC data do not allow for like comparisons with the carriers' previous coverage data. We agree with ARCC that relying on BDC data could lead to deviations in the providers' approved performance plans and create hardships for the providers as they adjust to any changes.¹⁹ Thus, without annual filings of coverage data consistent with FCC Form 477 data that have been submitted throughout the duration of the Alaska Plan, Commission staff would be unable to determine whether these providers are making progress towards implementing their ten-year performance plans. Staff also would be unable to determine whether the providers met their coverage commitments at the ten-year mark. Requiring annual filings of coverage data consistent with FCC Form 477 strikes the proper balance of tracking mobile-provider progress under the Alaska Plan, which like all high-cost programs depends on annual filings,²⁰ while reducing the burden from the original FCC Form 477 requirements, which required biannual filings.

7. We also find it necessary to continue to require these filings one year beyond the end of the plan—data representing the state of the networks as of December 31, 2027—as administration of the

¹⁴ The ARCC consists of six of the eight mobile participants of the Alaska Plan: Arctic Slope Wireless, Bristol Bay Cellular Partnership, Copper Valley Wireless, Cordova Wireless, OTZ Wireless, and TelAlaska Cellular. ARCC Comments at 3 n.1.

¹⁵ ATA consists of all six members of the ARCC plus GCI Communications Corp. and Windy City Cellular as the additional members that are also members of the Alaska Plan.

¹⁶ See generally ARCC Comments.

¹⁷ ATA Comments at 2-3.

¹⁸ *Alaska Form 477 Notice*, DA 23-259, para. 5 (“WTB and OEA propose that all mobile participants in the Alaska Plan file deployment data consistent with FCC Form 477 instructions, as specified in the Appendix, below. Mobile Alaska Plan participants would file these deployment data annually until March 1, 2028.”).

¹⁹ ARCC Comments at 3 (“If the Commission were to change the deployment requirements in the seventh year of a ten-year plan, carriers with significant deviations from their original plan would not have time to adjust due to Alaska’s shortened construction seasons, supply chain challenges, and skilled labor force shortages in rural and remote Alaska.”).

²⁰ See, e.g., 47 CFR § 54.313 (requiring annual filings for high-cost support recipients); *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 100 (“ATA proposes that, like the rate-of-return participants, competitive ETC participants be subject to the reporting requirements set forth in 54.313 and the recordkeeping and compliance requirements set forth in section 54.320(d) of the Commission’s rules. We adopt and build on that proposal, . . .”).

Alaska Plan does not end when the providers' milestones are due. Extending the filing one year beyond the December 31, 2026 provider-commitment deadline ensures that there is not a gap of information at a time when Commission staff are assessing the need for drive-test audits and engaging in conversations with the providers about their performance plan compliance.²¹

8. We reject ATA's request to require only one additional FCC Form 477 submission for the purpose of verifying compliance at the end of the plan unless a provider misses its milestone.²² ATA argues that a single filing "should be sufficient" because it would reflect coverage as of [the ten-year] milestone.²³ We disagree. First, the *Alaska Plan Order* was adopted when FCC Form 477 data could be relied on as a biannual filing for plan management, with the Commission assuming that the data needed for plan management would be filed at least on an annual basis.²⁴ Second, the Commission acknowledged that even this biannual data may not be enough and stated in the *Alaska Plan Order* that "[w]e will require progress reports of the Alaska Plan participants throughout the 10-year term."²⁵ In doing so, the Commission highlighted the need to obtain coverage data from these carriers not just at the compliance milestones, but rather throughout the course of the plan. Third, the Commission delegated authority to WTB to require additional filings as needed²⁶ to help ensure compliance with the ten-year milestone, and large discrepancies between two annually filed data sets can highlight areas of concern when evaluating ten-year milestone compliance. Fourth, coverage data can be used by WTB not just to assess milestone compliance, but also to inform WTB as to whether "revised commitments [are] justified by developments that occur after the approval of the initial performance commitments."²⁷

9. We also disagree with ATA that each of the filings would take a provider 289 hours on average to continue to file the FCC Form 477 deployment data.²⁸ ATA bases this assertion on an estimate from 2023 by the Commission of the burdens associated with FCC Form 477 filings *after* the deployment data collection was removed from FCC Form 477, as the deployment data collection is now covered by

²¹ See *Alaska Plan Order*, 31 FCC Rcd at 10166-67, para. 85 ("We delegate to the Wireless Telecommunications Bureau authority to require additional information, . . . from individual participants that it deems necessary to establish clear standards for determining whether or not they meet their five- and 10-year commitments, . . .").

²² See ATA Comments at 3 ("A single Form 477 deployment submission on March 1, 2027, will reflect coverage as of that milestone and should be sufficient. Of course, if a provider misses its milestone and is using the following year to come into compliance, additional Form 477 submission could be required to demonstrate that additional progress. But for others, the single Form 477 submission meets the needs of Alaska Plan compliance assessment. The burden of filing more frequently does not appear to be justified.").

²³ ATA Comments at 3. ATA further notes that "if a provider misses its milestone and is using the following year to come into compliance, additional Form 477 submission could be required to demonstrate that additional progress." *Id.*

²⁴ *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 100 ("ATA proposes that, like the rate-of-return participants, competitive ETC participants be subject to the reporting requirements set forth in 54.313 and the recordkeeping and compliance requirements set forth in section 54.320(d) of the Commission's rules. We adopt and build on that proposal, . . ."); 47 CFR § 54.313 (requiring annual filings for high-cost support recipients);

²⁵ *Alaska Plan Order*, 31 FCC Rcd at 10160, para. 67 ("We will require progress reports of the Alaska Plan participants throughout the 10-year term, and we establish specific measures to help ensure verifiability and compliance.").

²⁶ See *Alaska Plan Order*, 31 FCC Rcd at 10166-67, para. 85 ("We delegate to the Wireless Telecommunications Bureau authority to require additional information, . . . from individual participants that it deems necessary to establish clear standards for determining whether or not they meet their five- and 10-year commitments, . . .").

²⁷ 47 CFR § 54.317(f); see also *Alaska Plan Order*, 31 FCC Rcd at 10160, para. 67.

²⁸ ATA Comments at 2.

the BDC.²⁹ As a consequence, the 289 hours reflects a different filing burden that is not applicable here.³⁰ This point is underscored by the fact that ATA does not assert that any of its members expect the filings to require 289 hours or intimate that this number otherwise accurately reflects its members' burden.³¹ Moreover, unlike the blanket requirement to have all facilities-based providers in the United States file such data, in this case, these data are needed to appropriately administer a program that provides the carriers \$73.9 million annually in support. Additionally, we have halved the burden associated with the pre-BDC filing of FCC Form 477 data by requiring such filings once a year rather than twice a year, in an attempt to balance our need for data sufficient to administer the Alaska Plan with the effects that submitting such data can have on carriers.

10. Finally, we agree with ATA that providers should have at least three months' notice to file coverage data consistent with FCC Form 477.³² The first annual filing, which should represent the mobile participants' coverage as of December 31, 2022, will be due three months after this order is released. Going forward, mobile participants' annual filing reflecting coverage as of the end of the year will be due March 1 of each year, through March 1, 2028. For each filing, mobile participants of the Alaska Plan must file their coverage data pursuant to the requirements in the Appendix, *infra*, via the BDC portal as part of the Alaska Plan special submission.³³

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Certification

11. The Regulatory Flexibility Act of 1980, as amended (RFA),³⁴ requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."³⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁷ 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

²⁹ FCC, Supporting Statement at 5-6 (Mar. 2023) ("On December 9, 2022, the Commission adopted an Order that ended the collection of broadband deployment data through Form 477."), *available for download at* <https://www.reginfo.gov/public/do/DownloadDocument?objectID=129578701>.

³⁰ Compare FCC, Supporting Statement at 4 (Mar. 2023) (showing average respondent burden as an average of 289 hours), *available for download at* <https://www.reginfo.gov/public/do/DownloadDocument?objectID=129578701>, with FCC, Supporting Statement at 5 (Jan. 2020) (showing average respondent burden as 387 hours, which included deployment data filings from all facilities-based providers of average size nationally).

³¹ See ATA Comments at 2.

³² ATA Comments at 4.

³³ See Broadband Data Collection, <https://bdc.fcc.gov/>; see also BDC System User Guide, Section, *available at* <https://us-fcc.app.box.com/v/bdc-filer-user-guide>.

³⁴ 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).

³⁵ 5 U.S.C. § 605(b).

³⁶ 5 U.S.C. § 601(6).

³⁷ 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."

by the Small Business Administration (SBA).³⁸ The Bureau observes that the filing of coverage data consistent with FCC Form 477 applies to eight entities and seven of those qualify as small entities.³⁹ Therefore, we certify that the requirements of the Order will not have a significant economic impact on a substantial number of small entities.

12. The Commission will send a copy of the Order, including a copy of the Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.⁴⁰ In addition, the Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA and will be published in the Federal Register.⁴¹

B. Congressional Review Act

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

V. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4, 201, 254, 301, 303, 308, 309, 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 254, 301, 303, 308, 309, 332 and sections 0.91, 0.131, 0.291, 0.311, 1.3, 54.317, 54.320, and 54.321 of the Commission’s rules, 47 CFR §§ 0.91, 0.131, 0.291, 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 and the *Form 477 Sunset Order*, para. 14, that this Order IS ADOPTED, effective 30 days after publication in the Federal Register.

15. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

16. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order and the Final

³⁸ 15 U.S.C. § 632.

³⁹ See 13 CFR § 121.201; NAICS Code 517312 (specifying that a wireless telecommunications carrier is a small entity if it has 1500 or fewer employees). GCI has over 2,000 employees. See GCI, Executive Team, <https://www.gci.com/about/executiveteam> (observing that GCI has over 2,000 employees) (last visited July 15, 2021).

⁴⁰ See 5 U.S.C. § 801(a)(1)(A).

⁴¹ See 5 U.S.C. § 605(b).

Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief
Wireless Telecommunications Bureau

Giulia McHenry
Chief
Office of Economics and Analytics

APPENDIX
Data Specification

Field	Data Type	Example	Description / Notes
brandname	String	Acme Wireless	Name of the entity or service advertised or offered to consumers.
technology	Integer	400	Code for the technology used for the deployed service. ⁴² - <i>Value must be one of the following codes:</i> 200 – 2G 300 – 3G 400 – 4G LTE 500 – 5G-NR
mindown	Decimal (5,3)	10.0	The minimum advertised downstream bandwidth, or the downstream speed users should expect to receive in the coverage area, in Mbps with a precision of three decimal digits. ⁴³ - <i>Value must be greater than or equal to 0.</i>
minup	Decimal (5,3)	1.0	The minimum advertised upstream bandwidth, or the upstream speed users should expect to receive in the coverage area, in Mbps with a precision of three decimal digits. - <i>Value must be greater than or equal to 0.</i>

⁴² For commitments made using technology codes of FCC Form 477, for technology codes 85 (CDMA) and 86 (GSM), enter them as 200 (2G); for 80 (WCDMA/UMTS/HSPA), 81 (HSPA+), and 82 (EVDO/EVDO Rev A), enter them as 300 (3G); for 83 (LTE), enter as 400 (4G).

⁴³ For voice-only commitments, enter 0 for the minimum speeds. For commitments below 1 Mbps, enter 0 before decimal (e.g., for 256 kbps commitment, enter “0.256”). The data associated with each polygon should indicate the minimum advertised upload and download data speeds associated with that network technology (in Mbps, with a maximum of 3 decimal places), and the coverage area polygon should depict the boundaries where, according to providers, users should expect to receive those *advertised speeds*. If a provider advertises different minimum upload and download speeds in different areas of the country using the same technology (e.g., HSPA+), then the provider should submit separate polygons showing the coverage area for each speed. A variation in technology or speed would require the submission of a separate polygon. If a provider does not advertise the minimum upload and/or download data speeds, the provider must indicate the minimum upload/download data speeds that users should expect to receive within the polygon depicting the geographic coverage area of the deployed technology. See Instructions For Filings Through June 30, 2019 at 23-24, <https://us-fcc.app.box.com/v/Form477InstThruJune19>.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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DA 23-701

Released: August 15, 2023

WTB AND PSHSB EXTEND FILING AND REGULATORY DEADLINES IN AREAS AFFECTED BY HAWAII WILDFIRES

On August 8, 2023, wildfires began to spread in the State of Hawaii causing significant damage.¹ In recognition of these effects and those to come, President Biden issued a disaster declaration for the State of Hawaii.² Pursuant to our authority to waive rules for good cause³ and to alleviate any additional burden that may be caused by our filing requirements and regulatory deadlines, we hereby extend certain deadlines occurring from August 10, 2023, to September 10, 2023, for affected licensees and applicants in the affected areas.

For the purposes of the relief we grant today, we define “affected areas” as the State of Hawaii. In this context, “affected” licensees and applicants include those licensees and applicants that operate facilities, or, in a significant manner essential to the business or public safety operation, rely on personnel, records, or financial institutions located in the affected areas to provide services or to conduct substantial business activities with the Commission.

(1) For affected licensees and applicants, we extend until September 12, 2023, any deadlines currently set within the period from August 10, 2023, to September 10, 2023, inclusive, with respect to Wireless Radio Service⁴ applications, notifications, and reports pursuant to Parts 1 (Subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding Subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission’s rules, including, but not limited to, filings regarding certain minor⁵ license modifications, license renewals, and notifications of construction. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission’s rules because of the Hawaii

¹ Press Release, FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Hawaii (Aug. 10, 2023), <https://www.fema.gov/press-release/20230810/president-joseph-r-biden-jr-approves-major-disaster-declaration-hawaii>.

² Press Release, The White House, President Joseph R. Biden, Jr. Approves Hawaii Disaster Declaration (Aug. 10, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/10/president-joseph-r-biden-jr-approves-hawaii-disaster-declaration-3/>.

³ 47 CFR § 1.3. In light of the significant damage caused by these wildfires and the associated impact on affected licensees and applicants, we find that it would be unduly burdensome to require affected licensees and applicants to continue to meet the filing requirements and regulatory deadlines extended herein, and that good cause exists to grant this extension.

⁴ *Wireless Radio Services*. All radio services authorized in Parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of the Commission’s rules, whether commercial, private, or public safety in nature.

⁵ See 47 CFR § 1.947(b). We waive the requirement to notify the Commission within 30 days of making a minor modification.

wildfires.⁶ Pursuant to this Public Notice, licensees and applicants will not need to file individual waiver or extension requests, or to pay individual waiver fees.⁷

(2) For affected licensees and applicants, we extend until September 12, 2023, all construction deadlines and other regulatory deadlines currently set within the period from August 10, 2023, to September 10, 2023, inclusive, applicable to Wireless Radio Services pursuant to Parts 1 (Subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding Subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission's rules. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of the wildfires.⁸ Pursuant to this Public Notice, licensees and applicants will not need to file individual waiver or extension requests, or to pay individual waiver fees.

Special Temporary Authority and Waiver Requests. We also waive Section 1.931(a) of the Commission's rules through September 10, 2023, to allow the filing of STA requests for Wireless Radio Services in manners other than electronically on FCC Form 601, *e.g.*, by requesting STAs by telephone call to Commission staff.⁹ Further, because the President has issued an emergency declaration for the affected region, all STA filings by affected licensees and applicants related to the Hawaii wildfires will be considered "emergency filings" pursuant to Section 1.915(b) of the Commission's rules¹⁰ and will be processed as expeditiously as possible. Affected licensees and applicants must include a certification that the STA or waiver request is in response to the Hawaii wildfires. To file STA and waiver requests via email, or to request an STA orally, licensees and applicants may contact the following personnel:

- For Wireless Telecommunications Bureau Licensees and Applicants:
 - Parts 22, 24, 27 (excluding 600 MHz Service, Advanced Wireless Service, Broadband Radio Service and Educational Broadband Service), 80, 87, 90 (excluding Public Safety), 95, and 97: Josh Smith, (717) 338-2502, Joshua.Smith@fcc.gov.
 - Parts 27 (600 MHz Service, Advanced Wireless Service, Broadband Radio Service and Educational Broadband Service); Part 30; Part 74 (excluding Subparts G and L); and Part 101 (excluding Public Safety): Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov.
 - For more information and instructions for filing emergency STA and waiver requests with the Wireless Telecommunications Bureau, please consult the WTB Special Temporary Authority and Waiver Request Filing Guide, available at

⁶ To allow the Wireless Telecommunications Bureau (WTB) and Public Safety and Homeland Security Bureau (PSHSB) to process filings submitted through the Universal Licensing System (ULS) as expeditiously as possible, an "Attachment Type" has been created in ULS called "Wildfire Relief." This Attachment Type must be used to upload and attach to a filing a certification that states "under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of the wildfires." To provide the required certification, licensees and applicants should upload a file with the certification, select Attachment Type "Wildfire Relief," and enter "Wildfire Relief Certification" in the File Description field on the Attachment Screen. Following this process will allow you to submit a filing without paying waiver fees. Normal application fees still apply.

⁷ The FCC does not assess filing fees for Public Safety applicants and licensees.

⁸ See *supra* note 7 for instructions to file this certification.

⁹ 47 CFR § 1.931(a).

¹⁰ *Id.* § 1.915(b).

<https://www.fcc.gov/research-reports/guides/wtb-special-temporary-authority-and-waiver-request-filing-guide>.

- For Public Safety and Homeland Security Bureau Licensees and Applicants:
 - Parts 90 & 101 (Public Safety): Tracy Simmons, (717) 338-2657, Tracy.Simmons@fcc.gov. In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STAs can call the FCC's Operation Center, which is open 24 hours a day, 7 days a week, at (202) 418-1122 or by email at FCCOPS@fcc.gov.

Operation During Emergencies. We remind licensees that Sections 22.307, 90.407, and 101.205 of the Commission's rules address operation during periods of emergency for licensees authorized under these rule parts.¹¹ These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

We also remind applicants for Antenna Structure Registration (ASR) that facilities meeting the criteria for the replacement tower exception or temporary tower exception under the Commission's National Environmental Policy Act rules do not have to complete the environmental notification process prior to completing their ASR applications.¹² For facilities not subject to an exception, the Commission may waive or postpone the environmental notification process at the request of the applicant and upon an appropriate showing of an emergency situation.¹³ Requests to waive or postpone the environmental notification process may be submitted with ASR applications by completing the waiver question in the ASR system to indicate that the applicant is requesting a waiver of the Commission's rules for environmental notice, and attaching a request for waiver that includes a showing of the emergency basis for the request, e.g., that the proposed tower will be used to restore service in an area affected by the Hawaii wildfires.

Priority Review by WTB and PSHSB. Finally, we remind affected licensees and applicants that they can also file waiver requests for relief not covered by the Public Notice. To facilitate the rapid restoration of communications infrastructure and services, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau will give priority to the review of waiver filings by affected licensees and applicants related to the Hawaii wildfires.

By the Chief, Wireless Telecommunications Bureau and the Chief, Public Safety and Homeland Security Bureau.

-FCC-

¹¹ *Id.* §§ 22.307, 90.407, 101.205.

¹² *Id.* § 17.4(c)(1)(iv), (c)(1)(vii).

¹³ See *National Environmental Policy Act Compliance for Proposed Tower Registrations, Effects of Communications Towers on Migratory Birds*, WT Dockets Nos. 08-61, 03-187, Order on Remand, 26 FCC Rcd 16700, 16717, para. 43 n.117 (2011).

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

In the Matter of)	
)	
Searchlight II HMT, L.P.	)	MB Docket No. 23-2
)	
Petition for Declaratory Ruling Under Section)	
310(b)(4) of the Communications Act of 1934, as)	
Amended)	

DECLARATORY RULING

Adopted: August 16, 2023

Released: August 16, 2023

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Declaratory Ruling (Declaratory Ruling), the Media Bureau (Bureau) addresses an Amended & Restated Petition for Declaratory Ruling (Amended & Restated Petition),¹ as amended, filed by Searchlight II HMT, L.P. (Searchlight II HMT or Petitioner).² The Amended & Restated Petition asks the Commission to exercise its discretion to permit foreign ownership of Searchlight II HMT's controlling U.S. parent, Hemisphere Media Group, Inc. (HMTV), to exceed the 25% benchmarks in section 310(b)(4) of the Communications Act of 1934, as amended (the Act),³ and section 1.5000 *et seq.* of the Commission's rules.⁴ HMTV has an existing declaratory ruling in which the Commission previously authorized foreign ownership up to 100% of HMTV's equity and voting interests in the

¹ See 47 CFR § 1.5000 *et seq.*

² Petitioner first filed a Petition for Declaratory Ruling of Searchlight II HMT, L.P., MB Docket 23-2 (filed Sept. 23, 2022) (Petition). The Petition was superseded by the Petitioner's October 13, 2022 Amended & Restated Petition for Declaratory Ruling (Amended & Restated Petition), which was amended on November 10, 2022 (Second Amended & Restated Petition), again on June 1, 2023 (Third Amendment), and supplemented on July 28, 2023 (July 28, 2023 Supplement). The July 28, 2023 Supplement was later superseded by the requests and organization structure chart contained in Petitioner's August 3, 2023 Supplement (August 3, 2023 Supplement). The Media Bureau herein acts on the Amended & Restated Petition, as amended and supplemented, as it supersedes the Petition.

³ Section 310(b)(4) of the Act states:

No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

47 U.S.C. § 310(b)(4).

⁴ Amended & Restated Petition at 2; Second Amended & Restated Petition at 2. See 47 U.S.C. § 310(b)(4); 47 CFR § 1.5000 *et seq.*; *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, GN Docket No. 15-236, Report and Order, 31 FCC Rcd 11272 (2016) (2016 Foreign Ownership Order), *pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

aggregate.⁵ As discussed below, the Amended & Restated Petition seeks authority for up to an aggregate 100% indirect foreign ownership of HMTV.⁶ In addition, the Petitioner requests specific approval⁷ for certain foreign individuals and entities that will hold, indirectly, more than five percent of the equity and/or voting interests of HMTV, and advance approval⁸ for these individuals and entities to increase their interests in HMTV to certain percentages at some future time. No comments or oppositions were filed on the Amended & Restated Petition, and no parties asked for conditions to be placed on the requested ruling.⁹ As discussed below, and consistent with the input we received from the National Telecommunications and Information Administration (NTIA) on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), we find that it will serve the public interest to grant the Amended & Restated Petition, subject to the routine conditions specified below.¹⁰

II. BACKGROUND

2. *Pending Transactions.* The Commission's approval is being sought in connection with two applications pending with the Commission to (1) transfer control of broadcast television licenses held by Televiscentro of Puerto Rico, LLC (Televiscentro), an indirect, wholly owned subsidiary of HMTV, from Gato Investments LP (Gato) to Searchlight II HMT¹¹ (HMTV Transaction); and (2) transfer control of WLII/WSUR Licensee Partnership, G.P. (WLII/WSUR), a subsidiary of Univision of Puerto Rico, Inc., and an indirect, wholly owned subsidiary of TelevisaUnivision, Inc., from Univision Puerto Rico Station Operating Company to InterMedia Español, Inc. (TU Transaction).¹² Based on the record, at the end of these transactions, the structure of Petitioner will be as described below.

3. *Corporate Structure.* The Amended & Restated Petition lays out the proposed post-closing ownership structure of HMTV, Televiscentro, and WLII/WSUR in light of the HMTV and TU

⁵ See *Hemisphere Media Group, Inc. Petition for Declaratory Ruling*, Declaratory Ruling and Memorandum Opinion and Order, 34 FCC Rcd 10504 (2019) (*Hemisphere Declaratory Ruling*). The Amended & Restated Petition made clear that Searchlight II HMT was seeking a new ruling under section 310(b)(4) of the Act and section 1.5000 *et seq.* of the Commission's rules, but to the extent necessary, requested the Commission to reissue its approval for foreign entities and/or individuals, in the aggregate, to hold up to 100% of HMTV's equity and voting interests. Amended & Restated Petition at 2 and n.4. See 47 CFR § 1.5000 *et seq.* The *Hemisphere Declaratory Ruling* granted specific approval for certain foreign investors, but the interests held by those investors were acquired by Gato Investments LP (Gato) in connection with a take-private transaction that was consummated on September 13, 2022. Upon the closing of that transaction, 100% of the outstanding common stock of HMTV became indirectly owned by Gato, and HMTV became no longer publicly traded. See LMS File No. 0000191021. See also Amended & Restated Petition at 2-3 and nn. 4 and 6.

⁶ Amended & Restated Petition at n.4; Second Amended & Restated Petition at n.4.

⁷ August 3, 2023 Supplement.

⁸ August 3, 2023 Supplement.

⁹ The Amended & Restated Petition was placed on public notice on January 4, 2023, with comments due by February 3, 2023, and replies due by February 21, 2023. *Media Bureau Announces Filing of Petition for Declaratory Ruling by Searchlight II HMT, L.P.*, MB Docket No. 23-2, Public Notice (MB 2023) (2023 Public Notice). On June 20, 2023, the Commission received a letter from the National Telecommunications and Information Administration (NTIA) informing the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) has no objection to the Commission granting the Amended & Restated Petition. See Letter from Stephanie Weiner, Chief Counsel, NTIA, to Mr. Ethan Lucarelli, Chief, Office of International Affairs, FCC, MB Docket No. 23-2 (June 20, 2023) (*NTIA Letter*).

¹⁰ See *infra* at paras. 10-12 and 16.

¹¹ Amended & Restated Petition at 1; Second Amended & Restated Petition at 1.

¹² *Id.*; Third Amendment.

Transactions.¹³ Upon the closing of the wind-up of Gato, Searchlight II HMT will hold 100% of the membership interests in HWK Parent, LLC, and will indirectly hold 100% of the equity and voting interests in HMTV.¹⁴ At the same time as the closing of the HMTV Transaction, Searchlight Capital II EXU AIV, L.P., Searchlight Capital II PV, L.P., and SC II HMT, L.P., which each hold warrants in Searchlight II HMT, will exercise their respective warrants and will be issued new limited partnership interests in Searchlight II HMT.¹⁵ As a result, each of these investment fund vehicles will hold indirect equity interests in HMTV.¹⁶ Conversion of the warrants to equity interests will cause attribution of foreign ownership interests indirectly in HMTV through certain Searchlight investment fund entities organized in the Cayman Islands and that are ultimately controlled by foreign individuals, as well as through the foreign limited partners in each of the investment fund entities.¹⁷ In addition, the proposed TU Transaction will ultimately result in the transfer of control of the WLII/WSUR broadcast radio stations to HMTV.¹⁸ HMTV is the parent of InterMedia Español, Inc. (InterMedia Español), and HMTV and InterMedia Español will be indirectly ultimately controlled by Searchlight II HMT.¹⁹

4. Pursuant to section 1.5001(h) of the Commission's rules, the Petitioner requests approval of up to an aggregate 100% indirect foreign ownership of the controlling U.S. parent, HMTV.²⁰ Petitioner requests specific approval²¹ for certain foreign individuals and entities that will hold, indirectly, more than five percent of the equity and/or voting interests of HMTV and advance approval²² for each individual and entity to increase their interests in HMTV to certain percentages at some future time.²³ Specifically, Petitioner makes the following requests for advance approval: Erol Uzumeri (Canada) to hold up to 49.99% equity and 49.99% voting; Oliver Haarmann (Germany) to hold up to 49.99% equity and 49.99% voting; Searchlight Capital II PV, L.P. (Cayman Islands) to hold up to 49.99% equity and 49.99% voting; SC II HMT Holdings, Ltd. (Cayman Islands) to hold up to 49.99% equity and 49.99% voting; Searchlight Capital II UNR AIV, L.P. (Cayman Islands) to hold up to 49.99% equity and 49.99% voting; and Searchlight Capital Partners II GP, L.P. (Cayman Islands) to hold up to 49.99% and 100% voting.²⁴

5. According to the Second Amended & Restated Petition, Searchlight Capital Partners, L.P. (Searchlight) provides management and other advisory services to Searchlight-affiliated investment funds in return for a fee.²⁵ Nonetheless, the Second Amended & Restated Petition asserts that Searchlight has no economic ownership interest in the investment funds and has no decision-making authority with respect to their operations.²⁶ The Second Amended & Restated Petition asserts that all management and

¹³ Amended & Restated Petition at 6-8, Exhibit A; Second Amended & Restated Petition at 6-8; Exhibit.

¹⁴ Amended & Restated Petition at 6; Second Amended & Restated Petition at 6.

¹⁵ Amended & Restated Petition at 6; Second Amended & Restated Petition at 6-7.

¹⁶ Amended & Restated Petition at 6; Second Amended & Restated Petition at 7.

¹⁷ Amended & Restated Petition at 6-7; Second Amended & Restated Petition at 7.

¹⁸ Third Amendment at Revised Description of Proposed Transaction (Section I.B. – *Acquisition of Radio Stations*).

¹⁹ *Id.*

²⁰ Amended & Restated Petition n.4; Second Amended & Restated Petition at n.4.

²¹ August 3, 2023 Supplement.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Second Amended & Restated Petition at n.10.

²⁶ *Id.*

decision-making authority with respect to the funds rest with the general partners of the funds.²⁷ Petitioner states that Searchlight is controlled by its general partner, Searchlight Capital Partners, LLC (Delaware), which is controlled by its three members, Messrs. Eric Zinterhofer (United States), Erol Uzumeri (Canada), and Oliver Haarmann (Germany).²⁸ These same three individuals are also the only limited partners of Searchlight.²⁹ All other funds that Searchlight manages are also controlled by Messrs. Zinterhofer, Uzumeri, and Haarmann.³⁰ Petitioner asserts that aside from Mr. Zinterhofer, neither Searchlight, nor any of its employees have any active or direct role at HMTV or its subsidiaries.³¹

6. *Public Interest Showing.* Searchlight II HMT contends that granting the Amended & Restated Petition is in the public interest because it would, *inter alia*, further the Commission's goals of encouraging foreign investment in the broadcast industry and promoting regulatory transparency.³² Searchlight II HMT also asserts that approval of the Amended & Restated Petition would serve the public interest by "allowing Searchlight to expand beyond its current advisory role in HMTV and bring to bear its full managerial expertise and extensive industry relationships in implementing a strategic plan for HMTV's continued expansion, including the acquisition of the Puerto Rico radio stations."³³ Furthermore, Petitioner states that a grant would not pose any national security, trade policy, or law enforcement concerns, noting that "Searchlight and its management team—including Searchlight's foreign ownership through Cayman Island fund structures and its non-U.S. principals—are well known to the Commission and have already been vetted and approved by the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the 'Committee') in other connection with broadcast licensees and telecommunications providers."³⁴

7. *National Security, Law Enforcement, Foreign Policy and Trade Policy Review.* Pursuant to Commission practice, we referred the Amended & Restated Petition to the relevant Executive Branch agencies for their review of any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of Searchlight II HMT.³⁵ On January 6, 2023, the Committee notified the Commission that it was reviewing the Amended & Restated Petition for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Amended & Restated Petition.³⁶ Subsequently, on March 23, 2023, the Committee notified the Commission that Searchlight II HMT provided complete responses to the Committee's initial questions and that it was

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Amended & Restated Petition at 16-18; *see also* Second Amended & Restated Petition at 16-18; *see also* *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11272, 11273, 11280, paras. 2 and 12 (2016) (*2016 Foreign Ownership Order*).

³³ Amended & Restated Petition at 17.

³⁴ *Id.* at 18.

³⁵ 2023 Public Notice at 3, n.26 (*citing* *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927 (2020) (*2020 Process Reform Order*) (setting rules and procedures for referring applications for Executive Branch review consistent with Executive Order No. 13913)).

³⁶ Letter from Makenzie Briglia Skopowski, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-2 (filed Jan. 6, 2023).

conducting its review to assess whether granting the Amended & Restated Petition would pose a risk to the national security or law enforcement interests of the United States.³⁷ On June 20, 2023, the NTIA submitted a letter in which the Committee advised the Commission that it has no objection to grant of this Amended & Restated Petition.³⁸

8. *Standard of Review.* We review the Amended & Restated Petition under section 310(b)(4) of the Act, which states that “[n]o broadcast . . . license shall be granted to or held by . . . any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.”³⁹ This section of the Act grants the Commission discretion to allow foreign investment in a licensee’s controlling U.S.-organized parent above 25% unless the Commission finds that the public interest would be served by refusing to permit such foreign investment.⁴⁰ In evaluating petitions relating to foreign ownership, the Commission affords appropriate deference to the expertise of the Executive Branch agencies on issues related to national security, law enforcement, foreign policy, and trade policy.⁴¹

9. In the *2016 Foreign Ownership Order*, the Commission modified the broadcast licensee foreign ownership review process by extending the streamlined rules and procedures developed for review of foreign ownership of common carrier and certain aeronautical licensees under section 310(b)(4) to the broadcast context, with certain limited exceptions.⁴² The *2016 Foreign Ownership Order* expressly provides for processing of petitions requesting approval for up to and including 100% aggregate foreign voting and/or equity investment by unnamed and future foreign investors in the controlling U.S. parent of a broadcast licensee.⁴³ To exercise in a meaningful way the discretion conferred by statute, the Commission must receive detailed information from the applicant sufficient for the Commission to make the public interest finding the statute requires.⁴⁴

III. DISCUSSION

10. We find that the public interest is served by permitting foreign ownership of HMTV in excess of the 25% benchmarks in section 310(b)(4) of the Act and grant the Amended & Restated Petition. We also find that it is in the public interest to grant Petitioner’s request for approval of up to an aggregate 100% indirect foreign ownership of HMTV. In addition, we grant the requests for specific and advance approval under the Commission’s rules.

11. *Section 310(b)(4) Determination and Public Interest Analysis.* Pursuant to section 310(b)(4) of the Act, as well as sections 1.5001 through 1.5004 of the Commission’s rules, we find that the public interest is served by permitting foreign ownership of HMTV in excess of the 25% benchmarks in section 310(b)(4) of the Act and grant the Amended & Restated Petition. We also find that it is in the

³⁷ Letter from Makenzie Briglia Skopowski, Attorney Advisor, National Security Division, DOJ, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-2 (filed Mar. 23, 2023).

³⁸ *NTIA Letter*.

³⁹ 47 U.S.C. § 310(b)(4).

⁴⁰ *See id.*; *2016 Foreign Ownership Order*, 31 FCC Rcd at 11276, para. 5.

⁴¹ *2016 Foreign Ownership Order*, 31 FCC Rcd at 11277, para. 6.

⁴² *See generally id.*

⁴³ *Id.* at 11282, para. 15.

⁴⁴ *See, e.g., id.* at 11282, 11283-84, paras. 15, 20 (noting that the requirements adopted in the streamlined foreign ownership rules ensure that the Commission has the information necessary to evaluate and understand a licensee’s ownership structure and to fulfill its obligations under section 310(b) of the Act).

public interest to grant Petitioner's request for approval of up to an aggregate 100% indirect foreign ownership of HMTV. We further find that it is in the public interest to grant specific and advance approval for the percentages set out to the individuals and entities specified in Section IV below. Specifically, we conclude that grant of the Amended & Restated Petition is in the public interest because it, *inter alia*, provides the company with greater access to foreign capital and thereby contributes to the strengthening of the broadcast industry.⁴⁵

12. *National Security and Law Enforcement Review.* As stated, as part of its public interest analysis, the Commission coordinates petitions for section 310(b) foreign ownership rulings with the relevant Executive Branch agencies for national security, law enforcement, foreign policy and trade policy issues.⁴⁶ The Executive Branch agencies with expertise on issues pertaining to national security, law enforcement, foreign policy, and trade policy concerns, have reviewed the Amended & Restated Petition and did not file any objection to issuance of a declaratory ruling or request that we impose conditions on the grant.⁴⁷ We also note that no pleadings have been filed opposing the Amended & Restated Petition.

IV. DECLARATORY RULING

13. Under these circumstances, pursuant to section 310(b) of the Act and sections 1.5001 through 1.5004 of the Commission's rules, we find that the public interest would be served by permitting foreign ownership of Searchlight II HMT's controlling U.S. parent, HMTV, to exceed the 25% benchmarks in section 310(b)(4) of the Act, as amended. We also find that it is in the public interest to permit up to an aggregate 100% indirect foreign ownership of HMTV.

14. *Specific Approval.* We also find no grounds to object to the requests for specific approvals. Therefore, pursuant to section 1.5001(i) of the Commission's rules,⁴⁸ this Declaratory Ruling grants specific approval for the following individuals and entities to hold, indirectly, more than five percent of the equity and/or voting interests of HMTV:

- Erol Uzumeri (<1% Equity and 33.3% Voting) (Canada);
- Oliver Haarmann (<1% Equity and 33.3% Voting) (Germany);
- Searchlight Capital II PV, L.P. (49.23% Equity and 49.23% Voting) (Cayman Islands);
- SC II HMT Holdings, Ltd. (5.49% Equity and 5.49% Voting) (Cayman Islands);
- Searchlight Capital II UNR AIV, L.P. (5.49% Equity and 5.49% Voting) (Cayman Islands); and
- Searchlight Capital Partners II GP, L.P. (<2% Equity and 61.70% Voting) (Cayman Islands).

15. *Advance Approval.* Pursuant to section 1.5001(k) of the Commission's rules,⁴⁹ this Declaratory Ruling also grants advance approval for each of the following individuals or entities to increase their interests in HMTV to the percentages noted below at some future time:

⁴⁵ See Amended & Restated Petition at 16-18; Second Amended & Restated Petition at 16-18 (describing public interest benefits related to this Declaratory Ruling).

⁴⁶ See 2016 Foreign Ownership Order, 31 FCC Rcd at 11282, para. 15. See also 2020 Process Reform Order at 10934-36, paras. 17, 24 (2020).

⁴⁷ See NTIA Letter.

⁴⁸ 47 CFR § 1.5001(i).

⁴⁹ 47 CFR § 1.5001(k).

- Erol Uzumeri (Up to 49.99% Equity and 49.99% Voting) (Canada);
- Oliver Haarmann (Up to 49.99% Equity and 49.99% Voting) (Germany);
- Searchlight Capital II PV, L.P. (Up to 49.99% Equity and 49.99% Voting) (Cayman Islands);
- SC II HMT Holdings, Ltd. (Up to 49.99% Equity and 49.99% Voting) (Cayman Islands);
- Searchlight Capital II UNR AIV, L.P. (Up to 49.99% Equity and 49.99% Voting) (Cayman Islands); and
- Searchlight Capital Partners II GP, L.P. (Up to 49.99% Equity and 100% Voting) (Cayman Islands).

16. *Additional Terms and Conditions.* This Declaratory Ruling is subject to the terms and conditions set forth in section 1.5004 of the Commission's rules, including the requirement to obtain Commission approval before foreign ownership of HMTV exceeds the terms and conditions of this ruling.⁵⁰ This includes the requirement that HMTV obtain Commission approval for any new or additional foreign individual, entity, or group of such individuals or entities to hold, directly and/or indirectly, more than 5% (or more than 10% for certain investors) of the equity and/or voting interests, or a controlling interest, in the company.⁵¹ If, at any time, HMTV knows, or has reason to know, that it is no longer in compliance with this Declaratory Ruling, section 310(b) of the Act, or the Commission's foreign ownership rules, HMTV shall file a statement with the Commission explaining the circumstances within 30 days of the date that it knew, or had reason to know, that it was no longer in compliance.⁵² HMTV may be subject to enforcement action by the Commission for such non-compliance, including an order requiring divestiture of the foreign investment.⁵³

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4), and sections 1.5001 through 1.5004 of the Commission's rules, 47 C.F.R. §§ 1.5001-04, and pursuant to authority delegated to the Media Bureau in sections 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, the Amended & Restated Petition for Declaratory Ruling filed by Searchlight II HMT, L.P., **IS GRANTED** to the extent specified in this Declaratory Ruling and subject to the conditions specified herein.

⁵⁰ See generally 47 CFR § 1.5004. Section 1.5004, *inter alia*, specifies that licensees have an ongoing, proactive obligation to monitor their foreign ownership compliance and to take preemptive action to remain in compliance with the Commission's foreign ownership rules and any declaratory ruling they have received. 47 CFR § 1.5004(a). It sets out the requirements for when a licensee must seek Commission approval prior for any new, not previously approved foreign individuals, entities, or groups acquiring an interest in excess of the specific approval threshold. 47 CFR § 1.5004(a). It sets out a licensee's obligations regarding subsidiaries and affiliates and the insertion of new controlling or non-controlling foreign-organized companies. 47 CFR § 1.5004(b)-(d). It also specifies when a new petition for declaratory ruling must be filed and the obligations for continuing compliance, including how to report inadvertent non-compliance, and how to file a remedial petition for declaratory ruling, as well as the consequences of trying to evade the foreign ownership rules. 47 CFR § 1.5004(e)-(f).

⁵¹ 47 CFR § 1.5004(a)(1).

⁵² See 47 CFR § 1.5004(f)(1). If, for example, a foreign individual or entity should invest in HMTV above the specific approval threshold without Commission approval, HMTV, as licensee, is obligated to follow the steps set out in 47 CFR § 1.5004(f). Subsequent actions taken by or on behalf of HMTV to remedy non-compliance shall not relieve it of the obligation to notify the Commission of the circumstances (including duration) of non-compliance.

⁵³ *Id.*

18. **IT IS FURTHER ORDERED** that this Declaratory Ruling **SHALL BE EFFECTIVE** upon release.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

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

In the Matter of)	
)	
Amendment of Section 73.622(j), Table of TV	)	MB Docket No. 23-279
Allotments, Television Broadcast Stations	)	RM-11956
(Tulare, California))	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 16, 2023

Released: August 16, 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 (Petition) filed May 8, 2023, by One Ministries, Inc. (Petitioner).¹ The Petitioner requests the allotment of reserved noncommercial educational (NCE) channel *3 to Tulare, California as the community's first local television service.²

II. BACKGROUND

2. The Petitioner contends that Tulare is a community deserving of a new television broadcast service. In support, the Petitioner states that Tulare, with a 2020 population of 70,733, was founded in 1872 by the Southern Pacific Railroad and is in the heart of the agricultural San Joaquin Valley, halfway between Los Angeles and San Francisco.³ Tulare is known for its agricultural production and home to the nation's largest single-site dairy complex.⁴ The Petitioner further states that Tulare has a mayor and five council members; police, public works, planning, engineering, and community and economic development departments; a library, school district, and numerous businesses and places of worship.⁵ The Petitioner states its intention to file an application for channel *3, if allotted, and take all necessary steps to obtain a construction permit.⁶

III. DISCUSSION

3. The proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner's proposal would result in a first local service to Tulare under Priority (2) of the Commission's

¹ One Ministries, Inc.'s Petition for Rulemaking (filed May 8, 2023, LMS File No. 0000219131) (Petition).

² NCE television stations are identified in the Table by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR §73.622(a). The Petition mistakenly refers to section 73.622(i) of the Commission's rules (rules), which has been replaced by section 73.622(j) of the rules. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Order, 36 FCC Rcd 15891 (2021) (adopting new Table of TV Allotments to replace Post-Transition Table of DTV Allotments).

³ Petition at 3 and Exh. 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 4.

television allotment priority standard.⁷ The Petitioner demonstrates, and a Bureau staff engineering analysis confirms, that channel *3 can be allotted to Tulare, California, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's rules (rules),⁸ at 36° 17' 14" N and 118° 50' 19" W (allotment point). In addition, the allotment point complies with section 73.625(a)(1) of the rules as the entire community of Tulare is encompassed by the 35 dBμ contour.⁹

4. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹⁰ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Tulare, California	--	*3

IV. PROCEDURAL MATTERS

5. *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.¹¹ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.¹²

6. *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.¹³
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁴

⁷ The Commission determines a preferential arrangement of television allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; (2) *provide each community with at least one television broadcast station*; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952) (emphasis added).

⁸ 47 CFR § 73.623(d).

⁹ See 47 CFR § 73.625(a)(1).

¹⁰ 47 CFR § 73.622(j).

¹¹ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, Report and Order, MB Docket No. 07-729, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

¹² 47 CFR § 1.420(j).

¹³ 47 CFR § 1.420(d).

¹⁴ 47 CFR § 1.420(g)(2).

7. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,¹⁵ 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).¹⁶

- 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-19.¹⁷
 - 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.

8. *Service.* Pursuant to section 1.420 of the rules,¹⁸ 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.¹⁹ Additionally, a copy of such comments should be served on the Petitioner, as follows:

James L. Oyster, Esq.
108 Oyster Lane
Castleton, Virginia 22716

9. *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.²⁰ For purposes of this

¹⁵ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹⁸ 47 CFR § 1.420.

¹⁹ See 47 CFR § 1.420(a), (b) and (c).

²⁰ 47 CFR §§ 1.1200 *et seq.*

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.²¹ 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.²² 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.²³ 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.

10. *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.

11. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁴ do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the rules.²⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁶ 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 2002.²⁷

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

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

V. ORDERING CLAUSES

14. **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

²¹ 47 CFR § 1.1208.

²² 47 CFR § 1.1204(a)(10).

²³ 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).

²⁴ 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).

²⁵ 47 CFR § 73.622(j).

²⁶ See 44 U.S.C. §§ 3501-3520.

²⁷ See 44 U.S.C. § 3506(c)(4).

the rules, 47 CFR § 73.622(j), as set forth in this *NPRM*, and this *NPRM* **IS ADOPTED**.

15. **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. 23-279 and RM-11956 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

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

In the Matter of)
)
Wireless Telecommunications Bureau Seeks) WT Docket No. 21-111
Comment on the National Football League's)
Second Request to Extend Waiver of Section)
96.39(c)(2) of the Commission's Rules)
)

ORDER

Adopted: August 16, 2023

Released: August 16, 2023

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (Bureau) conditionally grants the National Football League's request¹ (NFL or Petitioner) for a second extension of the conditional waiver granted by the Bureau in an Order issued on July 9, 2021.² In the *NFL Waiver Order*, the Bureau granted Petitioner a conditional waiver of section 96.39(c)(2) of the Commission's rules,³ governing the Citizens Broadband Radio Service.⁴ In September 2022, the Bureau granted the NFL an extension of this relief for one NFL season.⁵ On May 31, 2023, the NFL filed a second extension request, this time seeking a two-year extension, subject to the same conditions that were included in the *Waiver Extension Order*.⁶ For the reasons set forth below, we grant the Second Waiver Extension Request subject to the limitations and conditions described herein.

II. BACKGROUND

2. On July 9, 2021, the Bureau granted the NFL a conditional waiver of section 96.39(c)(2) so that it could operate its SAS-authorized coach-to-coach communications system during football games without an Internet connection to an SAS, in the narrow circumstance in which Internet service becomes unavailable during or immediately prior to a scheduled game.⁷ The waiver expired on February 13, 2022, upon the conclusion of the 2021-22 NFL season,⁸ and the NFL petitioned for a three-year extension of the

¹ See Request of the National Football League for Extension of CBRS Waiver, WT Docket No. 21-111 (filed May 31, 2023), <https://www.fcc.gov/ecfs/document/1060138518494/1> (*Second Waiver Extension Request*).

² *The National Football League Request for Waiver of Section 96.39(c) of the Commission's Rules*, WT Docket No. 21-111, Order, 36 FCC Rcd 10489 (WTB 2021) (*NFL Waiver Order*).

³ 47 CFR § 96.39(c)(2).

⁴ *NFL Waiver Order*, 36 FCC Rcd at 10491-92, para. 7.

⁵ *The National Football League Request to Extend Waiver of Section 96.39(c) of the Commission's Rules*, WT Docket No. 21-111, Order, 2022 WL 4118669 (WTB 2022) (*Waiver Extension Order*).

⁶ *Second Waiver Extension Request* at 1.

⁷ See generally *NFL Waiver Order*.

⁸ *NFL Waiver Order*, 36 FCC Rcd at 10491, para. 6.

conditional waiver on May 5, 2022.⁹ The Bureau granted the requested extension on September 7, 2022, subject to the same conditions as the *NFL Waiver Order*, but again for a term of one season, expiring February 12, 2023.¹⁰ In the instant case, the NFL has petitioned for a two-year extension of the waiver.¹¹

3. The NFL claims that the same conditions necessitating the *NFL Waiver Order* and *Waiver Extension Order* remain present today, and therefore it requires a second extension of the conditional waiver relief granted therein.¹² The NFL also claims that it is still exploring a permanent technological solution alongside its vendor, and that more time is needed for it to complete its due diligence.¹³

4. The Bureau sought comment on the Second Waiver Extension Request on July 5, 2023.¹⁴ It received one comment from NCTA – The Internet & Television Association (NCTA) and one reply comment from the NFL. NCTA did not oppose the Second Waiver Extension Request, but questioned whether another extension was necessary given that the NFL has yet to make use of its waiver relief.¹⁵ NCTA also argued that, if granted, any extension should only be valid through the 2024 season because the Citizens Broadband Radio Service landscape could be different in 2026.¹⁶ NCTA also asserted that any further extensions should require the NFL to comply with all of the conditions included in the *NFL Waiver Order* and should also require the NFL to: (1) file reports describing the specific measures it has taken at each site to avoid interruptions in SAS connectivity and detail any remaining impediments to achieving compliance with the Commission’s rules, and (2) file a report detailing with specificity the steps it has taken thus far to bring its coach-to-coach system into compliance with the Citizens Broadband Radio Service rules and how it will do so before the 2024 Super Bowl.¹⁷ The NFL submitted a reply comment in which it disagreed with NCTA’s view that the waiver extension should be limited to one year, claiming that a one-year waiver period would tax Commission resources, and that a two-year waiver would allow it to manage short-term communications needs while actively testing other technologies.¹⁸ Finally, the NFL submitted an engineering analysis that it alleges demonstrates that the attenuation of RF signal propagation from NFL stadium structures precludes detection of Citizens Broadband Radio Service signals, including in areas immediately outside the stadiums or in the adjacent parking lots.¹⁹

⁹ Request of the National Football League for Extension of Waiver Grant, WT Docket No. 21-111 (filed May 5, 2022), <https://www.fcc.gov/ecfs/document/10505300303761/1> (*NFL Waiver Extension Request*).

¹⁰ See *Waiver Extension Order*, 36 FCC Rcd at 10491, para. 6.

¹¹ See *Second Waiver Extension Request*.

¹² *Second Waiver Extension Request* at 2. Specifically, the NFL asserts that there still remains the possibility that a complete regional Internet outage during or immediately prior to a football game could sever the connection between its coach-to-coach communications system and its SAS. *Second Waiver Extension Request* at 2. The NFL claims that the obligation to discontinue operation within 60 seconds of a loss of Internet connectivity would necessitate the discontinuance of operation during a football game or immediately prior. *Second Waiver Extension Request* at 7.

¹³ *Second Waiver Extension Request* at 5.

¹⁴ *Wireless Telecommunications Bureau Seeks Comment on the National Football League’s Second Request to Extend Waiver of Section 96.39(c)(2) of the Commission’s Rules*, WT Docket No. 21-111, Public Notice, 2023 WL 4404451 (WTB 2023).

¹⁵ NCTA – The Internet & Television Association Comments at 1 (NCTA Comments).

¹⁶ NCTA Comments at 6-7 (citing *Second Waiver Extension Request* at 6).

¹⁷ NCTA Comments at 2.

¹⁸ National Football League Reply Comments at 5 (NFL Reply).

¹⁹ NFL Reply, Attach. A.

III. DISCUSSION

5. Section 1.925(b)(3) of the Commission's rules states that the Commission may grant waiver when either (i) "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest," or (ii) "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."²⁰ Here, we find that Petitioner's showing, when paired with the conditions imposed below, meets the requirements of the first waiver standard of section 1.925. We conclude that the record demonstrates that strict application of section 96.39(c)(2) to the instant facts would not serve the rule's underlying purpose or the public interest. Accordingly, we grant Petitioner a conditional waiver of section 96.39(c)(2) of the Commission's rules for the 2023-24 NFL season.

6. Section 96.39(c)(2) specifies that a Citizens Broadband Radio Service Device (CBSD) "must cease transmission, move to another frequency range, or change its power level within 60 seconds as instructed by an SAS."²¹ The purpose of the rule is to enable the SAS to perform effective propagation and interference mitigation analyses on CBSDs, thereby ensuring the effective coexistence of all tiers of Citizens Broadband Radio Service users.²² In both the *NFL Waiver Order* and the *Waiver Extension Order*, we concluded that the strict application of section 96.39(c)(2) to the facts presented by the NFL would serve neither the rule's underlying purpose nor the public interest.²³ However, in the *Waiver Extension Order*, we found that the 2022-23 season should be sufficient time for Petitioner to determine if a tertiary level of ISP redundancy was necessary for its long-term plans.²⁴ We also cautioned that the burden would rest on Petitioner to provide substantial additional support for a further extension of the relief provided therein.²⁵

7. Here, Petitioner reiterates many of its claims about its coach-to-coach communications system,²⁶ but also states that it has spent the past several months conducting due diligence into implementing a technological solution beyond its current ISP redundancy in each NFL stadium.²⁷ Petitioner states that it is still in the process of determining whether this solution would be sufficient to

²⁰ 47 CFR § 1.925(b)(3).

²¹ 47 CFR § 96.39(c)(2).

²² See *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550- 3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Red 3959, 4032, para. 233 (2015).

²³ In the *NFL Waiver Order*, we found that the operational parameters and technical conditions associated with the NFL's system, paired with the conditions we imposed, would minimize the likelihood that Petitioner's operations cause harmful interference to other Citizens Broadband Radio Service users. *NFL Waiver Order*, 36 FCC Rcd at 10492, para. 8. In the *NFL Extension Order*, we found that Petitioner had demonstrated that its operational parameters, in concert with conditions imposed by the *NFL Waiver Order*, had sufficiently ensured compliance with all applicable service rules, minimized the potential for harmful interference, and precluded the need to operate pursuant to the waiver. *Waiver Extension Order* at 4.

²⁴ *Waiver Extension Order* at 6.

²⁵ *Waiver Extension Order* at 6.

²⁶ Petitioner reiterated that its waiver request is extremely limited in temporal and geographic scope. *Second Waiver Extension Request* at 3. Petitioner claimed it is unlikely to have to operate pursuant to the waiver, and submitted an engineering analysis purporting to demonstrate a low probability of interference outside stadiums. *Second Waiver Extension Request* at 5; NFL Reply, Attach. A.

²⁷ *Second Waiver Extension Request* at 5 ("Over the past several months, however, the NFL has worked diligently... with Verizon to install a local version of the CBRS database at each NFL stadium...it is a complex and untested solution that has not been proven in an NFL stadium environment.").

preserve connectivity to an SAS as a backup to a hardwired Internet connection.²⁸ No party challenged any of these claims in the record and, according to annual reports submitted by Petitioner, the NFL has never had to operate pursuant to its waiver authority.²⁹

8. In the absence of any opposition in the record, and given the circumstances discussed herein, we find that Petitioner's showing meets the requirements of the first waiver standard set forth in section 1.925 of the Commission's rules, subject to the conditions set forth below. Specifically, we find that a limited extension of the conditional waiver to allow the NFL to complete due diligence on a rules-compliant technical solution for its coach-to-coach communications system is in the public interest. Accordingly, we grant a conditional waiver of section 96.39(c)(2) of the Commission's rules to allow Petitioner to operate its coach-to-coach communications systems without connectivity to an SAS in the event of a localized Internet outage in an NFL stadium during an NFL football game throughout the 2023-24 NFL season. This conditional waiver applies only to the Citizens Broadband Radio Service system used for coach-to-coach communications during, and up to two hours immediately prior to, an NFL football game, in the event of a complete Internet outage that prevents the CBSDs that comprise this system from contacting an SAS. We will require Petitioner to comply with the same conditions we imposed in the NFL Waiver Order and Waiver Extension Order,³⁰ in addition to the following modified version of the conditions proposed by NCTA:³¹

- Within 30 days after Super Bowl LVIII, Petitioner must submit a full report to include the same required contents as the reports required in the *NFL Waiver Order* and *Waiver Extension Order*,³² and also detailing:

²⁸ NFL Reply at 4.

²⁹ See Letter from Gerard J. Waldron, Counsel to the National Football League, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 21-111, at 2 (filed Mar. 14, 2023) (indicating no outages occurred during the 2022-23 season); Letter from Gerard J. Waldron, Counsel to the National Football League, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 21-111, at 2 (filed Mar. 11, 2022) (indicating one outage occurred during the 2021-22 season, but that its redundant Internet connection precluded operation pursuant to the waiver).

³⁰ The conditions are: (1) Petitioner must utilize at least two independent, unaffiliated Internet Service Providers with separate physical connections at each NFL stadium throughout the season; (2) Petitioner must have a valid and active authorization from an SAS for its operations at the time of the outage; (3) Petitioner must provide the Bureau with a point of contact that will be available to receive and immediately address interference reports from federal incumbent users during NFL games; (4) Petitioner must immediately shut down operations if any authorized Incumbent Access or Priority Access tier user reports harmful interference to their operations in the band while the NFL is operating pursuant to this conditional waiver; (5) Operations pursuant to this conditional waiver are limited to the 3650-3700 MHz band segment; (6) This conditional waiver is limited to localized Internet outages affecting Internet connectivity to equipment within the stadium and does not apply to outages affecting the SAS itself; and (7) Within 24 hours of any operations pursuant to the conditional waiver, Petitioner must submit a report to the Bureau detailing the circumstances of the outage, including the Internet providers affected, gameday downtime for each provider, and any mitigation efforts undertaken by Petitioner or other associated entities with responsibility for gameday operations or communications (e.g., NFL teams, stadium crews, spectrum managers, etc.) to re-establish connectivity or establish an alternate means of communicating with the SAS. *Waiver Extension Order* at 4-5; *NFL Waiver Order*, 36 FCC Red at 10491, para. 6.

³¹ NCTA Comments at 2, 6.

³² The NFL was required to submit a report after Super Bowl LVI and Super Bowl LVII detailing (1) all Internet Service Providers used for CBSD connectivity at each NFL stadium; (2) gameday downtime for each provider including specific dates and times of any and all outages (including those that do not result in operations pursuant to this conditional waiver); (3) details about any games in which Petitioner operated its coach-to-coach communications system pursuant to this conditional waiver, including the specific dates and times of any such operations; and (4) any mitigation efforts undertaken by Petitioner or other associated entities with responsibility for gameday operations or communications (e.g., NFL teams, stadium crews, spectrum managers, etc.) to re-establish

(continued....)

- specific measures Petitioner has taken during the waiver period to bring its coach-to-coach system into compliance with the Citizens Broadband Radio Service service rules;
 - specific measures Petitioner has taken at each NFL stadium to avoid interruptions in SAS connectivity;
 - details regarding any remaining impediments to achieving compliance with the Commission's rules.
- The conditional waiver is limited to the duration of the 2023-2024 NFL season and expires the day after Super Bowl LVIII (currently scheduled for February 11, 2024).

9. While we find that a grant of a conditional waiver would be consistent with the underlying purpose of the rule and serve the public interest, we decline to grant the waiver for the full two-year period requested by the NFL. As previously stated, we granted Petitioner a conditional waiver for just one season in the *Waiver Extension Order* so that it could determine if a tertiary level of ISP redundancy was necessary for the long-term operation of its coach-to-coach communications system.³³ Petitioner now states it is still in the process of conducting due diligence on a possible long-term technological solution, and that it is already “several months” into that process.³⁴ While we agree that the public interest would be served by providing the NFL with a limited extension to complete its due diligence on a rules-compliant technical solution, we find nothing in the record to indicate that such diligence need last beyond the 2023-24 NFL season.³⁵ We also agree with NCTA that a conditional waiver limited to the 2023-24 NFL season is more appropriate due to the evolving Citizens Broadband Radio Service landscape.³⁶ Finally, we are wary of granting longer extensions that, when combined with previous waiver grants, may appear to operate as *de facto* exemptions to the Citizens Broadband Radio Service rules.³⁷ To that end, we remind the NFL that, consistent with our guidance in the *Waiver Extension Order*, the burden rests on Petitioner to provide substantial additional support for any further extensions of the waiver that it may request, particularly where the underlying circumstances have not changed significantly.³⁸

connectivity or establish an alternate means of communicating with the SAS in the event of any Internet outage during an NFL game (including those that do not result in operations pursuant to this waiver). *Waiver Extension Order* at 5; *NFL Waiver Order*, 36 FCC Rcd at 10491, para. 6.

³³ *Waiver Extension Order* at 6.

³⁴ *Second Waiver Extension Request* at 5; NFL Reply

³⁵ The burden to support a waiver is on Petitioner and it must state with clarity the facts and circumstances which warrant such action and provide substantial support for a waiver. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). See also *United States v. Storer Broadcasting Co.*, 351 U.S. 192, 205 (1956) (applicant must set out adequate reasons justifying why the rules should be waived or amended); *Indus. Broad. Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970) (applicant bears heavy burden to demonstrate that his arguments for waiver are substantially different from those that have been carefully considered in rulemaking proceeding); *Rio Grande Radio Fellowship Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir. 1968) (the Commission need not grant a waiver of its rules unless an application sets out adequate reasons why the rules should be waived).

³⁶ See NCTA Comments at 7.

³⁷ See NCTA Comments at 5.

³⁸ See *Waiver Extension Order* at 6, note 40 (citing *WAIT Radio*, 418 F.2d at 1157; *Family Stations, Inc. v. DirectTV, Inc.*, CSR-5772-M, Order on Reconsideration, 19 FCC Rcd 14777, 14780, para 7 (MB 2004); *Section 68.4(A) of the Commission's rules governing Hearing Aid-Compatible Telephones*, WT Docket 01-309, Memorandum Opinion & Order, 22 FCC Rcd 7171, 7176, para 9 (2007)). We note that, in the *Second Waiver Extension Request*, the NFL asserts that there is a fundamental difference between “making use of the waiver” and

(continued....)

10. For the reasons above, we find it is in the public interest to conditionally grant Petitioner's request for a waiver of section 96.39(c)(2), on a time-limited basis and subject to the conditions described herein.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the request filed by the NFL for waiver of section 96.39(c)(2) of the Commission's rules, 47 CFR § 96.39(c)(2), is GRANTED to the extent described, and with the conditions specified herein.

12. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131 and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief
Wireless Telecommunications Bureau

"actually *utilizing the waiver*" and claims that simply having the waiver in hand has allowed the NFL and its equipment partners to prepare for a "worst-case scenario." Indeed, the NFL goes so far as to analogize the purpose of the waiver to "auto insurance," which it hopes to never actually utilize. *See Second Waiver Extension Request* at 5-6 (emphasis in original). Nothing in this Order should be read as an endorsement of the NFL's "auto insurance" argument, and any further requests for extension will remain subject to close scrutiny, consistent with the Commission's rules and precedents.

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

In the Matter of)	
)	
Amendment of Section 73.622(j), Table of TV	)	MB Docket No. 23-280
Allotments, Television Broadcast Stations	)	RM-11957
(Colusa, California))	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 16, 2023

Released: August 16, 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 (Petition) filed May 1, 2023, by One Ministries, Inc. (Petitioner).¹ The Petitioner requests the allotment of reserved noncommercial educational (NCE) channel *2 to Colusa, California as the community's first local television service.²

II. BACKGROUND

2. The Petitioner contends that Colusa is a community deserving of a new television broadcast service. In support, the Petitioner states that Colusa, with a 2020 population of 6,411, is the seat of Colusa County and known for its agricultural production.³ The Petitioner further states that Colusa has a mayor, mayor pro tem, and three council members; police, public works, parks and recreation, planning, fire, and utility departments; a library, airport, and numerous businesses and places of worship; and its own Zip Code.⁴ The Petitioner states its intention to file an application for channel *2, if allotted, and take all necessary steps to obtain a construction permit.⁵

III. DISCUSSION

3. The proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner's proposal would result in a first local service to Colusa under Allotment Priority (2) of the

¹ One Ministries, Inc.'s Petition for Rulemaking (filed May 1, 2023, LMS File No. 0000219029) (Petition).

² NCE television stations are identified in the Table by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR §73.622(a). The Petition mistakenly refers to section 73.622(i) of the Commission's rules (rules), which has been replaced by section 73.622(j) of the rules. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Order, 36 FCC Red 15891 (2021) (adopting new Table of TV Allotments to replace Post-Transition Table of DTV Allotments).

³ Petition at 3.

⁴ *Id.* at 3-4 and Exh. 2.

⁵ Petition at 4.

Commission's television allotment priority standard.⁶ The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *2 can be allotted to Colusa, California, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's rules (rules),⁷ at 39° 12' 20" N and 121° 49' 14" W (allotment point).⁸ In addition, the allotment point complies with section 73.625(a)(1) of the Commission's rules as the entire community of Colusa is encompassed by the 35 dBμ contour.⁹

4. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹⁰ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Colusa, California	--	*2

IV. PROCEDURAL MATTERS

5. *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.¹¹ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.¹²

6. *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.¹³

⁶ The Commission determines a preferential arrangement of television allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; (2) *provide each community with at least one television broadcast station*; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952) (emphasis added).

⁷ 47 CFR § 73.623(d).

⁸ Petition at Exhibit 1. We note that the Petition gives two different sets of coordinates that clearly imply that one is a typographical error. Since the Petition describes the antenna location as "atop the Sutter Buttes" (Petition, Engineering Statement at 1), it is clear which set of coordinates is correct, and thus we use the correct set here.

⁹ See 47 CFR § 73.625(a)(1).

¹⁰ 47 CFR § 73.622(j).

¹¹ See, e.g., *Buffalo, Iola, Normangee, and Madisonville, Texas*, Report and Order, MB Docket No. 07-729, 24 FCC Rcd 8192, 8194, para. 9 (Aud. Div. 2009).

¹² 47 CFR § 1.420(j).

¹³ 47 CFR § 1.420(d).

- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁴

7. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,¹⁵ 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).¹⁶

- **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-19.¹⁷
 - 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.

8. *Service.* Pursuant to section 1.420 of the rules,¹⁸ 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.¹⁹ Additionally, a copy of such comments should be served on the Petitioner, as follows:

¹⁴ 47 CFR § 1.420(g)(2).

¹⁵ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹⁸ 47 CFR § 1.420.

¹⁹ See 47 CFR § 1.420(a), (b) and (c).

James L. Oyster, Esq.
108 Oyster Lane
Castleton, Virginia 22716

9. *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.²⁰ 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.²¹ 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.²² 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.²³ 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.

10. *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.

11. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁴ do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the rules.²⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁶ 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 2002.²⁷

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

²⁰ 47 CFR §§ 1.1200 *et seq.*

²¹ 47 CFR § 1.1208.

²² 47 CFR § 1.1204(a)(10).

²³ 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).

²⁴ 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).

²⁵ 47 CFR § 73.622(j).

²⁶ See 44 U.S.C. §§ 3501-3520.

²⁷ See 44 U.S.C. § 3506(c)(4).

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

V. ORDERING CLAUSES

14. **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*.

15. **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. 23-280 and RM-11957 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

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

In the Matter of)	
)	
Amendment of Section 73.622(j), Table of TV	)	MB Docket No. 23-281
Allotments, Television Broadcast Stations	)	RM-11958
(Alamogordo, New Mexico))	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 16, 2023

Released: August 16, 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 (Petition) filed May 8, 2023, by Vision Broadcasting Networks, Inc. (Petitioner).¹ The Petitioner requests the allotment of reserved noncommercial educational (NCE) channel *4 to Alamogordo, New Mexico as the community's first local television service.²

II. BACKGROUND

2. The Petitioner contends that Alamogordo is a community deserving of a new television broadcast service. In support, the Petitioner states that Alamogordo, with a 2020 population of 30,898, is the county seat of Otero County.³ Alamogordo has a mayor, six Commissioners, and a city manager; police, fire, public works, and utility departments;⁴ planning, engineering, and community and economic development departments; a library, school district, numerous businesses and places of worship; and its own ZIP Code.⁵ The Petitioner states its intention to file an application for channel *4, if allotted, and take all necessary steps to obtain a construction permit.⁶

III. DISCUSSION

3. The proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner's proposal would result in a first local service to Alamogordo under Allotment Priority (2) of

¹ Vision Broadcasting Network, Inc.'s Petition for Rulemaking (filed May 8, 2023, LMS File No. 0000219128) (Petition).

² NCE television stations are identified in the Table by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR §73.622(a). The Petition mistakenly refers to section 73.622(i) of the Commission's rules (rules), which has been replaced by section 73.622(j) of the rules. *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction*, GN Docket No. 12-268, Order, 36 FCC Rcd 15891 (2021) (adopting new Table of TV Allotments to replace Post-Transition Table of DTV Allotments).

³ Petition at 3.

⁴ *Id.* and Exh. 2.

⁵ *Id.* at 4 and Exh. 2.

⁶ *Id.* at 4.

the Commission's television allotment priority standard.⁷ The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *4 can be allotted to Alamogordo, New Mexico, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's rules (rules),⁸ at 32° 49' 45" N and 105° 52' 16" W (allotment point). In addition, the allotment point complies with section 73.625(a)(1) of the rules as the entire community of Alamogordo is encompassed by the 35 dBμ contour.⁹

4. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹⁰ for the community listed below, to read as follows:¹¹

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Alamogordo, New Mexico	--	*4

IV. PROCEDURAL MATTERS

5. *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 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

6. *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

⁷ The Commission determines a preferential arrangement of television allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; (2) *provide each community with at least one television broadcast station*; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Amendment of Section 3.606 of the Commission's Rules and Regulations*, Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952) (emphasis added).

⁸ 47 CFR § 73.623(d).

⁹ See 47 CFR § 73.625(a)(1).

¹⁰ 47 CFR § 73.622(j).

¹¹ While the Petitioner notes that the proposed channel was previously approved by treaty with Mexico for use at El Paso, New Mexico, from 1952 until 2009 (Petition, Exh. 2 at 2), concurrence from the Mexican government must still be obtained for this allotment at Alamogordo, which is approximately 135 km from El Paso.

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

¹³ 47 CFR § 1.420(j).

¹⁴ 47 CFR § 1.420(d).

- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁵

7. *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.
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 - 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.

8. *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 the Petitioner, as follows:

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).

¹⁹ 47 CFR § 1.420.

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

James L. Oyster, Esq.
108 Oyster Lane
Castleton, Virginia 22716

9. *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.

10. *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.

11. *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 Table of Allotments, section 73.622(j) of the rules.²⁶ This document does not contain proposed information collection requirements subject to the Paperwork 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

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

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(j).

²⁷ See 44 U.S.C. §§ 3501-3520.

²⁸ See 44 U.S.C. § 3506(c)(4).

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

V. ORDERING CLAUSES

14. **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*.

15. **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. 23-281 and RM-11958 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



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 23-707
Released: August 16, 2023

**OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS COMMENT ON EXTREME
NETWORK'S REQUEST FOR WAIVER OF SECTION 15.403 OF THE COMMISSION'S
RULES**
ET Docket No. 23-282

Comment Date: September 15, 2023
Reply Comment Date: October 16, 2023

By this public notice, we seek comment on a request by Extreme Networks (Extreme) to waive Section 15.403 of the Commission's rules.¹

To develop a complete record on the issues, and provide all parties with an opportunity to comment, we are opening a new docket, **ET Docket 23-282**, exclusively for Extreme's request.² This proceeding will be treated, for *ex parte* purposes, as a "permit-but-disclose" proceeding in accordance with Section 1.1200(a) of the Commission's rules, subject to the requirements under Section 1.1206(b). Parties should file all responsive comments and reply comments exclusively in **ET Docket 23-282**.

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.

¹ Petition of Extreme Networks for Waiver of Section of 15.403 of Commission's Rules, ET Docket No. 18-295 (filed Jul. 21, 2023), <https://www.fcc.gov/ecfs/document/107211224907036/1> (Extreme Waiver Request).

² We note some parties have already filed comments and we will move relevant submissions to the new docket.

- 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-19.³
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- 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).

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-

³ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020).



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 23-708
Released: August 16, 2023

OFFICE OF ENGINEERING AND TECHNOLOGY
OPENS ET DOCKET NO. 23-282

ET Docket No. 23-282

By this Public Notice, the Office of Engineering and Technology opens ET Docket No. 23-282, which is a Public Notice captioned “Office Of Engineering and Technology Seeks Comment on Extreme Network’s Request for Waiver of Section 15.403 of the Commission’s Rules.”

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

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

Action by Acting Chief, Office of Engineering and Technology.

– FCC –

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

In the Matter of)	
)	
B&C Communications, LLC	)	Facility ID No. 31570
	)	NAL/Acct. No. 20234140033
Licensee of Station WPAN	)	FRN: 0019006501
Fort Walton Beach, Florida	)	LMS File No. 0000122920

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 16, 2023**Released: August 16, 2023**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)¹ of B&C Communications, LLC (Licensee), for renewal of its license for WPAN, Fort Walton Beach, Florida (Station). In this *Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully and repeatedly violated the Commission's rules (Rules) by failing to timely file the Station's quarterly issues/programs lists in violation of section 73.3526(e)(11)(i).² 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 nine thousand dollars (\$9,000).

II. BACKGROUND

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

3. On September 29, 2020, the Licensee filed its Application. A staff inspection of the Station's OPIF revealed that the Licensee failed to upload some copies of its issues/programs lists by the

¹ Application of B&C Communications, LLC for Renewal of License, LMS File No. 0000122920 (filed Sep. 29, 2020). WPAN is a full power television station.

² 47 CFR § 73.3526(e)(11)(i).

³ *Id.* Full power (commercial and noncommercial) and Class A television broadcasters have been required to upload various public file documents to their OPIF, including issues/programs lists, since 2012 and have been required to utilize the OPIF for the entirety of the current license term. See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report*, Second Report and Order, 27 FCC Rcd 4535 (2012); *Effective Date Announced for Online Publication of Broadcast Television Public Inspection Files*, Public Notice, 27 FCC Rcd 7478 (2012) (announcing an effective date of August 2, 2012, for, *inter alia*, the requirement that television stations begin to post new issues/programs lists to their OPIF).

⁴ *Id.*

deadline established in section 73.3526(e)(11)(i) of the Rules.⁵ The Licensee did not file 10 quarterly lists. The Licensee does not provide any explanation for its failure to upload these issues/programs lists, but rather states it had timely filed the lists after it returned the Station to the air in May 2016. Licensee uploaded missing files only after Commission staff alerted it to the deficiency.

III. DISCUSSION

4. *Proposed Forfeiture.* We find that the Licensee is apparently liable for a forfeiture in the amount of \$9,000.⁶ The Licensee failed to upload in a timely manner to the Station's OPIF copies of the Station's issue/programs lists for 10 quarters. These late filings constitute an apparent willful and repeated violation of section 73.3526(e)(11)(i) of the Rules.⁷

5. Pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (the Act), a person who is found to have willfully and 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.⁸ 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.⁹ 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,¹⁰ and the Commission has so interpreted the term in the section 503(b) context.¹¹ 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."¹²

6. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$10,000 for public file violations.¹³ 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

⁵ *Id.* The staff inspection was not consistent with the Licensee's disclosures in its Application. Licensee disclosed missing issues/programs lists prior to its return to the air in 2016, but states the issues/programs lists had been published on line since that date. B&C Communication's Application, Attach., Online Public File Exhibit. However, a staff review shows Licensee's OPIF was missing issues/program lists for last three quarters of 2016, all four quarters of 2017, and the first three quarters of 2018. *See generally*, FCC's Licensing and Databases, Public Inspection File, Issues and Programs Lists, <https://publicfiles.fcc.gov/tv-profile/WPAN/Issues%20and%20Programs%20Lists/433c41b7-7d7c-1432-3392-0f083116fba7>.

⁶ Our action today addresses known apparent violations from the date the prior license renewal application was granted through the adoption date of this item. Any violations that are discovered or may occur following the adoption date of this item and prior to the grant of the current Application would be separate violations and potentially subject to additional Commission action.

⁷ *See* 47 CFR § 73.3526(e)(11)(i).

⁸ *See* 47 U.S.C. § 503(b)(1)(B); *see also* 47 CFR § 1.80(a)(2).

⁹ 47 U.S.C. § 312(f)(1).

¹⁰ *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

¹¹ *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).

¹² 47 U.S.C. § 312(f)(2).

¹³ *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), recon. denied, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), para. (b)(10), Table 1.

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.”¹⁴

7. In this case, the Licensee failed to upload to its OPIF issue/programs lists for 10 quarters, in violation of section 73.3526(e)(11)(i) of the Rules.¹⁵ The Licensee does not provide any explanation for its failure to upload these issues/programs lists, but rather states it had timely filed after it returned the Station to the air in May 2016. Licensee uploaded missing files only after Commission staff drew its attention to the deficiency. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁶ we find that under the facts of this case a forfeiture in the amount of \$9,000 is appropriate for the Licensee’s apparent failure to upload its issues/programs lists.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁷ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁸ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁹

9. We find that the Licensee’s apparent violation of section 73.3526(e)(11)(i) of the Rules 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

10. 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 B&C Communications, LLC, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in

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

¹⁵ See 47 CFR § 73.3526(e)(11)(i).

¹⁶ *Supra* note 14.

¹⁷ 47 U.S.C. § 309(k).

¹⁸ 47 U.S.C. § 309(k)(1).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ For example, we do not find here that the Licensee’s Station operation “was conducted in an exceedingly careless, inept and negligent manner and that the licensee is either incapable of correcting or unwilling to correct the operating deficiencies.” See *Heart of the Black Hills Stations*, Decision, 32 FCC 2d 196, 198, para. 6 (1971). Nor do we find on the record here that “the number, nature and extent” of the violations indicate that “the licensee cannot be relied upon to operate [the station] in the future in accordance with the requirements of its licenses and the Commission’s Rules.” *Id.* at 200, paras. 10-11. See also *Center for Study and Application of Black Econ. Dev.*, Hearing Designation Order, 6 FCC Rcd 4622 (1991); *Calvary Educ. Broad. Network, Inc.*, Hearing Designation Order, 7 FCC Rcd 4037 (1992).

²¹ 47 U.S.C. § 503(b).

²² 47 CFR §§ 1.80 and 0.283.

the amount nine thousand dollars (\$9,000) for its apparent willful and repeated violation of section 73.3526(e)(11)(i) of the Commission's rules.²³

11. **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*, B&C Communications, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁵ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁷ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/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

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.

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>.

and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

13. 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.

14. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.²⁹ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

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

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.³¹

16. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to B&C Communications, LLC, 155 Middle Plantation Lane,

²⁸ See 47 CFR § 1.1914.

²⁹ 47 CFR §§ 1.16 and 1.80(g)(3).

³⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³¹ See, e.g., *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

Gulf Breeze, Florida 32561, and to its counsel, Jeffrey L. Timmons, Esq., 974 Branford Lane NW,
Lilburn, Georgia 30047.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-710
Released: August 17, 2023

**FCC SEEKS COMMENT REGARDING POSSIBLE REVISION OR ELIMINATION OF RULES
ADOPTED IN 2007–2012 UNDER THE REGULATORY FLEXIBILITY ACT,
5 U.S.C. SECTION 610**

CB Docket No. 23-283

Comments Due: [60 days after date of publication in the Federal Register]

By this Public Notice, the Office of Communications Business Opportunities announces the Federal Communications Commission's (Commission) plan to review rules the agency adopted in calendar years 2007–2012 that have or will have a significant economic impact on a substantial number of small entities. Section 610 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 610, requires the Commission to determine whether such rules should be continued without change, amended, or rescinded consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of small entities. The Appendix lists the rules the Commission will review during the next 12 months. Annually, the Commission will publish a list for the review of rules promulgated 10 years preceding the year of review.

The Commission will consider the following factors in reviewing each rule in a manner consistent with section 610(b) of the RFA:

- a) The continued need for the rule;
- b) The nature of complaints or comments from the public concerning the rule;
- c) The complexity of the rule;
- d) The extent to which the rule overlaps, duplicates, or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
- e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The Appendix includes a brief description, the need for and legal basis of each rule. The Commission invites the general public to comment on these rules in accordance with the instructions below. The Commission will consider all relevant and timely filed comments before it takes final action in this proceeding.

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. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). *See* <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), 202-418-0432 (TTY).

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹ 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.

¹ 47 CFR §§ 1.1200 *et seq.*

Additional Information. For additional information, contact the Office of Communications Business Opportunities, OCBOInfo@fcc.gov or visit www.fcc.gov/ocbo.

FEDERAL COMMUNICATIONS COMMISSION

Joy M. Ragsdale
Director
Office of Communications Business Opportunities

Appendix

The Federal Communications Commission (Commission) will review the rules below pursuant to the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. § 610, for the 10-year period beginning in January 2007 and ending December 2012. All of the rules listed below are in Title 47 of the Code of Federal Regulations.

PART 1—PRACTICE AND PROCEDURE

SUBPART A—GENERAL RULES OF PRACTICE AND PROCEDURES—FORBEARANCE PROCEEDINGS

Brief Description: These rules establish procedures for the submission and handling of petitions for forbearance filed pursuant to section 10 of the Communications Act of 1934, as amended.² In particular, the rules require that forbearance petitions be “complete as filed” and establish procedures to ensure that forbearance petitions are addressed in a timely, equitable, and predictable manner. Further, a forbearance petition may no longer be withdrawn or significantly narrowed by the petitioner without Commission authorization after the tenth business day after the due date for reply comments.

Need: These rules implement procedures for handling forbearance petitions in a manner that is front-loaded, actively managed, transparent, and fair.

Legal Basis: 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 160, 201, and 303(r).

Section Number and Title:

- | | |
|------|--|
| 1.55 | Public notice of petitions for forbearance. |
| 1.56 | Motions for summary denial of petitions for forbearance. |
| 1.57 | Circulation and voting of petitions for forbearance. |
| 1.58 | Forbearance petition quiet period prohibition. |
| 1.59 | Withdrawal or narrowing of petitions for forbearance. |

Brief Description: These rule sections implement the Truth in Caller ID Act of 2009,³ and prohibit any person or entity from knowingly spoofing caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value. Sections 1.80(a)(4), (b)(3) and (c) establish forfeiture provisions for violations of the Truth in Caller ID Act or the Commission’s rules under the Truth in Caller ID Act.

Need: These rule sections carry out the Commission’s statutory obligation to implement the Truth in Caller ID Act.

Legal Basis: Section 2 of the Truth in Caller ID Act of 2009, Pub. L. No. 11-331. 47 U.S.C. §§ 151, 154(i), 154(j), 227, and 303(r).

Section Number and Title:

- | | |
|-----------------------------|-------------------------|
| 1.80(a)(4), (b)(3), and (c) | Forfeiture Proceedings. |
|-----------------------------|-------------------------|

² 47 U.S.C. § 160(c) (“Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the authority granted under this section with respect to that carrier or those carriers, or any service offered by that carrier or carriers.”).

³ The President signed the Truth in Caller ID Act into law on December 22, 2010. Truth in Caller ID Act of 2009, Pub. L. No. 111-331, codified at 47 U.S.C. § 227(e).

SUBPART E—COMPLAINTS, APPLICATIONS, TARIFFS, AND REPORTS INVOLVING COMMON CARRIERS

Brief Description: Section 1.767 of the Commission’s rules sets forth the application filing requirements for submarine cable landing licenses. During the relevant review period, the Commission amended the cable landing license application rules and application procedures to require applicants to certify their compliance with the Coastal Zone Management Act of 1972 (CZMA).

Need: The rules are needed to ensure that Commission processing of certain submarine cable landing license applications comports with the consistency review procedures specified in the CZMA.

Legal Basis: 47 U.S.C. §§ 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

Section Number and Title:

1.767 (a)(10) note, (j), (k)(4) Cable landing licenses.

SUBPART G—SCHEDULE OF STATUTORY CHARGES AND PROCEDURES FOR PAYMENT

Brief Description: These rules specify the schedule of annual regulatory fees and filing locations for the designated payors.

Need: Congress sets the amount the Commission must collect each year in the Commission’s fiscal year appropriations. Section 9(a)(2) of the Communications Act of 1934, as amended (Act) requires the Commission to collect fees sufficient to offset the amount appropriated.⁴ These rules specify the fees for the Commission’s regulatees.

Legal Basis: 47 U.S.C. § 159.

Section Number and Title:

1.1102	Revised – Schedule of charges for applications and other filings in the wireless telecommunications services.
1.1103	Revised –Schedule of charges for experimental radio services.
1.1104	Revised - Schedule of charges for applications and other filings for media services.
1.1105	Revised - Schedule of charges for applications and other filings for the wireline competition services.
1.1106	Revised - Schedule of charges for applications and other filings for the enforcement services.
1.1107	Revised – Schedule of charges for applications and other filings for the international services.
1.1108	Reserved.
1.1109	Revised - Schedule of charges for applications and other filings for the Homeland services.
1.1110	Correctly redesignated as 1.112; new 1.1110 correctly added - Attachment of charges.
1.1111	Correctly redesignated as 1.113; new 1.1111 correctly added - Payment of charges.
1.1112	Correctly redesignated as 1.114; new 1.1112 correctly added - Form of payment.

⁴ 47 U.S.C. § 159(a)(2).

1.1113	Correctly redesignated as 1.115; new 1.1113 correctly added - Filing locations.
1.1114	Conditionality of Commission or staff authorizations.
1.1115	Return or refund of charges.
1.1116	General exemptions to charges.
1.1117	Adjustments to charges.
1.1118	Penalty for late or insufficient payments.
1.1119	Petitions and applications for review.
1.1120	Correctly redesignated from 1.1118;(a) revised - Error claims.
1.1121	Correctly redesignated from 1.1119; (b) revised - Billing procedures.
1.1152	Revised - Schedule of annual regulatory fees for wireless radio services.
1.1153	Revised - Schedule of annual regulatory fees and filing locations for mass media services.
1.1154	Revised - Schedule of annual regulatory charges for common carrier services.
1.1155	Revised - Schedule of regulatory fees for cable television services.
1.1156	Revised; Eff. Date corrected; Revised - Schedule of regulatory fees for international services.
1.1164 (c)	Revised – Penalties for late or insufficient regulatory fee payments.
1.1166 (b)	Revised – Waivers, reductions and deferrals of regulatory fees.
1.1166 (d)	Amended - Waivers, reductions and deferrals of regulatory fees.

SUBPART X—SPECTRUM LEASING

Brief Description: These rules pertain to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees.

Need: These rules extend the Commission's secondary market spectrum manager spectrum leasing policies, procedures, and rules that apply to wireless terrestrial services to terrestrial services provided using the Ancillary Terrestrial Component (ATC) of a Mobile Satellite Service (MSS) system.

Legal Basis: 15 U.S.C §§ 79 *et seq.*; 47 U.S.C. §§ 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

Section Number and Title:

1.9001	Purpose and scope.
1.9005	Included services
1.9020	Spectrum manager leasing arrangements
1.9049	Special Provisions relating to spectrum leasing arrangements involving the Ancillary Terrestrial Component of Mobile Satellite Services.

SUBPART AA—COMPETITIVE BIDDING FOR UNIVERSAL SERVICE SUPPORT

Brief Description: These rules set forth procedures for competitive bidding to determine the recipients of universal service support pursuant to part 54 and the amount(s) of support that each recipient respectively may receive, subject to post-auction procedures, when the Commission directs that such support shall be determined through competitive bidding. The rules establish requirements for applications to participate in competitive bidding, restrict certain communications during the competitive process, and establish a winning bidder's obligation to apply for support.

Need: These rules implement competitive bidding processes for the allocation of high-cost universal service support, helping to ensure the most efficient and effective use of public resources.

Legal Basis: 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

Section Number and Title:

1.21000	Purpose.
1.21001	Participation in competitive bidding for support.
1.21002	Prohibition of certain communications during the competitive bidding process.
1.21003	Competitive bidding process.
1.21004	Winning bidder's obligation to apply for support.

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

SUBPART B—ALLOCATION, ASSIGNMENT, AND USE OF RADIO FREQUENCIES

Brief Description: Section 2.106 contains the Table of Frequency Allocations, which specifies the Federal and non-Federal radio services that may operate in certain frequency bands, as well as the operating conditions for each service, including power limits and coordination procedures. Footnote US23 governs Amateur Radio Service operations in the 5330.5-5406.4 kHz band. Footnote US64 governs Medical Device Radiocommunication Service (MedRadio) operations in the 401-406 MHz, 413-419 MHz, 426-432 MHz, 438-444 MHz, and 451-457 MHz bands. Footnote US338 governs Wireless Communications Service (WCS) operations in the 2305-2320 MHz band.

Need: The Table of Frequency Allocations is needed to allow Federal and non-Federal services to operate safely and without causing harmful interference. The Table is amended frequently to revise existing allocations and add new allocations, generally promoting more efficient and productive use of radio spectrum.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, and 336.

Section Number and Title:

2.106 US23, US64, US338	Table of Frequency Allocations.
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Brief Description: Part 2 contains the Commission's Table of Frequency Allocations as well as terminology and rules governing bandwidths, call signs, and other transmission identifiers, distress, disaster and emergency communications, prohibition against use of radio devices for eavesdropping, and marketing of radio-frequency devices.

Need: Part 2 rules establish the allocations for spectrum use.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, and 336.

Section Number and Title:

2.106	Table of Frequency Allocations.
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SUBPART J—EQUIPMENT AUTHORIZATION PROCEDURES

Brief Description: Section 2.1093 specifies which portable devices must undergo radiofrequency (RF) radiation exposure evaluation and 2.1093(c) specifies how that evaluation must be done.

Need: These rules are needed to satisfy the Commission’s responsibilities under the National Environmental Policy Act to evaluate the environmental significance of its actions and to minimize the chance of harmful interference.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, and 336.

Section Number and Title:

2.1093(c) Radiofrequency radiation exposure evaluation: portable devices.

SUBPART K—IMPORTATION OF DEVICES CAPABLE OF CAUSING HARMFUL INTERFERENCE

Brief Description: Section 2.1204 specifies the conditions under which RF devices may be imported into the United States. 2.1204(a)(9) governs medical implant transmitters, specifying that these devices must either comply with the Part 95 rules or be only for the personal use of the person in whom the device has been inserted or on whom the body-worn device is applied.

Need: These rules are needed to prevent unauthorized and non-complaint RF devices from being imported into the United States and causing harmful interference.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, and 336.

Section Number and Title:

2.1204(a)(9) Import conditions.

PART 4—DISRUPTIONS TO COMMUNICATIONS

Brief Description: These rules expanded the Commission’s existing Part 4 outage reporting requirement to include a new class of providers – Interconnected Voice over Internet Protocol. They also provide for the appropriate thresholds for outage impact and duration to trigger reporting obligations to the Commission.

Need: These provisions support the Commission’s statutory obligations to ensure the public safety can make emergency calls by ensuring the integrity and reliability of the Nation’s communications networks and the service those in need use to reach 911. The expansion and continued use of IP-based voice protocols for consumer calling, particularly in emergencies, underscores the relevance of these provisions.

Legal Basis: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. §§ 154, 155, 201, 251, 307, 316, 615a-1, 1302(a), and 1302(b).

Section Number and Title:

4.3 Communications Providers Covered by the Requirements of this Part.

4.7 Definitions of metrics used to determine the general outage-reporting threshold criteria.

4.9 Outage reporting requirements – threshold criteria.

PART 6—ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

SUBPART A—SCOPE - WHO MUST COMPLY WITH THESE RULES?

Brief Description: Part 6, subpart A implements section 255 of the Telecommunications Act to ensure that people with disabilities have access to telecommunications services and related equipment, if readily achievable. These rules increase the accessible products and services available in the marketplace. section 255 of the Act requires manufacturers of “telecommunications equipment or customer premises equipment” to ensure that such equipment is accessible to and usable by individuals with disabilities, if readily achievable, and requires providers of a “telecommunications service” to ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable. In 2007, the rules were amended by adding subsection (d) and (e) to section 6.1, extending those disability access requirements that applied to telecommunications service providers and equipment manufacturers under section 255 of the Act and 47 CFR part 6, to providers of “interconnected Voice over Internet Protocol (VoIP) services,” as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services.

Need: The added rules extend the disability access requirements that applied to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended, to providers of “interconnected Voice over Internet Protocol services,” as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services.

Legal Basis: 47 U.S.C. §§ 151-154, 251, 255, and 303(r).

Section Number and Title:

6.1(d)	Applicability.
6.1(e)	Applicability.

SUBPART B—DEFINITIONS

Brief Description: Part 6, Subpart B implements sections 251 and 255 of the Communications Act of 1934, as amended. In adopting section 255, Congress sought to ensure that all Americans, including Americans with disabilities, benefit from advances in telecommunications services and equipment. section 255 requires providers of telecommunications services and manufacturers of telecommunications equipment or customer premises equipment to ensure that such services and equipment are accessible to and usable by individuals with disabilities, if readily achievable. Section 251(a)(2) of the Act prohibits telecommunications carriers from installing network features, functions, or capabilities that do not comply with the guidelines and standards established pursuant to section 255. These rules clarify who must comply with requirements covering telecommunications equipment and services and define certain terms related to those manufacturers and service providers to which the rules apply.

Need: The rules are intended to facilitate communication by persons with disabilities by ensuring that all commonly-used communications equipment and services are available to and accessible by individuals with disabilities, including recently developed equipment and services, such as equipment and service used with Voice over Internet Protocol (VoIP).

Legal Basis: 47 U.S.C. §§ 151, 152, 251, 255, and 303(r).

Section Number and Title:

6.3(c), (e), (j), (k)	Definitions.
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PART 8—INTERNET FREEDOM

Brief Description: Section 8.11(a) provides a definition of “broadband Internet access service;” section 8.11(d) provides a definition of “reasonable network management practices.”

Need: These definitions are needed in connection with Commission programs such as the Broadband Data Collection.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 201, 218, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 316, 332, 403, 503, 522, 536, 548, and 1302.

Section Number and Title:

8.11(a) and (d) Transparency.

PART 10—WIRELESS EMERGENCY ALERTS

SUBPART A—GENERAL INFORMATION

Brief Description: These rules provide the parameters for wireless service providers to implement the statutory Commercial Mobile Alert System (CMAS), now referred to as Wireless Emergency Alerts (WEA), including relevant timeframes and technical parameters associated with WEA infrastructure, messaging support, alert tones and similar.

Need: These provisions support the operation of WEA – a statutory component of the Nation’s alert and warning system and help ensure the timely and accurate transmission of wireless alerts and warnings.

Legal Basis: 47 U.S.C. §§ 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act.

Section Number and Title:

10.2 Purpose.
10.10 Definitions.
10.11 CMAS Implementation Timeline.

SUBPART C—SYSTEM ARCHITECTURE

10.320 Provider Alert Gateway Requirements.
10.330 Provider Infrastructure Requirements.

Brief Description: These rules support the operational changes necessary and the implementation/testing requirements for the Commercial Mobile Alert System (CMAS), now known as Wireless Emergency Alerts (WEA) – a statutory component of the Nation’s alert and warning system. They direct the installation of necessary equipment, and prescribe the parameters for testing the system and keeping record of its operation.

Need: These provisions support the operation of WEA – a statutory component of the Nation’s alert and warning system and help ensure the timely and accurate transmission of wireless alerts and warnings.

Legal Basis: 47 U.S.C. §§ 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act.

Section Number and Title:

10.340	Digital Television Transmission Towers Retransmission Capability
10.350	CMAS Testing Requirements

SUBPART D—ALERT MESSAGE REQUIREMENTS

Brief Description: These rules provide the parameters for wireless service providers to implement the statutory Commercial Mobile Alert System (CMAS), now referred to as Wireless Emergency Alerts (WEA), including relevant timeframes and technical parameters associated with WEA infrastructure, messaging support, alert tones and similar.

Need: These provisions support the operation of WEA – a statutory component of the Nation’s alert and warning system and help ensure the timely and accurate transmission of wireless alerts and warnings.

Legal Basis: 47 U.S.C. §§ 151, 154(i) and (o), 201, 303(r), 403, and 606, as well as sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act.

Section Number and Title:

10.400	Classification.
10.410	Prioritization.
10.420	Message Elements.
10.430	Character Limit.
10.440	Embedded Reference Prohibition.
10.450	Geographic Targeting.
10.470	Roaming.

SUBPART E—EQUIPMENT REQUIREMENTS

Section Number and Title:

10.500	General Requirements.
10.510	Call preemption prohibition.
10.520	Common Audio Attention Signal.
10.530	Common Vibration Cadence.

PART 11—EMERGENCY ALERT SYSTEM (EAS)

SUBPART A—GENERAL

Brief Description: Part 11 sets forth the rules governing the Emergency Alert System (EAS).

Need: The rules are needed to implement the Commission’s policies and requirements concerning the EAS, which provides federal, state, local, territorial, and tribal government agencies with the capability to provide immediate communications and information to the general public regarding emergency situations. EAS is a system for distributing emergency alerts by transmitting audio and visual messages over the facilities of radio and television broadcasters, cable service providers, direct broadcast satellite providers, and other participating entities.

Legal Basis: 47 U.S.C. §§ 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

11.2	Definitions.
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| 11.11 (a), (d) | The Emergency Alert System (EAS). |
| 11.21(a) | State and Local Area Plans and FCC Mapbook. |

SUBPART B—EQUIPMENT REQUIREMENTS

Brief Description: EAS uses a four part message for an emergency activation of the EAS. The four parts are: Preamble and EAS Header Codes; audio Attention Signal; message; and, Preamble and EAS End of Message (EOM) Codes. Subpart B outlines the equipment requirements to provide the service.

Need: These amendments specify up-to-date technology to ensure that EAS messages are provided seamlessly, promptly and accurately.

Legal Basis: 47 U.S.C. §§ 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

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| 11.31 (c), (e), and (f) | EAS Protocol. |
| 11.32 (a)(2), (a)(3) and (a)(9)(iv) | EAS Encoder. |
| 11.33 (a), (a)(1), (a)(4), (a)(7), and (a)(11) | EAS Decoder. |
| 11.34(d) | Acceptability of the equipment. |
| 11.35(a), (b) | Equipment operational readiness. |

SUBPART C—ORGANIZATION

Brief Description: Entities that wish to voluntarily participate in the national level EAS may submit a written request to the Chief, Public Safety and Homeland Security Bureau. Subpart C provides the regulatory organization for EAS.

Need: The revision provides that All EAS Participants specified in section 11.11 are categorized as Participating National (PN) sources and must have immediate access to an EAS Operating Handbook.

Legal Basis: 47 U.S.C. §§ 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

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| 11.41 | Participation in EAS. |
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SUBPART D—EMERGENCY OPERATIONS

Brief Description: Analog and digital broadcast stations must transmit, either automatically or manually, national level EAS messages and required tests by sending the EAS header codes, Attention Signal, emergency message and End of Message (EOM) codes using the EAS Protocol. Subpart D outlines Emergency operations.

Need: The revisions provide for modernizing the EAS to make it capable of processing Common Alerting Protocol (CAP) formatted alert messages is necessary and consistent with the Commission's statutory goals, because a CAP-based EAS will be more flexible and robust than the current system. In this regard, we observe that the rules we adopt today will integrate the EAS with the Federal Emergency Management Agency's (FEMA) Integrated Public Alert and Warning System (IPAWS). This will allow authorized alert initiators to issue alerts that will be delivered simultaneously by the EAS as well as the Personal Localized Alerting Network (PLAN). A CAP-based EAS will also be compatible with the many state alerting systems that are switching to CAP.

Legal Basis: 47 U.S.C. §§ 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

11.51 (a), (c), (d), (g)(3), (h)(3), (i), (j), (j)(2), (m), and (p)	EAS code and Attention Signal Transmission requirements.
11.52 (a), (d), (e), and (e)(2)	EAS code and Attention Signal Monitoring requirements.
11.54	EAS operation during a National Level emergency.
11.55 (a), (c), (c)(3), (4), (7), (8), and (d)	EAS operation during a State or Local Area emergency.
11.56	Obligation to process CAP-formatted EAS messages.

SUBPART E—TESTS

Brief Description: Subpart E sets forth the rules governing testing of the Emergency Alert System (EAS).

Need: The EAS is subject to weekly and monthly tests at the state and local level, such tests may not expose vulnerabilities in functioning or gaps in nationwide coverage. For example, EAS PEP station operational and maintenance requirements are the responsibility of FEMA, which tests the PEP stations but typically does not test other stations. The NWS tests its own National Weather Radio (NWR) facilities independently or as integrated with state and local level emergency alert delivery architectures, but again, its focus is solely on the proper operation of NWS/NWR facilities as those facilities interact with state and local EAS architectures. State EOC facilities are maintained by their respective state officials. None of these entities has been responsible for “top-to-bottom” national testing of EAS. Sections 11.61 (a), (a)(1)(i), (a)(2)(ii), (a)(3), and (b) provide for more complete testing including end to end testing.

Legal Basis: 47 U.S.C. §§ 151, 154 (i) and (o), 303(r), 544(g), 606, 1201, and 1206.

Section Number and Title:

11.61 (a), (a)(1)(i), (a)(2)(ii), (a)(3), and (b)	Tests of EAS procedures.
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PART 14—ACCESS TO ADVANCED COMMUNICATIONS SERVICES AND EQUIPMENT BY PEOPLE WITH DISABILITIES

SUBPART A—SCOPE

Brief Description: Part 14 implements the requirements of section 716 of the Communications Act of 1934, as amended, which requires providers of advanced communication services (ACS) and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Communications Act of 1934, as amended, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718. Part 14 requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable. Part 14 includes a temporary self-executing exemption for small businesses to avoid the possibility of unreasonably burdening small and entrepreneurial innovators during the initial compliance period. Part 14 also establishes procedures to facilitate the filing of formal and informal complaints.

Need: Part 14 implements Congress’ mandate that people with disabilities have access to advanced communications services (ACS) and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the “Twenty-First Century Communications and Video Accessibility Act of 2010” (CVAA). ACS plays a fundamental role in today’s world, and these rules remain necessary to ensure that people with disabilities can access ACS services and equipment to fully participate in business, family, social, and other activities. The temporary self-executing exemption for small businesses expired on October 8, 2013, is no longer needed and may be deleted.

Legal Basis: 47 U.S.C. §§ 151-154, 251, 255, 303(r), 403, 503, 616, 617, and 618.

Section Number and Title:

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| 14.1 | Applicability. |
| 14.2 | Limitations. |
| 14.3 | Exemption for Customized Equipment or Services. |
| 14.4 | Exemption for Small Entities. |
| 14.5 | Waivers – Multi-purpose Services and Equipment. |

SUBPART B—DEFINITIONS

Brief Description: Part 14 implements the requirements of section 716 of the Communications Act of 1934, as amended, which requires providers of advanced communication services (ACS) and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Communications Act of 1934, as amended, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718. Part 14 requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable. Part 14 also establishes procedures to facilitate the filing of formal and informal complaints.

Need: Part 14 implements Congress’ mandate that people with disabilities have access to advanced communications services (“ACS”) and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the “Twenty-First Century Communications and Video Accessibility Act of 2010” (CVAA). ACS plays a fundamental role in today’s world, and these rules remain necessary to ensure that people with disabilities can access ACS services and equipment to fully participate in business, family, social, and other activities.

Legal Basis: 47 U.S.C. §§ 151-154, 251, 255, 303(r), 403, 503, 616, 617, and 618.

Section Number and Title:

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| 14.10 | Definitions. |
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SUBPART C—IMPLEMENTATION REQUIREMENTS - WHAT MUST COVERED ENTITIES DO?

Brief Description: Part 14 implements the requirements of section 716 of the Communications Act of 1934, as amended, which requires providers of advanced communication services (ACS) and

manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Communications Act of 1934, as amended, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718. Part 14 requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable. Part 14 also establishes procedures to facilitate the filing of formal and informal complaints.

Need: Part 14 implements Congress' mandate that people with disabilities have access to advanced communications services (ACS) and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA). ACS plays a fundamental role in today's world, and these rules remain necessary to ensure that people with disabilities can access ACS services and equipment to fully participate in business, family, social, and other activities.

Legal Basis: 47 U.S.C. §§ 151-154, 251, 255, 303(r), 403, 503, 616, 617, and 618.

Section Number and Title:

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| 14.20 | Obligations. |
| 14.21 | Performance Objectives. |

SUBPART D—RECORDKEEPING, CONSUMER DISPUTE ASSISTANCE, AND ENFORCEMENT

Brief Description: Part 14 implements the requirements of section 716 of the Communications Act of 1934, as amended, which requires providers of advanced communication services (ACS) and manufacturers of equipment used for ACS to make their products accessible to people with disabilities, unless accessibility is not achievable. The Commission also adopts rules to implement section 717 of the Communications Act of 1934, as amended, which requires the Commission to establish new recordkeeping and enforcement procedures for manufacturers and providers subject to sections 255, 716 and 718. Part 14 requires manufacturers and service providers subject to section 716 to comply with the requirements of section 716 either by building accessibility features into their equipment or service or by relying on third party applications or other accessibility solutions. If accessibility is not achievable by building in accessibility or relying on third party applications or other accessibility solutions, manufacturers and service providers must make their products compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, unless that is not achievable. Part 14 also establishes procedures to facilitate the filing of formal and informal complaints.

Need: Part 14 implements Congress' mandate that people with disabilities have access to advanced communications services ("ACS") and ACS equipment. Specifically, these rules implement sections 716 and 717 of the Communications Act of 1934, as amended, which were added by the "Twenty-First Century Communications and Video Accessibility Act of 2010" (CVAA). ACS plays a fundamental role in today's world, and these rules remain necessary to ensure that people with disabilities can access ACS services and equipment to fully participate in business, family, social, and other activities.

Legal Basis: 47 U.S.C. §§ 151-154, 251, 255, 303(r), 403, 503, 616, 617, and 618.

Section Number and Title:

14.30	Generally.
14.31	Recordkeeping.
14.32	Consumer Dispute Assistance.
14.33	Informal or formal complaints.
14.34	Informal complaints; form, filing, content, and consumer assistance.
14.35	Procedure; designation of agents for service.
14.36	Answers and replies to informal complaints.
14.37	Review and disposition of informal complaints.
14.38	Formal Complaints; General pleading requirements.
14.39	[superseded by subpart E of part 1, 1.722] Format and content of formal complaints.
14.40	[superseded by subpart E of part 1, 1.723] Damages.
14.41	[superseded by subpart E of part 1, 1.725] Joinder of complainants and causes of action.
14.42	[superseded by subpart E of part 1, 1.726]
14.43	[superseded by subpart E of part 1, 1.727] Cross-complaints and counterclaims.
14.44	[superseded by subpart E of part 1, 1.728] Replies.
14.45	[superseded by subpart E of part 1, 1.729] Motions.
14.46	[superseded by subpart E of part 1, 1.721(r)-(s)] Formal complaints not stating a cause of action; defective pleadings.
14.47	[superseded by subpart E of part 1, 1.730] Discovery.
14.48	[superseded by subpart E of part 1, 1.731] Confidentiality of information produced or exchanged by the parties.
14.49	[superseded by subpart E of part 1, 1.732] Other required written submissions.
14.50	[superseded by subpart E of part 1, 1.733] Status conference.
14.51	[superseded by subpart E of part 1, 1.49-1.52] Specifications as to pleadings, briefs, and other documents; subscription.
14.52	[superseded by subpart E of part 1, 1.734] Copies; service; separate filings against multiple defendants.

PART 15—RADIO FREQUENCY DEVICES

SUBPART A—GENERAL

Brief Description: These rules set forth the definitions for various terms and the measurement procedures that must be used to determine whether devices comply with the Commission’s RF emissions limits. These rules cover, among other devices, Broadband Power Line (BPL) devices, Unlicensed Personal Communications Service (UPCS) devices, and field disturbance sensors.

Need: These rules are needed to allow operators of devices, including Broadband Power Line (BPL) devices, Unlicensed Personal Communications Service (UPCS) devices, and field disturbance sensors, to accurately measure and determine whether their devices comply with the Commission’s RF emissions limits.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, 304, 307, 336, 544a, and 549.

Section Number and Title:

15.3(hh)	Definitions.
15.31(a)(2), (f)(2), (f)(3)	Measurement standards.
15.35(b)	Measurement detector functions and bandwidths.
15.38	Incorporation by reference.

SUBPART C—INTENTIONAL RADIATORS

Brief Description: Section 15.212 defines the different types of modular transmitters and sets forth the requirements for obtaining approval for these devices under Part 15 of the Commission's rules.

Need: These rules are needed to provide efficient equipment authorization procedures for modular transmitter devices, enabling manufacturers to develop more advanced unlicensed transmitter technologies without causing harmful interference.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, 304, 307, 336, and 544a.

Section Number and Title:

15.212 Modular transmitters.

SUBPART D—UNLICENSED PERSONAL COMMUNICATIONS SERVICE DEVICES

Brief Description: These rules set forth general technical requirements for Unlicensed Personal Communications Service (UPCS) devices, and specific requirements for UPCS devices operating in the 1920-1930 MHz band.

Need: These rules are needed to ensure UPCS devices operate as intended and do not cause harmful interference.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, 304, 307, 336, and 544a.

Section Number and Title:

15.319(b)	General technical requirements.
15.323(a), (c)(5), (d), and (e)	Specific requirements for devices operating in the 1920-1930 MHz band.

SUBPART G—ACCESS BROADBAND OVER POWER LINE (ACCESS BPL)

Brief Description: Section 15.611 sets forth general technical requirements for Broadband Power Line (BPL) systems. Subsection (c) specifies the interference mitigation and avoidance requirements for BPL systems. Subparagraph (c)(1)(i) clarifies that for frequencies below 30 MHz, when a notch filter is used to avoid interference to a specific band, the BPL system must be capable of attenuating emissions within that band to a level at least 25 dB below the applicable Part 15 limits.

Need: This rule clarifies what steps a Broadband Power Line (BPL) system operator must take to avoid causing harmful interference.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, 304, 307, 336, 544a, and 549.

Section Number and Title:

15.611(c)(1)(i) General technical requirements.

SUBPART H—WHITE SPACE DEVICES

Brief Description: These rules specify how White Space Devices may operate safely in certain bands. These rules cover the scope of subpart H, definitions, cross references, user information, permissible channels of operation, general technical requirements, interference avoidance methods, interference

protection requirements, white space databases, database administration fees, database administrators, and white space devices that rely on spectrum sensing.

Need: These rules enable white space devices to operate on an unlicensed basis using television channels that are vacant in certain markets without causing harmful interference.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, 304, 307, 336, and 544a.

Section Number and Title:

15.701	Scope.
15.703	Definitions.
15.705	Cross reference.
15.706	Information to the user.
15.707	Permissible channels of operation.
15.709	General technical requirements.
15.711	Interference avoidance methods.
15.712	Interference protection requirements.
15.713	White space database.
15.714	White space database administration fees.
15.715	White space database administrator.
15.717	White space devices that rely on spectrum sensing.

PART 20—COMMERICAL MOBILE SERVICES

Brief Description: Part 20 rules set forth the Commission's requirements and conditions for commercial mobile radio service providers under the Communications Act of 1934, as amended. Section 20.12(d) requires host carriers to provide automatic roaming to technologically compatible, facilities-based CMRS carriers on reasonable and not unreasonably discriminatory terms and conditions. Sections 20.12(a)(3) and (e) require facilities-based providers of commercial mobile data services to offer roaming arrangements to other such providers on commercially reasonable terms, subject to certain limitations. Section 20.19 requires wireless handset manufacturers and terrestrial mobile service providers to make available to consumers a minimum number of handsets that meet specified technical criteria for hearing aid compatibility and to disclose certain information to consumers about a handset's hearing aid compatibility.

Need: Section 20.12 is needed on an ongoing basis to implement the Commission's interconnection regulations between local exchange carriers and commercial mobile radio providers. Section 20.19 is needed on an ongoing basis to ensure reasonable access to commercial mobile services by persons with impaired hearing, as required under 47 U.S.C. § 610.

Legal Basis: 47 U.S.C. §§ 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615(a), 615(b), and 615(c), unless otherwise noted.

Section Number and Title:

20.12(a)(3), (d), and (e)	Resale and roaming.
20.19(a)(3)(i), (b)(3), (c)	Hearing aid-compatible mobile handsets.
(1)(ii)(C), (e)(1)(ii), (iii), (f)(2) introductory text and (iii), (f)(3), and (l)	

PART 25—SATELLITE COMMUNICATIONS

SUBPART B—APPLICATIONS AND LICENSES

Brief Description: Part 25 contains the Commission's rules governing the licensing and operation of space stations and earth stations. It includes application requirements, technical requirements, operational requirements, and coordination requirements for various satellite services. The rules also define the Commission's processing of applications.

Need: Part 25 rules are needed to ensure that satellite services may be provided without harmful interference and consistent with the public interest.

Legal Basis: 47 U.S.C. §§ 154, 157, 301, 302, 303, 307, 309, 310, 316, 319, 332, 605, and 701-744.

Section Number and Title:

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| 25.114 | Applications for space station authorizations. |
| 25.115 | Applications for earth station authorizations, |
| 25.130 | Filing requirements for transmitting earth stations. |
| 25.132 | Verification of earth station antenna performance standards. |
| 25.134 | Licensing provisions of Very Small Aperture Terminal (VSAT) and C-band Small Aperture Terminal (CSAT) networks. |
| 25.138 | Blanket Licensing provisions of GSO FSS Earth Stations in 18.3-18.8 GHz (space-to-Earth), 19.7-20.2 GHz (space-to-Earth), 28.35-28.6 GHz (Earth-to-space), and 29.25-30.0 GHz (Earth-to-space) bands. |
| 25.149 | Application requirements for ancillary terrestrial components in Mobile-Satellite Service networks operating in the 1.5/1.6 GHz and 1.62/2.4 GHz Mobile Satellite Service. |
| 25.201 | Definitions. |

SUBPART C—TECHNICAL STANDARDS

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| 25.202 | Frequencies, frequency tolerance and emission limits. |
| 25.203 | Choice of sites and frequencies. |
| 25.204 | Power limits for earth stations. |
| 25.205 | Minimum antenna elevation angle. |
| 25.209 | Earth station antenna performance standards. |
| 25.212 | Narrowband analog transmissions, digital transmissions, and video transmissions in the GSO Fixed-Satellite Services. |
| 25.218 | Off-axis EIRP density envelopes for FSS earth station transmitting in certain frequency bands. |
| 25.220 | Non-routine transmit/receive earth station operations. |
| 25.221 | Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 3700-4200 MHz (space-to-Earth) band and transmitting in the 5925-6425 MHz (Earth-to-space) band, operating with GSO Satellites in the Fixed-Satellite Service. |
| 25.222 | Blanket Licensing provisions for Earth Station on Vessels (ESVs) receiving in the 10.95-11.2 GHz (space-to-Earth), 11.45-11.7 GHz (space-to-Earth), 11.7-12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0-14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Orbit (GSO) Satellites in the Fixed-Satellite Service. |
| 25.226 | Blanket licensing provisions for domestic, U.S. VMESs operating with GSO FSS space stations in the 10.95-11.2 GHz, 11.45-11.7 GHz, 11.7-12.2 GHz, and 14.0-14.5 GHz bands. |

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| 25.254 | Special requirements for ancillary terrestrial components operating in the 1610-1626.5 MHz/2483-2500 MHz bands. |
| 25.264 | Requirements to facilitate reverse-band operation in the 17.3-17.8 GHz band of 17/24 GHz BSS and DBS Service space stations. |

SUBPART D—TECHNICAL OPERATIONS

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| 25.271 | Control of transmitting stations. |
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PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

SUBPART B—APPLICATIONS AND LICENSES

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart B establishes application and licensing requirements applicable to a number of spectrum bands, including among others, 700 MHz (698-746, 746-758, 775-788, and 805-806 MHz); Advanced Wireless Service (AWS) (1710-1755, 2110-2155, 1695-1710, 1755-1780, and 2155-2180 MHz); Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (2150-2160 and 2496-2690 MHz); and Wireless Communications Service (WCS) (2305-2320 and 2345-2360 MHz).

Need: The revised rules specify license periods for BRS and EBS (27.13 (h)); construction requirements for 700 MHz, BRS and EBS, and WCS (27.14 (g) – (p)); and network access requirements for Block C in the 746-757 and 776-787 MHz bands (27.16). The need for these rules is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 301, 302, 303, 307, 309, and 332.

Section Number and Title:

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| 27.13(h) | License period. |
| 27.14 (g) – (p) | Construction requirements. |
| 27.16 | Network access requirements for Block C in the 746-757 and 776-787 MHz bands. |

SUBPART C—TECHNICAL STANDARDS

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart C contains technical standards applicable to a number of services and frequency bands.

Need: The additional rules provide for: (1) permissible power and antenna heights; (2) emission limitations; (3) Power flux density limits; (4) efficient deployment of and coexistence between WCS licensees and SDARS licensees; and (5) WCS licensees to take all practicable steps necessary to minimize the risk of harmful interference to AMT and DSN facilities. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452.

Section Number and Title:

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|--------------------------|--|
| 27.50 Tables 2, 3, and 4 | Permissible Power and Antenna Heights for Base and Fixed Stations in the 600 MHz, 698-757 MHz, 758-763 MHz, 776-787 MHz and 788-793 MHz Bands. |
| 27.53(d), (e)(1)-(5) | Emission limits. |
| 27.55(c) | Power strength limits. |

27.72	Information sharing requirements.
27.73	WCS, AMT, and Goldstone coordination requirements.

SUBPART M—BROADBAND RADIO SERVICE AND EDUCATIONAL BROADBAND SERVICE

Brief Description: Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart M contains specific rules applicable to the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) that operate in the 2500-2690 MHz band.

Need: The rules establish competitive bidding and designated entity rules for BRS and EBS. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 301, 302, 303, 307, 309, and 332.

Section Number and Title:

27.1217	Competitive bidding procedures for the Broadband Radio Service and the Educational Broadband Service.
27.1218	Broadband Radio Service designated entity provisions.

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

SUBPART A—GENERAL

Brief Description: Section 36.4 sets out streamlining procedures for processing petitions for waiver of the Commission's freeze of Local Exchange Carrier study area boundaries.

Need: These rules enable the Commission to more efficiently and effectively process petitions for waiver of the study area freeze.

Legal Basis: 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302, and sections 1.1 and 1.1421 of the Commission's rules, 47 C.F.R. 1.1, 1.421.

Section Number and Title:

36.4	Streamlining procedures for processing petitions for waiver of study area boundaries.
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PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS, PROVIDERS OF INTERNATIONAL INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES AND CERTAIN AFFILIATES

Brief Description: Part 43 sets forth reporting requirements for common carriers. During the relevant review period, the Commission eliminated the following outdated and unnecessary reporting requirements related to international telecommunications traffic for which the burdens on U.S. international service providers now outweigh the benefits: (1) the quarterly traffic and revenue reports for large carriers; (2) the quarterly traffic and revenue reports for foreign-affiliated switched resale carriers; (3) the circuit-addition report for carriers that have been certified as resellers of private lines; (4) the telegraph toll division report for carriers that provide international telegraph service; and (5) the requirement for carriers holding international section 214 authorizations to file a traffic and revenue report or circuit-status report

for traffic between the continental United States and off-shore U.S. points (e.g., Guam or the U.S. Virgin Islands) or between off-shore U.S. points, or to file separate reports for off-shore U.S. points.

Need: In modifying its rules, the Commission ensures that its data collections match its data needs while avoiding unnecessary or excessive burdens on entities subject to Commission authority.

Legal Basis: 47 U.S.C. §§ 35-39, 154, 211, 219, and 220.

43.53 [Removed]	Reports regarding division of international toll communication charges.
43.61 (a); (b), (c) [Removed]	Reports of international telecommunications traffic.
43.82 (a)	International circuit status report.

PART 51—INTERCONNECTION

SUBPART H—RECIPROCAL COMPENSATION FOR TRANSPORT AND TERMINATION OF TELECOMMUNICATIONS TRAFFIC

Brief Description: The purpose of Subpart H is to establish rules governing the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology – and confirms that, after the transition, the exchange of telecommunications traffic between and among service providers will, by default, be governed by bill-and-keep arrangements.

Need: These rules establish the context for Subpart H and support the implementation of bill-and-keep as the ultimate uniform, national methodology for all telecommunications traffic exchanged with a Local Exchange Carrier.

Legal Basis: 47 U.S.C. §§ 151–55, 157, 201–05, 207–09, 218, 220, 225–227, 251–254, 256, 271, 303(r), 332, and 1302, 47 U.S.C. § 157 note, unless otherwise noted.

Section Number and Title:

51.700	Purpose of this subpart.
51.701(b)(3)	Scope of transport and termination pricing rules.

SUBPART J—TRANSITIONAL ACCESS SERVICE PRICING

Brief Description: Sections 51.901 through 51.919 govern the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology for telecommunications traffic exchanged between telecommunications providers; that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

Need: These rules facilitate implementation of bill-and-keep as the national methodology for all telecommunications traffic exchanged between telecommunications providers; that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

Legal Basis: 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302; 47 C.F.R. §§ 1.1, 1.421.

Section Number and Title:

51.901	Purpose and scope of transitional access service pricing rules.
51.903	Definitions.

51.905	Implementation.
51.907	Transition of price cap carrier access charges.
51.909	Transition of rate-of-return carrier access charges.
51.911	Access reciprocal compensation rates for competitive LECs.
51.913	Transition for VoIP-PSTN traffic.
51.915	Recovery mechanism for price cap carriers.
51.917	Revenue recovery for Rate-of-Return Carriers.
51.919	Reporting and monitoring.

PART 52—NUMBERING

SUBPART C—NUMBER PORTABILITY

Brief Description: Section 52.23(h) establishes requirements for porting telephone numbers from a wireline carrier to a wireless carrier. Section 52.34 establishes obligations regarding local number porting to and from interconnected VoIP or Internet-based TRS providers. Section 52.35 establishes porting intervals when transferring a customer's telephone number between two wireline providers; a wireline and wireless provider; or an interconnected Voice over Internet Protocol (VoIP) provider and any other service provider. Section 52.36 specifies standard data fields that may be required from customers for simple port order processing.

Need: These rules facilitate prompt transfers of telephone numbers by standardizing the data to be exchanged when transferring a customer's telephone number between two wireline providers; a wireline and wireless provider; or an interconnected Voice over Internet Protocol (VoIP) provider and any other service provider. The rules also mandate one-business day porting intervals to ensure that consumers are able to port their telephone numbers efficiently and to enhance competition for all communications services.

Legal Basis: 47 U.S.C. §§ 151, 154(i)-(j), 251, and 303(r).

Section Number and Title:

52.23(h)	Deployment of long-term database methods for number portability by LECs.
52.35	Porting intervals.
52.36	Standard data fields for simple port order processing.

PART 54—UNIVERSAL SERVICE

SUBPART D—UNIVERSAL SERVICE SUPPORT FOR HIGH COST AREAS

Brief Description: Section 54.302 establishes a per-line limit on universal service monthly support. The provisions in section 54.304 govern data submission requirements for, and payment of CAF ICC support to, eligible rate-of-return and price-cap carriers. Section 54.307(e) establishes the current methodology for determining Competitive Eligible Telecommunications Carrier high cost support. Section 54.312 sets out rules for legacy high-cost support in price-cap territories before, during and after the Connect America Fund Phase II and Rural Digital Opportunity Fund Phase I auctions.

Need: These rule sections specify reporting and payment processes integral to the Commission's high-cost program.

Legal Basis: 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

Section Number and Title:

54.302	Monthly per-line limit on universal service support.
54.304	Administration of Connect America Fund Inter-carrier Compensation Replacement.
54.307(e)	Support to a competitive eligible telecommunications carrier.
54.312	Connect America Fund for Price Cap Territories - Phase I.

SUBPART E—UNIVERSAL SERVICE SUPPORT FOR LOW-INCOME CONSUMERS

Brief Description: Section 54.404 details requirements and processes applicable to the National Lifeline Accountability Database, which allows service providers to enroll Lifeline eligible consumers in the program and manage their subscribers. Section 54.405(e) details the process for Eligible Telecommunications Carriers to de-enroll a Lifeline subscriber where there is a reasonable basis for the ETC to believe that the subscriber no longer meets the criteria to be considered a qualifying low-income consumer for purposes of the Lifeline program. Section 54.414 provides that only ETCs that receive high-cost support may receive Link Up, specifies requirements for determining a resident of rural Tribal lands' initial eligibility for Link Up, and establishes recordkeeping requirements that must be met for ETCs to receive reimbursement for providing Tribal Link Up. Section 54.419 provides that electronic signatures have the same legal effect as written signatures for purposes of Subpart E. Section 54.420 sets out requirements for obtaining third-party biennial audits of their compliance with subpart E requirements. Section 54.422 establishes annual reporting requirements applicable to ETC receiving low-income support.

Need: These rules comprise key elements of the Lifeline and Tribal Link Up programs, including provisions for verification of eligibility for the programs and auditing and reporting requirements to support Commission oversight.

Legal Basis: 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

Section Number and Title:

54.404	The National Lifeline Accountability Database.
54.405(e)	Carrier obligation to offer Lifeline.
54.414	Reimbursement for Tribal Link Up.
54.419	Validity of electronic signatures.
54.420	Low income program audits.
54.422	Annual reporting for eligible telecommunications carriers that receive low-income support.

SUBPART F—UNIVERSAL SERVICE FOR RURAL HEALTH CARE PROGRAM

Brief Description: These rules establish the framework for the Healthcare Connect Fund of the Rural Health Care Program, including the criteria for what recipients, services, and equipment are deemed eligible in the program, the requirement that health care providers contribute to the total cost of eligible expenses, and requirements for data collection and reporting.

Need: These rules facilitate the administration of the Health Care Connect Fund, which provides support for high-capacity broadband connectivity to eligible health care providers and encourages the formation of state and regional broadband health care provider networks.

Legal Basis: 47 U.S.C. §§ 151, 152, 154(i)–(j), 201(b), and 254.

Section Number and Title:

54.600	Terms and definitions.
54.601(b)	Health care provider eligibility.
54.602	Health care support mechanism.
54.607 (formerly 54.630)	Eligible recipients.
54.609 (formerly 54.631)	Designation of consortium leader.
54.610 (formerly 54.632)	Letters of agency (LOA).
54.611 (formerly 54.633)	Health care provider contribution.
54.612 (formerly 54.634)	Eligible services.
54.613 (formerly 54.635)	Eligible equipment.
54.614 (formerly 54.636)	Eligible participant-constructed and owned network facilities for consortium applicants.
54.615 (formerly 54.637)	Off-site data centers and off-site administrative offices.
54.616 (formerly 54.638)	Upfront payments.
54.617 (formerly 54.639)	Ineligible expenses.
54.618 (formerly 54.640)	Data collection and reporting.
54.622 (formerly 54.642)	Competitive bidding requirement and exemptions.

SUBPART L—MOBILITY FUND AND 5G FUND

Brief Description: Sections 54.1001 through 54.1010 establish the regulatory framework for the Mobility Fund – Phase I, the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking. These rules established necessary elements of the Mobility Fund – Phase I, including the geographic areas eligible for support, the application process, public interest obligations, and record retention and reporting requirements.

Need: These rules were necessary to facilitate the administration of the Mobility Fund – Phase I, which provided immediate one-time support to accelerate the deployment of mobile broadband and voice service to unserved areas.

Legal Basis: 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

Section Number and Title:

54.1001	Mobility Fund - Phase I.
54.1002	Geographic areas eligible for support.
54.1003	Provider eligibility.
54.1004	Service to Tribal Lands.
54.1005	Application process.
54.1006	Public interest obligations.
54.1007	Letter of credit.
54.1008	Mobility Fund Phase I disbursements.
54.1009	Annual reports.
54.1010	Record retention for Mobility Fund Phase I.

PART 61—TARIFFS

SUBPART B—RULES FOR ELECTRONIC FILING

Brief Description: These rules require electronic tariff filing, using the Commission’s Electronic Tariff Filing System, for all tariff filers for their tariffs, tariff revisions, Base Documents, and associated

documents, including applications for special permission, and petitions and replies to petitions against tariff filings. Sections 61.13 and 61.51 define the scope of electronic filing requirements to apply to all issuing carriers that file tariffs. Sections 61.14 – 61.17 establish procedures applicable to tariff filings to which electronic filing requirements apply.

Need: By requiring all tariff filers to file electronically, these rules create a more open, transparent and efficient flow of information to the public, and benefit the public, carriers, and the Commission by creating a uniform system providing online access to all carrier tariffs filed with the Commission.

Legal Basis: U.S.C. §§ 151, 154(i), 201-205, and 226(h)(1)(A).

Section Number and Title:

61.13	Scope.
61.14	Method of filing publications.
61.15	Letters of transmittal and cover letters.
61.16	Base documents.
61.17	Applications for special permission.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

Brief Description: Part 63 sets forth, among other things, the processes, requirements, and conditions applicable to international section 214 applications and authorizations to provide global facilities-based and global resale services. During the relevant review period, the Commission modified the rules and procedures to, among other things, reduce the notice period for the discontinuance of international services, clarified the rules governing the provision of international roaming service by U.S. Commercial Mobile Radio Service (CMRS) carriers, and made changes to the *de jure* control of an international section 214 authorization holder and the treatment of asset acquisitions. The Commission also eliminated the requirement to submit circuit-additions report.

Need: These rules provide the applicable framework and establish the general applications, procedures, conditions, and restrictions for the provision of U.S.-international telecommunications services.

Legal Basis: 47 U.S.C. §§ 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

Section Number and Title:

63.18 (e)(2) introductory text	Contents of applications for international common carriers.
63.19 (a)(1) and (2)	Special procedures for discontinuances of international services.
63.23 (c); (e) [Removed]; (f) designated as new (e)	Resale-based international common carriers.
63.24 (b) note; (c)	Assignments and transfers of control.

Brief Description: Sections 63.60 (a), (b)(3), (e) and (g) extend to providers of interconnected VoIP service the discontinuance obligations that apply to domestic non-dominant telecommunications carriers under section 214 of the Communications Act.

Need: These rule sections protect consumers of interconnected VoIP service from abrupt discontinuance, reduction, or impairment of their service without notice.

Legal Basis: 47 U.S.C. §§ 151, 154(i)-(j), 214, and 303(r).

Section Number and Title:

63.60(a), (b)(3), (e), and (g)

Definitions.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

SUBPART F—TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES

Brief Description: Part 64, Subpart F implements section 225 of the Communications Act of 1934, as amended. Section 225 codifies Title IV of the Americans with Disabilities Act of 1990 (ADA) which requires that the Commission ensure telecommunications relay services (TRS) are available, “to the extent possible and in the most efficient manner,” to individuals with hearing or speech disabilities in the United States. Section 225 defines “TRS” as telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio. The rules provide minimum functional, operational, and technical standards for TRS programs. The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission. The rules also establish a cost recovery and a carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS. In 2007 and 2008, the rules were amended by adding subsection (a)(3), (a)(9) (which has been redesignated as (a)(10)), (a)(11) (which has been redesignated as (a)(13)), (a)(12) (which has been redesignated as (a)(14)), (a)(13) (which has been redesignated as (a)(17)), (a)(15) (which has been redesignated as (a)(21)), (a)(17) (which has been redesignated as (a)(22)), (a)(18) (which has been redesignated as (a)(22)), (a)(24) (which has been redesignated as (a)(27)), (a)(25) (which has been redesignated as (a)(28)), and (b) to section 64.601 defining terms and extending the TRS requirements contained in section 64.601 to providers of interconnected VoIP services. Section 64.605 (which has been redesignated as section 9.14) was also added to ensure that emergency calls placed by Internet-based TRS users will be routed directly and automatically to the appropriate emergency services authorities by Internet-based TRS providers. Section 64.611 was added to (1) allow the Internet-based TRS provider to take steps to associate the Internet-based TRS user’s telephone number with their IP address to allow for the routing and completion of calls; (2) to facilitate the provision of 911 service; and (3) to facilitate the implementation of appropriate network security measures. Furthermore, section 64.613 was added in order to establish a uniform ten-digit numbering system for Internet-based forms of TRS: (1) a means for NANP numbers to be assigned to Internet-based TRS users and (2) a central numbering directory mechanism that maps each NANP telephone number assigned to an Internet-based TRS user to the appropriate Internet address.

Section 64.610 of Part 64, Subpart F implements the pilot National Deaf-Blind Equipment Distribution Program (NDBEDP). The NDBEDP was established to enable low-income individuals who are deafblind to access Twenty-First Century communications services. The two-year pilot program, which was extended for three additional years, helped ensure that qualified individuals who are deafblind have specialized customer premises equipment designed to access the Internet and advanced communications. Section 64.611(e) prohibits Video Relay Service and IP Relay providers from assigning or issuing toll free numbers to their customers and requires that, upon request of a customer, VRS and IP Relay providers transfer any already assigned toll-free numbers to a toll free service provider or Responsible Organization (RespOrg).

Need: The rules implementing section 225 are intended to facilitate communication by persons with hearing or speech disabilities in order to give full effect to the accessibility policies embodied in section 225, and to ensure that individuals with hearing or speech disabilities receive the same quality of service as hearing individuals when they make TRS calls, regardless of where their calls originate or terminate. Further, the rules are designed to further the TRS functional equivalency mandate by ensuring that Internet-based TRS users can be reached by voice telephone users in the same way that voice telephone users are called. These rules also are intended to ensure that emergency calls placed by Internet-based TRS users will be routed directly and automatically to the appropriate emergency services authorities by Internet-based TRS providers.

Section 64.610 implemented a provision of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), which allocated \$10 million annually from the Interstate Telecommunications Relay Service (TRS) Fund for this nationwide equipment distribution effort. These rules were adopted to govern a pilot program to support the distribution of such specialized CPE and the provision of associated services. With the establishment of a permanent NDBEDP in 2016, 47 CFR 64.6201-64.6219, the pilot program ended, and final accounting was completed. As a result, section 64.610 is no longer needed and may be repealed. Section 64.611(e) promotes the use of geographically appropriate numbers and provide iTRS customers with access functionally equivalent to that enjoyed by hearing customers.

Legal Basis: 47 U.S.C. §§ 151, 152, 225, and 620.

Section Number and Title:

- 64.601(a)(3) American Sign Language (ASL).
- 64.601(a)(9) [redesignated as 64.601(a)(10)] Common carrier or carrier.
- 64.601(a)(11) [redesignated as 64.601(a)(13)] Default provider.
- 64.601(a)(12) [redesignated as 64.601(a)(14)] Default provider change order.
- 64.601(a)(13) [redesignated as 64.601(a)(17)] Hearing carry over (HCO).
- 64.601(a)(15) [redesignated as 64.601(a)(22)] Internet Protocol Captioned Telephone Service (IP CTS).
- 64.601(a)(17) [redesignated as 64.601(a)(24)] IP Relay access technology.
- 64.601(a)(18) [redesignated as 64.601(a)(25)] iTRS access technology.
- 64.601(a)(24) [redesignated as 64.601(a)(30)] Original default provider.
- 64.601(a)(25) [redesignated as 64.601(a)(31)] Point-to-point video call.
- 64.601(b) Definitions and provisions of general applicability.
- 64.603(a) [cross-reference updated] Provision of Services.
- 64.604(a)(4) [redesignated as 47 CFR 9.14(a)], (a)(6)-(7), (c)(5)(ii), (c)(5)(iii)(C) redesignated as (c)(5)(iii)(D)], (c)(5)(iii)(F)(1) [cross-references updated], (c)(5)(iii)(F)(4) [cross-references updated], (c)(5)(iii)(L)-(N), (c)(6)(i) [cross-references updated], (c)(6)(iii)(B) [cross-references updated] Mandatory minimum standards.
- 64.605 redesignated as 47 CFR 9.14(b)] Additional Operational Standards Applicable to Internet-Based TRS Providers; Emergency Calling Requirements.
- 64.606 [renumbered; previously 64.605] Internet-based TRS provider and TRS program Certification.
- 64.607 [renumbered; previously 64.606] Furnishing related customer premises Equipment.
- 64.608 [renumbered; previously 64.607] Provision of hearing aid compatible telephones by exchange carriers.
- 64.609 [renumbered; previously 64.608; cross-references updated] Enforcement of related consumer premises equipment rules.
- 64.610 [superseded by 64.6201-64.6219] Establishment of a National Deaf-Blind Equipment Distribution Program.

64.611 Internet-based TRS registration.
64.613 Numbering directory for Internet-based TRS users.

SUBPART L—RESTRICTIONS ON TELEMARKETING, TELEPHONE SOLICITATION, AND FACSIMILE ADVERTISING

Brief Description: In compliance with the requirements of the Junk Fax Prevention Act, the Commission amends 64.1200(a)(3) of the Commission's rules to expressly recognize an EBR exemption from the prohibition on sending unsolicited facsimile advertisements. (The Commission correspondingly withdraws 64.1200(a)(3)(i) of its rules from its existing rules, as facsimile senders will now be permitted to send facsimile advertisements to recipients with whom they have an EBR without first securing the recipient's written permission.)

Need: Congress mandated that the Commission issue regulations implementing the Junk Fax Prevention Act of 2005. As set forth in the statute, the Commission: (1) codified an established business relationship (EBR) exemption to the prohibition on sending unsolicited facsimile advertisements; (2) provided a definition of an EBR to be used in the context of unsolicited facsimile advertisements that is not limited in duration; (3) required the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows recipients to "opt-out" of any future facsimile transmissions from the sender; and (4) specified the circumstances under which a request to "opt-out" complies with the Junk Fax Prevention Act of 2005.

Legal Basis: 47 U.S.C. §§ 154, 254(k) secs. 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

Section Number and Title:

64.1200 Delivery Restrictions; Section 64.1200 is amended by revising paragraphs (a) and (f).

Brief Description: In a Report and Order, *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, Do-Not-Call Registry*, the Commission amends its rules under the TCPA to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Consistent with the Do Not Call Improvement Act of 2007 (DNC Act), the Commission extends this requirement indefinitely to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Registry to protect consumer privacy rights. The Commission concludes that eliminating the need for consumers to re-register their numbers will enhance consumer privacy protections and benefit the federal government in administering the National Registry. Making registrations permanent adequately balances the need to maintain a high level of accuracy in the National Registry with the desire to have a simple and effective means to limit unwanted telemarketing calls.

Need: The *DNC Report and Order* amends the Commission's rules so that registrations with the National Do-Not-Call Registry will not expire after a period of five years, consistent with the DNC Act and FTC policy. This action will benefit consumers, who will no longer be required to re-register every five years, thereby reducing any burdens on consumers in terms of the time and effort required to register and the need to remember when to re-register.

Legal Basis: 47 U.S.C. §§ 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k), unless otherwise noted.

Section Number and Title:

64.1200 Delivery Restrictions; section 64.1200 is amended by revising paragraph (c)(2) introductory text.

Brief Description: In this Report and Order, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, the Commission requires prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines. Second, the Commission eliminates the “established business relationship” exemption as it previously applied to prerecorded telemarketing calls to residential lines. Third, the Commission requires telemarketers to implement an automated, interactive opt-out mechanism for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines, which would allow a consumer to opt out of receiving additional calls immediately during a telemarketing robocall. Fourth, the Commission requires that the permissible three percent call abandonment rate be calculated for each calling campaign, so that telemarketers cannot shift more abandoned calls to certain campaigns, as is possible if calculation is made across multiple calling campaigns. Finally, the Commission adopts an exemption to its implementing rules under the Telephone Consumer Protection Act (TCPA) for prerecorded health care-related calls to residential lines, which are already regulated by the federal Health Insurance Portability and Accountability Act.

Need: The Commission adopts prior express written consent for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines only. Limiting the written consent requirement to telemarketing calls significantly reduces the compliance burden for all entities, including small entities. In adopting the written consent requirement for autodialed or prerecorded telemarketing calls to wireless numbers and for prerecorded telemarketing calls to residential lines, the Commission also concluded that consent obtained pursuant to the E-SIGN Act will satisfy the requirement of its revised rule, including permission obtained via an email, Web site form, text message, telephone keypress, or voice recording. Accepting consent pursuant to the E-SIGN Act relieves all businesses, including small entities, from the economic impact of generating and retaining a paper document to evidence their compliance.

Legal Basis: 47 U.S.C. §§ 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. §§ 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620 unless otherwise noted.

Section Number and Title:

64.1200	Delivery Restrictions; revise paragraphs (a), (b), (c), and (f). [note that the 64.1200(a)(4)(iv) opt out requirement has been removed if permission/consent is for the fax].
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SUBPART P—CALLING PARTY TELEPHONE NUMBER; PRIVACY

Brief Description: These rule sections implement the Truth in Caller ID Act of 2009,⁵ and prohibit any person or entity from knowingly spoofing caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value. Sections 1.80(a)(4), (b)(3) and (c) establish forfeiture provisions for violations of the Truth in Caller ID Act or the Commission’s rules under the Truth in Caller ID Act. Sections 64.1600 (c), (d), (g) and (h) set out definitions used in connection with the Truth in Caller ID rules. Section 64.1604 establishes the rule against transmission of inaccurate or misleading caller identification information and exceptions to the rule.

Need: These rule sections carry out the Commission’s statutory obligation to implement the Truth in Caller ID Act.

⁵ The President signed the Truth in Caller ID Act into law on December 22, 2010. Truth in Caller ID Act of 2009, Pub. L. No. 111-331, codified at 47 U.S.C. § 227(e).

Legal Basis: Section 2 of the Truth in Caller ID Act of 2009, Pub. L. No. 11-331; 47 U.S.C. §§ 151, 154(i), 154(j), 227, and 303 (r).

Section Number and Title:

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|---------|--|
| 64.1600 | Definitions; subsections (c), (d), (g) and (h). |
| 64.1604 | Prohibition on transmission of inaccurate or misleading caller identification information. |

SUBPART U—CUSTOMER PROPRIETARY NETWORK INFORMATION

Brief Description: These rules implement increased safeguards to the Commission’s customer proprietary network information (CPNI) rule to protect customers’ CPNI against unauthorized access and disclosure. Sections 64.2003(a), (b), (d), (m), (q), and (r) set out definitions of key terms used in the Commission’s CPNI rules. Section 64.2003(k) extends the application of the Commission’s CPNI rules to providers of interconnected VoIP service. Section 64.2009(e) requires carriers to file with the Commission an annual certification, including an explanation of any actions taken against data brokers and a summary of all consumer complaints received in the previous year regarding the unauthorized release of CPNI. Sections 64.2010 (b), (c) and (d) restrict the release of call detail information in customer-initiated telephone contacts, requires mandatory password protection for online account access, and permits carriers to provide CPNI to customers based on in-store contact with a valid photo ID, respectively.⁶ Section 64.2011 establishes a notification process for both law enforcement and customers in the event of a CPNI breach.⁷

Need: These rules limit pretexters’ ability to obtain unauthorized access to personal customer information from carriers the Commission regulates.

Legal Basis: 47 U.S.C. §§ 151, 154(i)-(j), 222, and 303(r).

Section Number and Title:

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|---------|---|
| 64.2003 | Definitions; subsections (a), (b), (d), (m), (q) and (r). |
| 64.2005 | Use of customer proprietary network information without customer approval; subsection (c)(3). |
| 64.2009 | Safeguards required for use of customer proprietary network information; subsection (e). |
| 64.2010 | Safeguards on the disclosure of customer proprietary network information. |
| 64.2011 | Notification of customer proprietary network information security breaches. |

⁶ The Commission proposed to amend section 64.2010 to require wireless carriers to adopt secure methods of authenticating a customer before redirecting a customer’s phone number to a new device and to immediately notify customers whenever a subscriber identity module (SIM) change request is made on a customers’ accounts, and sought comment on other ways to protect customers from fraud related to SIM changes. *Protecting Customers from SIM Swap and Port-Out Fraud*, WC Docket No. 21-341, Notice of Proposed Rulemaking, 36 FCC Rcd 14120 (2021).

⁷ The Commission has proposed updates to section 64.2011 addressing telecommunications carriers’ breach notification duties to ensure that affected customers, the Commission, and other federal law enforcement agencies receive the information they need to mitigate and prevent harm due to a breach and take action to deter future breaches. *Data Breach Reporting Requirements*, WC Docket No. 22-21, Notice of Proposed Rulemaking, FCC 22-102 (2023).

PART 69—ACCESS CHARGES

SUBPART A—GENERAL

Brief Description: These rules implement measures to address the artificial stimulation of interstate switched access charges by requiring carriers, or groups of carriers, that engage in access stimulation to refile their tariffs to reflect lower rates for these services. Sections 69.3(e)(12)(i)-(iii) require local exchange carriers, or groups that include at least one local exchange carrier engaged in access stimulation, to: (1) file their own access tariffs, (2) withdraw from interstate access tariffs issued by the National Exchange Carrier Association, and (3) give notice of their intent to withdraw from the National Exchange Carrier Association tariffs within 45 days of beginning access stimulation. Section 69.1(d) provides that the provisions of Part 51 – Interconnection, subparts H (Reciprocal Compensation for Transport and Termination of Telecommunications Traffic) and J (Transitional Access Service Pricing) control in the event of a conflict between those provisions and the provisions of Part 69.

Need: These rules help to curtail access stimulation, which imposes undue costs on consumers and inefficiently diverts capital away from more productive uses such as broadband deployment.

Legal Basis: 47 U.S.C. §§ 154, 201, 202, 203, 205, 218, 220, 254, and 403.

Section Number and Title:

69.1(d)	Application of access charges.
69.3(e)(12)(i)-(iii).	Filing of access service tariffs.

PART 73— RADIO BROADCAST SERVICES

SUBPART A—AM BROADCAST STATIONS

Brief Description: These rules permit the use of computer modeling techniques to verify that directional AM antennas perform as authorized and reduce the time and expense associated with the license application for a directional AM station. They were adopted collectively by the Commission. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 08-228).

Need: These rules are necessary because they are consistent with the Commission's streamlining initiatives, reduce the regulatory burden upon directional AM stations to the extent possible while maintaining the integrity of the service.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.61(a) and (b)	AM directional antenna field strength measurements.
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Brief Description: This rule addresses corrective actions an AM broadcast station licensee must take when encountering certain difficulties in the operation of a station's AM directional antenna. (*Amendment of the Commission's Rules Regarding AM Directional Antennas*, Report and Order, FCC 07-97).

Need: These rules provide AM licensees with explicit guidance on operating AM broadcast stations with directional antennas.

Legal Basis: 47 U.S.C. §§ 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.62 Directional antenna system operation and tolerances.

Brief Description: These rules permit the use of computer modeling techniques to verify that directional AM antennas perform as authorized and reduce the time and expense associated with the license application for a directional AM station. They were adopted collectively by the Commission. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 08-228).

Need: These rules are necessary because they are consistent with the Commission's streamlining initiatives, reduce the regulatory burden upon directional AM stations to the extent possible while maintaining the integrity of the service.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.68(a) revised and (b) Sampling systems for antenna monitors.

Brief Description: These rules permit the use of computer modeling techniques to verify that directional AM antennas perform as authorized and reduce the time and expense associated with the license application for a directional AM station. They were adopted collectively by the Commission. (*An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 08-228).

Need: These rules are necessary because they are consistent with the Commission's streamlining initiatives, reduce the regulatory burden upon directional AM stations to the extent possible while maintaining the integrity of the service.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.151 introductory text and (c) Field strength measurements to establish performance of directional antennas.

73.155 Directional antenna performance recertification.

SUBPART B—FM BROADCAST STATIONS

Brief Description: This rule implements procedures for allocating new FM channels and modifying the communities of license of existing radio stations. (*Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Second Report and Order, FCC 06-163).

Need: These rules are necessary to streamline the process of allocating new FM channels, modifying the communities of existing radio stations, and to reduce backlogs in proceedings to amend the FM Table of Allotments.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.202 Table of Allotments.

SUBPART C—DIGITAL AUDIO BROADCASTING

Brief Description: These rules foster the development of a vibrant terrestrial digital radio service for the public and ensures that radio stations are able to successfully implement digital audio broadcasting. (*Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, Second Report and Order, FCC 07-33).

Need: These rules are necessary for the operation of a terrestrial digital radio service.

Legal Basis: 47 U.S.C. §§ 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.404 Interim hybrid IOBC DAB operation.

SUBPART E—TELEVISION BROADCAST STATIONS

Brief Description: These rules provide procedures necessary to ensure that broadcasters were able to timely complete their transitions from analog to digital service and are able to continue to provide digital television service. They were adopted collectively by the Commission. (*Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07-228).

Need: These rules ensured that full power broadcasters met their statutory obligation and deadline to convert to digital technology and viewers did not and do not lose service.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.616	Post-transition DTV station interference protection.
73.622(f)(4)	Digital television table of allotments.
73.623(a)	DTV applications and changes to DTV allotments.
73.624(d)(1)	Digital television broadcast stations.
(v)-(vii) and (3), (g) introductory text and (g)(2)	

Brief Description: This rule extends the duration of certain licenses and construction permits, to conform to the new, June 12, 2009, digital television transition date. (*Implementation of the DTV Delay Act*, Second Report and Order, FCC 09-11).

Need: These rules modify the tolling standard to extend to construction deadline if a station is unable to meet the digital television transition deadline due to international coordination with Mexico and Canada.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.624(d)(1)(vii), (3)(ii) and (iii) Digital television broadcast stations.

Brief Description: This rule establishes an annual fee for the provision of certain ancillary and supplementary service provided by low power television stations converting to digital operations.

(Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations, Second Report and Order, FCC 11-110).

Need: This rule is necessary to fulfill the requirements of section 336 of the Communications Act of 1934 that the public recover a portion of the value of the public spectrum resource made available for commercial use, as well as to avoid unjust enrichment of broadcasters that use that resource.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.624 (g) Digital television broadcast stations.

Brief Description: These rules permit the use of distributed transmission system technologies in the digital television service. The rules allow DTV station licensees and permittees to use DTS technologies where feasible in place of a single transmitter to provide service as authorized. *(Digital Television Distributed Transmission System Technologies, Report and Order, FCC 08-256).*

Need: These rules will help improve some DTV stations' ability to serve more of their viewers within their service areas. For example, we expect that DTS will be especially useful in mountainous areas where single transmitters have been unable to reach viewers in valleys or those blocked by elevated terrain.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.626 DTV distributed transmission systems.

Brief Description: These rules modernize rules concerning children's programming to include restrictions on displaying Internet website addresses. They were adopted collectively by the Commission to modernize its rules implementing the Act in light of the Digital TV Transition. *(In the Matter of Children's Television Obligations Of Digital Television Broadcasters, Second Order on Reconsideration and Second Report and Order, FCC 06-143).*

Need: These rules are necessary to ensure that the Commission's rules continue to respond the Congressional mandate in the Children's Television Act by protecting children from advertising directing them to Internet sites.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.670(b)-(d) and Note 1 Commercial limits in children's programs.

Brief Description: These rules provide procedures necessary to ensure that broadcasters were able to timely complete their transitions from analog to digital service and are able to continue to provide digital television service. They were adopted collectively by the Commission. *(Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Report and Order, FCC 07-228).*

Need: These rules ensured that full power broadcasters met their statutory obligation and deadline to convert to digital technology and viewers did not and do not lose service.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.682 (d) TV transmission standards.

Brief Description: This rule makes mandatory a technical standard, developed by an industry standards development body, that is designed to prevent digital television commercial advertisements from being transmitted at louder volumes than the program material they accompany. (*Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, FCC 11-182).

Need: This rule is necessary to implement the Commercial Advertisement Loudness Mitigation Act to protect viewers from excessively loud commercials.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.682(e) and Note TV Transmission standards.

Brief Description: This rule adopts a predictive model for determining the ability of individual locations to receive an over-the-air digital television broadcast signal at the intensity level needed for service through the use of an antenna. (*Satellite Television Extension and Localism Act of 2010 and Satellite Home Viewer Extension and Reauthorization Act of 2004*, Report and Order and Further Notice of Proposed Rulemaking, FCC 10-194).

Need: This rule is necessary to fulfill the requirement of the Satellite Television Extension and Localism Act of 2010.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.683(d) and (e) Field strength contours and presumptive determination of field strength at individual locations.

Brief Description: This rule establishes measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures are used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers. (*Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004*, Report and Order, FCC 10-195).

Need: These rules is necessary to fulfill the requirement of the Satellite Television Extension and Localism Act of 2010.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.684(d) and (e) Field strength measurements.

Brief Description: Section 73.686 sets forth the procedures for measuring the field strength of television broadcast stations. Subsection (d) governs the measurement of NTSC television signal intensity while subsection (e) governs the measurement of digital television (DTV) signal intensity.

Need: These rules specify how field strength data must be collected for different types of television broadcast stations. This data is then used for propagation analysis. Accurate field strength measurement

and propagation analysis are necessary to ensure that television broadcast stations operate as intended and do not cause harmful interference.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.686(d) and (e) Field strength measurements.

SUBPART G—LOW POWER FM BROADCAST STATIONS (LPFM)

Brief Description: These rules provide procedures and guidance to promote the operation and expansion of the low power FM (LPFM) service through its technical and ownership rules. (*Creation of a Low Power Radio Service*, Third Report and Order, FCC 07-204).

Need: These rules help ensure the viability and success of the LPFM service.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.809 (a) and (b)	Inference protection to full service FM stations.
73.853(b)(1)-(3)	Licensing requirements and service.
73.865	Assignment and transfer of LPFM licenses.
73.870(f)	Processing of LPFM broadcast station applications.
73.871(c)(2)-(4)	Amendment of LPFM broadcast station applications.
73.872(c)(1)-(3)	Selection procedure for mutually exclusive LPFM applications.

SUBPART H—RULES APPLICABLE TO ALL BROADCAST STATIONS

Brief Description: This rule provides the required content that must be provided by a station as part of a broadcaster's official station identification. (*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 Rulemaking, FCC 07-33).

Need: These rules are necessary to ensure broadcast stations, including digital radio and television stations, properly identify themselves to the public.

Legal Basis: 47 U.S.C. §§ 154 and 303.

Section Number and Title:

73.1201(b) Station identification.

Brief Description: These rules require that television station public inspection files be made available in an online public file that is hosted on the Commission's website. (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, Second Report and Order, FCC 12-44).

Need: These rules are necessary to provide guidance as to what documents must be maintained in a television station's online public file.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, and 554.

Section Number and Title:

73.1212(e) Sponsorship identification; list retention; related requirements.

Brief Description: This rule addresses transmission system operations for broadcast television and radio stations. (*Amendment of the Commission's Rules Regarding AM Directional Antennas*, Report and Order, FCC 07-97)

Need: These rules are necessary to ensure licenses maintain and operate a broadcast station in a manner that is consistent with the Commission's rules.

Legal Basis: 47 U.S.C. §§ 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.1350 (b)(2), (d), and (e) Transmission System Operation.

Brief Description: These rules provide procedures for processing and allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments. They were adopted collectively by the Commission. (*Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, FCC 06-163).

Need: These rules are necessary to provide streamlined processes for allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments.

Legal Basis: 47 U.S.C. §§ 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.1690(b)(9) Modification of transmission systems.

Brief Description: These rules require that television station public inspection files be made available in an online public file that is hosted on the Commission's website. (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, Second Report and Order, FCC 12-44).

Need: These rules are necessary to provide guidance as to what documents must be maintained in a television station's online public file.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, and 554.

Section Number and Title:

73.1943(d) Political file.

Brief Description: These rules afford eligible entities that acquire an expiring construction permit additional time to build out, revises the Commission's equity/debt plus attribution standard to facilitate investment in eligible entities, and adopts other policies to prevent discrimination in transactions and encourage diverse ownership in the broadcast industry. (*In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-217).

Need: These rules were adopted to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.2090 Ban on discrimination in broadcast transactions.

Brief Description: These rules require that television station public inspection files be made available in an online public file that is hosted on the Commission's website. (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, Second Report and Order, FCC 12-44).

Need: These rules are necessary to provide guidance as to what documents must be maintained in a television station's online public file.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, and 554.

Section Number and Title:

73.2526 (b) and (e)(11)(i)	Online public inspection file of commercial stations.
73.3527(b) and (e)(8)	Online public inspection file of noncommercial. educational stations.

Brief Description: These rules afford eligible entities that acquire an expiring construction permit additional time to build out, revises the Commission's equity/debt plus attribution standard to facilitate investment in eligible entities, and adopts other policies to prevent discrimination in transactions and encourage diverse ownership in the broadcast industry. (*In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-217).

Need: These rules were adopted to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.3555, Note 2 Multiple ownership.

Brief Description: This rule adopts a maximum aggregate national audience reach of any single television station owner and sets for procedures for divestiture in the event the specified national television ownership limit is reached. (Implementation of section 629 of the Consolidated Appropriations Act, 2004 (National Broadcast Television Ownership), Order, FCC 06-117).

Need: These rules are necessary in furtherance of statute and to promote localism, competition, and diversity.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.3555 (e)(1) and (3) Multiple ownership.

Brief Description: These rules provide procedures for processing and allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments. They were adopted collectively by the Commission. (*Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast*

Services, Report and Order, FCC 06-163).

Need: These rules are necessary to provide streamlined processes for allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments.

Legal Basis: 47 U.S.C. §§ 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.3571(a)(1) and (j) Processing of AM broadcast station applications.

Brief Description: This rule implements procedures designed to promote ownership and programming diversity, especially by Native American tribes, and to streamline processing of AM radio applications. (*Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures, Second Report and Order, FCC 11-28*).

Need: This rule is necessary to provide a process for filing and processing certain AM radio applications.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.3571(h)(1)(ii) and note Processing of AM broadcast station applications.

Brief Description: This rule implements procedures designed to promote ownership and programming diversity, especially by Native American tribes, and to streamline processing of AM radio applications. (*Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures, Report and Order and Further Notice of Proposed Rulemaking, FCC 10-24*).

Need: This rule is necessary to provide a process for filing and processing certain AM radio applications.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.3571(h)(4)(iii) and (k) Processing of AM broadcast station applications.

Brief Description: This rule implements a process to enable Class A television stations to complete the digital transition process. (*Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations, Second Report and Order, FCC 11-110*).

Need: The rule is necessary to enable Class A stations to complete their transition from analog to digital operations.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.3572(h) Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

Brief Description: These rules provides procedures for processing and allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of

allotments. They were adopted collectively by the Commission. (*Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, FCC 06-163).

Need: This rule is necessary to provide streamlined processes for allocating new FM channels, modifying the communities of license of existing radio stations, and amending the FM Table of allotments.

Legal Basis: 47 U.S.C. §§ 154, 303, 309, 310, 334, and 336.

Section Number and Title:

73.3573(a)(1), Note 1 and (g) Processing of FM broadcast station applications.

Brief Description: These rules require that television station public inspection files be made available in an online public file that is hosted on the Commission's website. (*Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)*, Second Report and Order, FCC 12-44).

Need: These rules are necessary to provide guidance as to what documents must be maintained in a television station's online public file.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, and 554.

Section Number and Title:

73.3580(d)(4)(i) and (ii) Local public notice of filing of broadcast applications.

Brief Description: The rule provides for the construction period and manner of extending a construction permit for LPFM stations. (*Creation of a Low Power Radio Service*, Third Report and Order, FCC 07-204).

Need: The rule was adopted to ensure the timely construction of LPFM stations while providing necessary flexibility.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.3598(a) introductory text Period of construction.

Brief Description: These rules afford eligible entities that acquire an expiring construction permit additional time to build out, revises the Commission's equity/debt plus attribution standard to facilitate investment in eligible entities, and adopts other policies to prevent discrimination in transactions and encourage diverse ownership in the broadcast industry. (*In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-217).

Need: These rules were adopted to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.3598(a)(1)-(3) Period of construction.

Brief Description: These rules provide procedures necessary to ensure that broadcasters were able to timely complete their transitions from analog to digital service and are able to continue to provide digital television service. They were adopted collectively by the Commission. (*Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07-228).

Need: These rules ensure that full power broadcasters met their statutory obligation and deadline to convert to digital technology and viewers did not and do not lose service.

Legal Basis: 47 U.S.C. §§ 154, 303, 334 and 336.

Section Number and Title:

73.3598(a) and (b) Period of construction.

Brief Description: This rule extends the duration of certain licenses and construction permits, to conform to the new, June 12, 2009, digital television transition date. (*Implementation of the DTV Delay Act*, Second Report and Order, FCC 09-11).

Need: These rules modify the tolling standard to extend to construction deadline if a station is unable to meet the digital television transition deadline due to international coordination with Mexico and Canada.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.3598(b)(3) Construction Period

Brief Description: This rule includes reporting requirements on FCC Form 323, "Ownership Report for Commercial Broadcast Stations" to improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States. (*Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order, FCC 09-33).

Need: These rules help improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive broadcast ownership in the United States.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.3615(a) Ownership reports.

SUBPART I—PROCEDURES FOR COMPETITIVE BIDDING AND FOR APPLICATIONS FOR NONCOMMERCIAL EDUCATIONAL BROADCAST STATIONS ON NON-RESERVED CHANNELS

Brief Description: These rules implement procedures designed to promote ownership and programming diversity, especially by Native American tribes, and to streamline processing of AM and FM applications. (*Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures*, Report and Order and Further Notice of Proposed Rulemaking, FCC 10-24).

Need: These rules are necessary in order to set procedures for competitive bidding and applications for noncommercial educational broadcast stations on non-reserved channels.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.5002(c)	Application and certification procedures; return of mutually exclusive applications not subject to competitive bidding procedures; prohibition of collusion.
73.5005(a)	Filing of long-form applications.
73.5007(a) and Note 1	Designated entity provisions.

Brief Description: The rule implements methods to facilitate investment in eligible entities and encourage diverse ownership in the broadcast industry. (*In the Matter of Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, FCC 07-217).

Need: These rules were adopted to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.5008(c)	Definitions applicable for designated entity provisions.
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SUBPART J—CLASS A TELEVISION BROADCAST STATIONS

Brief Description: These rules permit the use of distributed transmission system technologies in the digital television service. The rules allow DTV station licensees and permittees to use DTS technologies where feasible in place of a single transmitter to provide service as authorized. (*Digital Television Distributed Transmission System Technologies*, Report and Order, FCC 08-256).

Need: These rules will help improve some DTV stations' ability to serve more of their viewers within their service areas. For example, we expect that DTS will be especially useful in mountainous areas where single transmitters have been unable to reach viewers in valleys or those blocked by elevated terrain.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, and 336.

Section Number and Title:

73.6023	Distributed transmission systems.
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Brief Description: This rule extends FCC Form 323 ownership reporting requirements to low power television stations, including Class A stations, to file biennially. (*Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order, FCC 09-33).

Need: These rules help improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of broadcast ownership in the United States.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

73.6026	Broadcast regulations applicable to Class A television stations.
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**SUBPART K—APPLICATION AND SELECTION PROCEDURES FOR RESERVED
NONCOMMERCIAL EDUCATIONAL CHANNELS, AND FOR CERTAIN APPLICATIONS
FOR NONCOMMERCIAL EDUCATIONAL STATIONS ON NON-RESERVED CHANNELS**

Brief Description: These rules implement procedures designed to promote ownership and programming diversity, especially by Native American tribes, and to streamline processing of AM and FM applications. (*Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures*, Report and Order, FCC 11-28).

Need: These rules are necessary to help promote access to radio services in rural areas.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

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|------------|--|
| 73.7000 | Definition of terms (as used in subpart K only). |
| 73.7002(b) | Fair distribution of service on reserved band FM channels. |

**PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER
PROGRAM DISTRIBUTIONAL SERVICES**

SUBPART—GENERAL; RULES APPLICABLE TO ALL SERVICES IN PART 74

Brief Description: This rule reduces the regulatory burden for the 18 GHz band by adding new channel-size options for FS operations along with channelization and emission flexibility for multichannel video programming distributors below 18.3 GHz, thereby facilitating the relocation to spectrum at 17.7-18.3 GHz and 19.3-19.7 GHz. (*Rechannelization of the 17.7–19.7 GHz Frequency Band for Fixed Microwave Services*, Report and Order, FCC 06-141).

Need: These rules are necessary to encourage efficient use of the spectrum by all FS licensees and provide a regulatory environment that will allow MVPDs to provide competitive services while protecting Federal earth stations.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

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|-------------|---|
| 74.25(c)(3) | Temporary conditional operating authority. |
| 74.32(a) | Operation in the 17.7-17.8 GHz and 17.8-19.7 GHz Bands. |

SUBPART E—AURAL BROADCAST AUXILIARY STATIONS

Brief Description: This rule provides for the use of the 942-944 MHz band. (*Non-Substantive Revisions to the Table of Frequency Allocations*, Memorandum Opinion and Order, FCC 08-530).

Need: These rules ensure consistency with worldwide spectrum allocations.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

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| 74.502(a) and Note | Frequency assignment. |
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SUBPART F—TELEVISION BROADCAST AUXILIARY STATIONS

Brief Description: These rules reflect what frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations, and require registration of TV pickup stations in certain spectrum bands. (*Facilitating the Use of Microwave for Wireless Backhaul and Other Uses and Providing Additional Flexibility To Broadcast Auxiliary Service and Operational Fixed Microwave Licensees*, Report and Order, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 11-120).

Need: These rules are necessary to prevent interference with licensed users of the same and adjacent spectrum bands.

Legal Basis: 47 U.S.C. §§ 154, 302a, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

74.602(a) introductory text	Frequency assignment.
74.605	Registration of stationary television pickup receive sites.

Brief Description: Section 74.638 sets forth the frequency coordination procedures between terrestrial Broadcast Auxiliary Service and Cable Television Relay Service (BAS/CARS) operations and geostationary satellite orbit (GSO) or non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) operations in the 6875-7075 MHz (7 GHz) and 12750-13250 MHz (13 GHz) bands. (*Coordination Between the NonGeostationary and Geostationary Satellite Orbit*, Report and Order, FCC 10-15).

Need: These rules are necessary to ensure proper coordination of frequency assignments among Television Broadcast Auxiliary Station licensees, which minimizes the chances of harmful interference.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

74.638(a)-(d)	Frequency coordination.
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Brief Description: This rule waives the deadline by which Sprint Nextel must complete relocation of the broadcast auxiliary service (BAS) to frequencies above 2025 MHz until February 8, 2010. The rule also eliminates the requirement that MSS entrants to the 2000-2020 MHz band may not begin operations until the BAS incumbents in the top 30 markets by population and all fixed BAS links in the 1990-2025 MHz band have been relocated. MSS entrants will be allowed to conduct operations in markets where the BAS incumbents have not been relocated only if they successfully coordinate with the BAS incumbents. (*Relocation of 2 GHz Broadcast Auxiliary Service*, Report and Order and Further Notice of Proposed Rulemaking, FCC 09-49).

Need: These rules helped to coordinate the timely relocation of BAS licensees in order to implement new services in the 1990-2025 MHz band.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 336(f), 336(h) and 554.

Section Number and Title:

74.690(e)(1)(i)	Transition of the 1990-2025 MHz band from the Cable Television Relay Service to emerging technologies.
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SUBPART G— LOW POWER TV AND TV TRANSLATOR STATIONS

Brief Description: These rules establish processes to facilitate and enable low power television and television translator stations to transition from analog to digital operations. (*Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations*, Second Report and Order, FCC 11-110).

Need: These rules are necessary to enable low power television and television translator stations to conduct digital operations.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 309, 336, and 554.

Section Number and Title:

74.735(b)(1) Power Emissions.

Brief Description: This rule creates a new “replacement” digital television translator service to permit full-service television stations to continue to provide service to viewers within their analog coverage areas who have lost service as a result of those stations' digital transition. The replacement digital television translator license will be associated with the full-service station's main license and will have the same four letter call sign as its associated main station. As a result, a replacement digital television translator license may not be separately assigned or transferred and will be renewed or assigned along with the full-service station's main license. Almost all other rules associated with television translator stations are applied to replacement digital television translators. (*Replacement Digital Television Translator Service*, Report and Order, FCC 09-36).

Need: These rules help preserve service to viewers who have lost television service as a result of a station's digital transition.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 336(f), 336(h) and 554.

Section Number and Title:

74.787(a)(5) Digital licensing.

Brief Description: These rules establish processes to facilitate and enable low power television and television translator stations to transition from analog to digital operations. (*Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations*, Second Report and Order, FCC 11-110).

Need: These rules are necessary to enable low power television and television translator stations to conduct digital operations.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 309, 336, and 554.

Section Number and Title:

74.787(b)(1) Digital Licensing.

74.794(a)(1) and (a)(2)(iii) Digital Emissions.

Brief Description: This rule extends FCC Form 323 ownership reporting requirements to low power television stations to file biennially. (*Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order, FCC 09-33).

Need: These rules help improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of broadcast ownership in the United States.

Legal Basis: 47 U.S.C. §§ 154, 303, 334 336, and 339.

Section Number and Title:

74.797 Biennial Ownership Reports

SUBPART L—FM BROADCAST TRANSLATOR STATIONS AND FM BROADCAST BOOSTER STATIONS

Brief Description: These rules modified the FM translator rules to allow AM stations to use currently authorized FM translators for “fill-in” service within their current coverage areas. (*Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, FCC 09-59).

Need: These rules were implemented to help AM radio stations provide a listenable signal to their listeners and better serve their local communities.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

74.1201 (a) through (e), (g), and (j)	Definitions.
74.1231(a), (b), and (h)	Purpose and permissible service.
74.1232 (d)	Eligibility and licensing requirements.
74.1263 (b)	Time of operation.
74.1284 (b) and (c)	Rebroadcasts.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

SUBPART A—GENERAL

Brief Description: This rule establishes a definition for the term “significantly viewed.” (*Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA); Amendments to Section 340 of the Communications Act*, Report and Order and Order on Reconsideration, FCC 10-193).

Need: This rule is necessary to implement Section 203 of the Satellite Television Extension and Localism Act of 2010.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.5(i)	Definitions.
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Brief Description: This rule establishes procedures related to program carriage complaints and entities that elect to resolve a dispute through alternative dispute resolution. (*Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, FCC 11-119).

Need: This rule is necessary to establish procedures for resolving program carriage disputes.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.7(g)(2)	General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.
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SUBPART C—CABLE FRANCHISING

Brief Description: These rules address provide guidance and implement section 621(a)(1) of the Communications Act of 1934, which prohibits franchising authorities from unreasonably refusing to award competitive franchises for the provision of cable services. (*Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-180).

Need: These rules are necessary for carrying out the Congressional mandate of section 621(a)(1) of the Communications Act of 1934.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.41 Franchise application process.

SUBPART D—CARRIAGE OF TELEVISION BROADCAST SIGNALS

Brief Description: This rule provides satellite carriers the authority to offer out-of-market, but “significantly viewed” broadcast television network stations as part of their local service to subscribers. (*Implementation of Section 203 of the Satellite Television Extension and Localism Act of 2010 (STELA); Amendments to Section 340 of the Communications Act*, Report and Order and Order on Reconsideration, FCC 10-193).

Need: This rule is necessary to implement Section 203 of the Satellite Television Extension and Localism Act of 2010.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.54(c),(g), and (i) Significantly viewed signals; method to be followed for special showings.

Brief Description: This rule establishes the standard for which is considered a good quality signal delivered by broadcasters to MVPDS. (*Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, FCC 07-228).

Need: This rule ensures that MVPDS and their subscribers are able to receive clear, high quality broadcast signals.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.55(c)(3) Definitions Applicable to the Must-Carry Rules.

Brief Description: This rule addresses the responsibilities of cable television operators with respect to carriage of digital broadcasters in light of the significant changes to the broadcasting and cable television industries resulting from the digital television transition. (*Carriage of Digital Television Broadcast*

Signals: Amendment to Part 76 of the Commission's Rules, Third Report and Order and Third Notice of Proposed Rulemaking, FCC 07-170).

Need: This rule ensures that cable subscribers will continue to be able to view broadcast stations after the digital transition, and that they will be able to view those broadcast signals at the same level of quality in which they are delivered to the cable system.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.56(d)	Signal carriage obligations.
76.56 (f)	Signal carriage obligations.
76.62 (b) and (h)	Manner of Carriage.

Brief Description: This rule require satellite carriers to carry digital-only stations upon request in markets in which they are providing any local-into-local service pursuant to the statutory copyright license, and to require carriage of all high definition signals in a market in which any station's signals are carried in HD. (*Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues*, Second Report and Order, Memorandum Opinion and Order, and Second Further Notice of Proposed Rulemaking, FCC 08-86).

Need: This rule ensures that satellite subscribers will continue to be able to view broadcast stations after the digital transition and receive high definition signals.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.66 (b)(1), (d)(2)(vi), and (k)	Satellite Broadcast Signal Carriage.
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Brief Description: These rules set forth carriage rights for stations that elected as part of the broadcast television incentive auction to relinquish their spectrum usage rights and engage in a channel sharing arrangement. (*Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, Report and Order*, Report and Order, FCC 12-45).

Need: These rules are necessary to establish carriage rights for broadcast television stations that relinquished their spectrum in the broadcast television incentive auction in order to share a television channel with another television broadcaster.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.66(n)	Satellite broadcast signal carriage.
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SUBPART G—CABLECASTING

Brief Description: These rules modernize rules concerning children's programming to include restrictions on displaying Internet website addresses. They were adopted collectively by the Commission

to modernize its rules implementing the Act in light of the Digital TV Transition. (*In the Matter of Children's Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, FCC 06-143).

Need: These rules are necessary to ensure that the Commission's rules continue to respond the Congressional mandate in the Children's Television Act by protecting children from advertising directing them to Internet sites.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.225(b)-(e) and Note 1 Commercial Limits in Children's Programs.

SUBPART J—OWNERSHIP OF CABLE SYSTEMS

Brief Description: This rule prohibits cable operators from owning or having an attributable interest in cable systems serving more than 30 percent of multichannel video programming subscribers nationwide. It also eliminates the overbuilder exception. (*The Commission's Cable Horizontal and Vertical Ownership Limits; Implementation of Section 11 of the Cable Television Consumer Protection and Competition Act of 1992; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996; Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; Reexamination of the Commission's Cross-Interest Policy*, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 07-219).

Need: This rule balances the need to ensure that cable operators cannot use their dominant position in the multichannel video programming distribution market to impede unfairly the flow of video programming to consumers with consideration of the efficiencies and other benefits that might be gained through increased ownership or control.

Legal Basis: 47 U.S.C. §§ 152(a), 154(i), 303, 307, 309, 310, and 533.

Section Number and Title:

76.503 (a) National Subscriber Limits.

SUBPART K— TECHNICAL STANDARDS

Brief Description: This rule incorporates by reference the technical standard, developed by an industry standards development body, that was designed to prevent digital television commercial advertisements from being transmitted at louder volumes than the program material they accompany. (*Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act*, Report and Order, FCC 11-182).

Need: This rule is necessary to implement the Commercial Advertisement Loudness Mitigation Act to protect viewers from excessively loud commercials.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.607 Transmission of commercial advertisements.

Brief Description: This rule implements requirements for digital cable systems to support unidirectional digital cable products. (*Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Third Report and Order and Order on Reconsideration, FCC 10-181).

These rules are necessary to improve the operation of the CableCARDS and bolster support for retail CableCARD devices so that consumers may access cable services without the need to lease a set-top box from their cable operator.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.640(b)(4)(ii) and (iii)	Support for unidirectional digital cable products on digital cable systems.
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SUBPART O—COMPETITIVE ACCESS TO CABLE PROGRAMMING

Brief Description: These rules establish policies and procedures for the consideration of complaints alleging unfair acts involving terrestrially delivered, cable-affiliated programming in violation of section 628(b) of the Communications Act of 1934. These rules will provide competitors to incumbent cable operators with an opportunity to obtain access to certain cable-affiliated programming that they are currently unable to offer their subscribers, thereby promoting competition in the delivery of video to consumer. (*Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, First Report and Order, FCC 10-17).

Need: These rules are necessary to promote competition in the video distribution market.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1000 (b), (c)(1), (j), (l), and (m)	Definitions.
76.1001	Unfair practices generally.
76.1002 (b)(2)	Specific unfair practices prohibited.
76.1003©(3), (e)(1), (g)(1)-(2), (l)	Program access proceedings.
76.1004(a)	Applicability of program access rules to common carriers and affiliates.

Brief Description: These rules set forth the Commission's program access complaint procedures. (*Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act; Sunset of Exclusive Contract Prohibition; Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*, Report and Order and Notice of Proposed Rulemaking, FCC 07-169).

Need: These rules provide procedures for resolving program access disputes in furtherance of section 628 of the Communications Act.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1003 (i), (j) and (k) Program access proceedings.

SUBPART P—COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES

Brief Description: These rules provide for the commercial availability of set top boxes and other consumer equipment used to receive video signals and other services. (*Commercial Availability of Navigation Devices*, Report and Order, FCC 98-116).

Need: The intended effect of these rules is to expand opportunities for consumers to purchase this equipment from sources other than the service provider.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1200 Definitions.
76.1201 Rights of Subscribers to Use or Attach Navigation Devices.
76.1202 Availability of Navigations Devices.
76.1203 Incidence of Harm.
76.1206 Equipment Sale or Lease Charged Subsidy Prohibition.
76.1207 Waivers.
76.1208 Sunset of Regulations.
76.1209 Theft of Services.
76.1210 Effect on Other Rules.

SUBPART Q—REGULATION OF CARRIAGE AGREEMENTS

Brief Description: This rule pertains to carriage of video programming vendors by multichannel video programming distributors (MVPDs) and the procedures for addressing complaints alleging violations of the Commission's program carriage rules. (*Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Second Report and Order, FCC 11-119).

Need: These rules are necessary to promote competition and diversity in the video programming and video distribution markets.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1302(c) through (k) Support for unidirectional digital cable products on digital cable systems.

SUBPART T—NOTICES

Brief Description: This rule establishes annual consumer notice requirements with regards to cable operators charging fees for the rental of navigation devices and CableCARDS. (*Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between*

Cable Systems and Consumer Electronics Equipment, Third Report and Order and Order on Reconsideration, FCC 10-181).

Need: These rules are designed to protect consumers and ensure they are fully informed about fees related to the rental of navigation devices and CableCARDS from cable operators.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1602(b)(7) and (8) Customer service - general information.

SUBPART W—ENCODING RULES

Brief Description: These rules establish a definition of “unencrypted broadcast television” and make clear what practices with regards to encoding, storing or managing commercial audiovisual content are not prohibited. (*Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, Report and Order, FCC 10-181).

Need: These rules are necessary to improve the operation of the CableCARDS and bolster support for retail CableCARD devices so that consumers may access cable services without leasing a set-top box from their cable operators.

Legal Basis: 47 U.S.C. §§ 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

Section Number and Title:

76.1902(s) Definitions.

76.1908(a) Certain practices not prohibited.

PART 78—CABLE TELEVISION RELAY SERVICE

SUBPART B—APPLICATIONS AND LICENSES

Brief Description: This rule reduces the regulatory burden for the 18 GHz band by adding new channel-size options for FS operations along with channelization and emission flexibility for multichannel video programming distributors below 18.3 GHz, thereby facilitating the relocation to spectrum at 17.7-18.3 GHz and 19.3-19.7 GHz. (*Rechannelization of the 17.7–19.7 GHz Frequency Band for Fixed Microwave Services*, Report and Order, FCC 06-141).

Need: These rules are necessary to encourage efficient use of the spectrum by all FS licensees and provide a regulatory environment that will allow MVPDs to provide competitive services while protecting Federal earth stations.

Legal Basis: 47 U.S.C. §§ 152, 153, 154, 301, 303, 307, 308, and 309.

Section Number and Title:

78.19(f) introductory text and (f)(2) Interference.

Brief Description: This rule establishes procedures to be used for frequency coordination between terrestrial Broadcast Auxiliary Service and Cable Television Relay Service (BAS/CARS) operations and

geostationary satellite orbit (GSO) or non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) operations in certain spectrum bands. (*Coordination Between the NonGeostationary and Geostationary Satellite Orbit*, Report and Order, FCC 10-15).

Need: These rules are necessary to ensure coordination of frequency assignments and prevent interference among users of certain spectrum bands.

Legal Basis: 47 U.S.C. §§ 152, 153, 154, 301, 303, 307, 308, and 309.

Section Number and Title:

78.36(a),(b),(c),(d) Frequency Coordination.

Brief Description: This rule waives the deadline by which Sprint Nextel must complete relocation of the broadcast auxiliary service (BAS) to frequencies above 2025 MHz until February 8, 2010. The rule also eliminates the requirement that MSS entrants to the 2000-2020 MHz band may not begin operations until the BAS incumbents in the top 30 markets by population and all fixed BAS links in the 1990-2025 MHz band have been relocated. MSS entrants will be allowed to conduct operations in markets where the BAS incumbents have not been relocated only if they successfully coordinate with the BAS incumbents. (*Replacement Digital Television Translator Service*, Report and Order, FCC 09-36).

Need: These rules helped to coordinate the timely relocation of BAS licensees in order to implement new services in the 1990-2025 MHz band.

Legal Basis: 47 U.S.C. §§ 154, 303, 307, 336(f), 336(h), and 554.

Section Number and Title:

78.40 (f)(1)(i) Transition of the 1990-2025 MHz Band from the Cable Television Relay Service to Emerging Technologies.

PART 79— ACCESSIBILITY OF VIDEO PROGRAMMING

SUBPART A—VIDEO PROGRAMMING OWNERS, PROVIDERS, AND DISTRIBUTORS

Brief Description: These rules require closed captioning of IP-delivered video programming that is published or exhibited on television with captions. The FCC also imposes closed captioning requirements on certain apparatus that receive or play back video programming, and on certain recording devices. (*Closed Captioning of Internet Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 12-9).

Need: These rules are necessary to enable individuals who are deaf or hard of hearing to have access to captioned IP-delivered video programming pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010.

Legal Basis: 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.1(a)(4) and (c) Closed captioning of televised video programming.

Brief Description: This rule establishes certain requirements for video programming distributors to caption television programming and establishes a standard for exemption from the requirement. (*Closed Captioning and Video Description of Video Programming*, Report and Order, FCC 12-83).

Need: This rule is necessary to implement section 613 of the Communications Act of 1934 and establishing a

process by which video programming distributors may seek an exemption from the Commission's closed captioning requirements.

Legal Basis: 47 U.S.C. §§ 151, 152(a), 154(i), 303, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.1(d)(2), (f), (1)-(4), (10), and (11) Closed captioning of televised video programming.

Brief Description: These rules establish the requirement for certain television broadcasters and multichannel video programming distributor systems to provide video description services. (*Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 11-126)

Need: These rules are necessary to implement the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010.

Legal Basis: 47 U.S.C. §§ 154, 303, 334, 336, and 339.

Section Number and Title:

79.1(i)(1) and (2) Closed captioning of televised video programming.

79.3 Audio description of video programming.

Brief Description: This rule establishes a means by which video programming distributors are permitted to provide contact information to the Commission for the handling of closed captioning questions and complaints. (*Closed Captioning of Video Programming*, Order, FCC 09-109).

Need: This rule is necessary to ensure the Commission has necessary contact information for video programming distributors in order to promptly address closed captioning concerns and complaints.

Legal Basis: 47 U.S.C. §§ 154(i), 303I, and 613.

Section Number and Title:

79.1(i)(3) Closed captioning of televised video programming.

Brief Description: These rules require closed captioning of IP-delivered video programming that is published or exhibited on television with captions. The FCC also imposes closed captioning requirements on certain apparatus that receive or play back video programming, and on certain recording devices. (*Closed Captioning of Internet Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 12-9).

Need: These rules are necessary to enable individuals who are deaf or hard of hearing to have access to captioned IP-delivered video programming pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010.

Legal Basis: 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.4 Closed captioning of video programming delivered using Internet protocol.

Brief Description: Part 79, Subpart A implements section 713 of the Communications Act of 1934, as amended. Section 713, Video Programming Accessibility, was added to the Communications Act by section 305 of the Telecommunications Act of 1996 and directed the Commission to adopt rules that

generally require the closed captioning of video programming shown on television. In 2009, the rules were amended by adding subsection (a)(5)(i) and (a)(5)(ii) to section 79.1 defining what constitutes “new programming,” subject to captioning requirements for both analog and digital video programming shown on television. Subsection (i), which was also added to section 79.1, adopted requirements for video programming distributors to make their contact information available to consumers.

Need: Closed captioning is an assistive technology that provides persons with hearing disabilities access to television programs. Closed captioning displays the audio portion of a television signal as printed words on the television screen. Congress has directed the Commission to prescribe and maintain regulation to implement the provision of closed captioning for video programming shown on television.

Legal Basis: 47 U.S.C. §§ 151, 152(a), 154(i), 303, 330, 544a, 613, and 617.

Section Number and Title:

79.1 (a)(5)(i)	New Programming.
79.1 (a)(5)(ii)	New Programming.
79.1 (i)	Contact information.

Brief Description: These rules require closed captioning of IP-delivered video programming that is published or exhibited on television with captions. The FCC also imposes closed captioning requirements on certain apparatus that receive or play back video programming, and on certain recording devices. (*Closed Captioning of Internet Protocol Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, FCC 12-9).

Need: These rules are necessary to enable individuals who are deaf or hard of hearing to be able to have access to captioned IP-delivered video programming pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010.

Legal Basis: 47 U.S.C. §§ 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, and 617.

Section Number and Title:

79.100	Incorporation by reference.
79.101	Closed caption decoder requirements for analog television receivers.
79.102	Closed caption decoder requirements for digital television receivers and converter boxes.
79.103	Closed caption décor requirements for apparatus.
79.104	Closed caption decoder requirements for recording devices.

PART 80—STATIONS IN THE MARITIME SERVICES

SUBPART A—GENERAL INFORMATION

Brief Description: Part 80 rules set forth the conditions under which radio stations may be licensed and used in the maritime services. Subpart A contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

Need: Section 80.7 provides that certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. § 552(a) and 1 CFR part 51. In order to enforce any edition other than that specified in this section, the Federal Communications Commission must publish notice of the change in the Federal Register and the material must be available to the public. The need to continue the coordination with the Federal Register is ongoing.

Legal Basis: 47 U.S.C. §§ 151-155, 301-609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Section Number and Title:

80.7 Incorporation by reference.

SUBPART E—GENERAL TECHNICAL STANDARDS

Brief Description: The Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart E rules prescribe the general technical requirements for the use of frequencies and equipment in the maritime services.

Need: Section 80.203(b)(4) provides for authorized channels to be programmed via computerized remote control, while section 80.231 sets out the technical requirements for a class of equipment used to locate a survival craft or distressed vessel. The need for these rules is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.203(b)(4)	Authorization of transmitters for licensing.
80.231	Technical Requirements for Class B Automatic Identification System (AIS) equipment.

SUBPART F—EQUIPMENT AUTHORIZATION FOR COMPULSORY SHIPS

Brief Description: The Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart F rules prescribe the general technical requirements for certification of equipment used on compulsory ships.

Need: Section 80.277 specifies the equipment that may be used by Ship Security Alert Systems (SSAS). The need for this rule is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.277 Ship Security Alert System (SASS).

SUBPART G—SAFETY WATCH REQUIREMENTS AND PROCEDURES

Brief Description: Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart G rules set out the procedures for Coast Station safety watches.

Need: Section 80.314(d) describes the procedures for canceling false distress alerts. Section 80.327(e), (f), and (g) prescribe procedures for sending, receiving, and canceling of urgency signals. Section 80.329 (g) sets out requirements for stations hearing a safety signal. The need for these rules is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.314(d)	Distress communications.
80.327(e), (f), and (g)	Urgency signals and messages.
80.329(g)	Safety signals and messages.

SUBPART H—FREQUENCIES

Brief Description: The Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart H describes the carrier frequencies and general conditions of use for the types of radiotelephony governed by Part 80, and section 80.373 specifically describes the carrier frequency pairs assignable for private on-board mobile radiotelephony communications.

Need: Section 80.373(g)(2) allows, where needed, equipment designed for 12.5 kHz channel spacing using the additional frequencies 457.5375 MHz, 457.5625 MHz, 467.5375 MHz, and 467.5625 MHz to be introduced for on-board communications. The need for this section is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.373(g)(2)	Private communications frequencies.
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SUBPART I—STATION DOCUMENTS

Brief Description: Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart I requires that licensees of radio stations have current station documents.

Need: Section 80.409(e)(6) requires a weekly entry that verifies that certain safety devices have been *tested* and inspected.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.409(e)(6)	Station logs.
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SUBPART J – PUBLIC COAST STATIONS

Brief Description: Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart J sets out the requirements and parameters for public coast stations.

Need: Section 80.475(d) sets out requirements for when certain AMTS systems are required to connect to the public switched telephone network. The need for this rule is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.475(d)	Scope of service of the Automated Maritime Telecommunications System (AMTS).
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SUBPART R—TECHNICAL EQUIPMENT REQUIREMENTS FOR CARGO VESSELS NOT SUBJECT TO SUBPART W

Brief Description: The Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart R rules provide the radiotelephone requirements for cargo ships of 300 to 1600 gross tons.

Need: Section 80.882 requires ships subject to this subpart of maintain a watch on the frequency 2182 kHz. The need for this rule is ongoing.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.882 2182 kHz watch.

SUBPART S—COMPULSORY RADIOTELEPHONE INSTALLATIONS FOR SMALL PASSENGER BOATS

Brief Description: Part 80 rules set forth the conditions under which radio stations may be licensed and used in the maritime services. Subpart S provides that the provisions of Part III of Title III of the Communications Act require United States vessels which transport more than six passengers for hire while such vessels are being navigated on any tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, or in the open sea to carry a radiotelephone installation complying with this subpart.

Need: Section 80.917(h) sets forth the conditions by which any small passenger vessel, the keel of which was laid after March 1, 1957, must have a reserve power supply located on the same deck as the main wheel house or at least one deck above the vessel's main deck, unless the main power supply is so situated. Further, beginning January 2, 2013, any small passenger vessel that does not carry a reserve power supply must carry at least one VHF handheld radiotelephone. The need for this section is ongoing.

Legal Basis: 47 U.S.C. §§ 151-155, 301-609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Section Number and Title:

80.917(h) Reserve power supply.

SUBPART W—GLOBAL MARITIME DISTRESS AND SAFETY SYSTEM (GMDSS)

Brief Description: Part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart W rules apply to all passenger ships regardless of size and cargo ships of 300 tons gross tonnage and upwards, mostly fishing vessels, with some exceptions.

Need: The rules in this subpart require that all compulsory vessels, including fishing vessels of 300 gross tons or more, must comply with all the GMDSS requirements appropriate to their area of operation. A separate safety system for fishing vessels would be expensive, difficult to administer, and would cause confusion during a distress incident. Sections 80.1101(c)(2)(iii), (c)(3)(iii), (c)(12)(vi), and (c)(13)(x)

specify the appropriate performance standards to which listed equipment must conform, as well as applicable testing requirements.

Legal Basis: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. §§ 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

Section Number and Title:

80.1101(c)(2)(iii), (3)(iii), (12)(vi), and 13(x) Performance standards.

Brief Description: Part 80 rules set forth the conditions under which radio stations may be licensed and used in the maritime services. Subpart W contains the rules applicable to the Global Maritime Distress and Safety System (GMDSS). Every ship of the United States subject to part II of Title III of the Communications Act or the Safety Convention must comply with the provisions of this subpart. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to the GMDSS. For the purposes of this subpart, distress and safety communications include distress, urgency, and safety calls and messages.

Need: Section 80.1107 provides that unless the normal use of the required radiotelephone station demonstrates that the equipment is operating, a test communication on a required or working frequency must be made each day the ship is navigated. Further, when this test is performed by a person other than the master and the equipment is found to be defective, the master must be promptly notified. The need for this section is ongoing.

Legal Basis: 47 U.S.C. §§ 151-155, and 301-609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Section Number and Title:

80.1107 Test of radiotelephone station.

PART 87—AVIATION SERVICES

SUBPART D—TECHNICAL REQUIREMENTS

Brief Description: Part 87 states the conditions under which radio stations may be licensed and used in the aviation services. Some maritime frequencies are authorized for use by aircraft stations for safety and distress, public correspondence and for operational communications. Subpart D provides for the technical requirements under which radio stations may be licensed and used in the aviation services.

Need: Section 87.133(g) sets forth the carrier frequency tolerances each station operating under this subpart must maintain. Any aeronautical enroute service transmitter operating in U.S. controlled airspace with 8.33 kHz channel spacing (except equipment being tested by avionics equipment manufacturers and flight test stations prior to delivery to their customers for use outside U.S. controlled airspace) must achieve 0.0005% frequency stability when operating in that mode. The need for this section is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.133(g) Frequency stability.

SUBPART F—AIRCRAFT STATIONS

Brief Description: Part 87 states the conditions under which radio stations may be licensed and used in the aviation services. Some maritime frequencies are authorized for use by aircraft stations for safety and distress, public correspondence and for operational communications. Subpart F provides that aircraft stations must limit their communications to the necessities of safe, efficient, and economic operation of aircraft and the protection of life and property in the air, except as otherwise specifically provided in this part. Contact with an aeronautical land station must only be attempted when the aircraft is within the service area of the land station.

Need: Sections 87.187(gg) and (hh) provide that the frequencies used for air-ground communications are listed in subpart E and that aircraft stations may use frequencies assigned to Government or non-Government aeronautical stations or radionavigation land stations if the communications are within the aeronautical or radionavigation land station scope of service, including specified frequencies in the Hawaiian islands and other specified coordinate locations.

Further, transmissions by emergency locator transmitters (ELTs) are intended to be actuated manually or automatically and operated automatically as part of an aircraft or a survival craft station as a locating aid for survival purposes. Section 87.195 provides that ELTs that operate only on frequency 121.5 MHz will no longer be certified and that the manufacture, importation, and sale of ELTs that operate only on frequency 121.5 MHz is prohibited beginning July 10, 2019. The need for this section is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.187(gg) and (hh)	Frequencies.
87.195	121.5 MHz ELTs.

SUBPART J—FLIGHT TEST STATIONS

Brief Description: Part 87 states the conditions under which radio stations may be licensed and used in the aviation services. Some maritime frequencies are authorized for use by aircraft stations for safety and distress, public correspondence and for operational communications. Subpart J provides that the use of flight test stations is restricted to the transmission of necessary information or instructions relating directly to tests of aircraft or components thereof.

Need: Section 87.303(f) denotes the frequencies available for assignment to flight test land and aircraft stations and additional frequencies available for assignment only to flight test stations of aircraft manufacturers. Further, frequency assignments for Flight Test VHF Stations may be based on either 8.33 kHz or 25 kHz spacing. The need for this section is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 303, and 307(e), unless otherwise noted.

Section Number and Title:

87.303(f)	Frequencies.
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PART 90—PRIVATE LAND MOBILE RADIO SERVICES

SUBPART A—GENERAL INFORMATION

Brief Description: Part 90 sets forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. These rules do not govern the licensing of radio systems belonging to and operated by the United States. Sets forth the rules governing the Emergency Alert System (EAS).

Need: Further clarified that and the environmental processing requirements that, together with the procedures specified in section 17.4(c) of this chapter, if applicable, must be complied with prior to initiating construction.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Number and Title:

90.5(b), (f) Other applicable rule parts.

Brief Description: The Part 90 rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart A rules inform the general basis, purposes, and definitions of the rules.

Need: Section 90.5 lists other rule parts of importance that may be referred to with respect to licensing and operations in radio services governed under this part. Section 90.5(n) provides a cross-reference to Part 101, which governs the operation of fixed microwave services. The need for this rule is ongoing for clarity and to prevent confusion.

Legal Basis: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

Section Number and Title:

90.5(n) Other applicable rule parts.

SUBPART B—PUBLIC SAFETY POOL

Brief Description: Subpart B addresses the Public Safety Radio Pool.

Need: Pursuant to the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112-96, 126 Stat. 156 (2012), this provision allocates the 758-769 MHz and 788-799 MHz bands for use by the First Responder Network Authority to deploy a nationwide public safety broadband network as prescribed by statute.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), 1401-1473.

Section Numbers and Title:

90.19 Nationwide Public Safety Broadband Network.

Brief Description: Subpart B outlines regulations for frequencies the Public Safety Radio Pool.

Need: For administrative convenience and clarity assigned channel names for the thirty-two frequency pairs listed in paragraph (d)(66)(i) .

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Numbers and Title:

90.20(d)(66)(i) Public Safety Pool.

Brief Description: These rules sets forth the conditions under which radio communications systems may be licensed and used in the Public Safety, I. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

Need: The rules were amended to clarify the frequencies available to Public Safety Entities.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Numbers and Title:

90.20(c)(7) Additional frequencies available.

Brief Description: Subpart B concerns the frequencies generally available to Public Safety Entities.

Need: Grandfathered public safety licensees licensed to operate on 157.225 MHz/161.825 MHz and 157.275 MHz/161.875 MHz.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Number and Title:

90.20(g)(2)(ii) Additional frequencies available.

Brief Description: This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Pool. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

Need: This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Pool. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.20(g)(3)(i), (ii), (iii)(B), (D) and (vi) Public Safety Pool.

SUBPART C—INDUSTRIAL/BUSINESS RADIO POOL

Brief Description: Subpart addresses the Industrial/Business Pool including the entities eligible for licensure in the pool.

Need: The rules were amended to increase the availability of frequencies in the Industrial/Business Pool to Public Safety licensees.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Numbers and Titles:

90.35(a)(5) Eligibility.

Brief Description: Part 90 rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart C rules set forth the rules specific to the Industrial/Business Radio Pool.

Need: Section 90.35(c)(91) explains assignment limitations to the frequency table, specifically a cross-reference that Subpart M of this part contains rules for assignment of frequencies in the 5850-5925 MHz band. This reference is necessary for clarity of the section.

Legal Basis: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L.112–96, 126 Stat. 156.

Section Number and Title:

90.35(c)(91) Industrial/Business Pool (title of 90.35).

SUBPART F—RADIOLOCATION SERVICE

Brief Description: The Radiolocation Service accommodates the use of radio methods for determination of direction, distance, speed, or position for purposes other than navigation. Rules as to eligibility for licensing, permissible communications, frequency available, and any special requirements are set forth in this subpart.

Need: Clarifies that the frequency band set forth in the table in 103(b) is shared with and stations operating in this frequency band in this service are on a secondary basis to stations licensed in the Maritime Mobile Service.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Number and Title:

90.103(c)(1) Radiolocation Service.

Brief Description: Part 90 sets forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. These rules do not govern the licensing of radio systems belonging to and operated by the United States.

Need: The rules are need to implement the Commission's authority under Title III of the Communications Act of 1934, as amended which vests authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Number and Title:

90.103(c)(21) Radiolocation Service.

SUBPART G—SUPPLEMENTAL INFORMATION TO BE ROUTINELY SUBMITTED WITH APPLICATIONS.

Brief Description: Outlines the information that must be routinely provided with any application for licensure in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services.

Need: Further clarified that applicants must comply with the environmental provisions of section 17.4(c).

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Number and Title:

90.129(g) Supplemental information to be routinely submitted with applications.

SUBPART H—POLICIES GOVERNING THE ASSIGNMENT OF FREQUENCIES

Brief Description: The Part 90 rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart H rules inform about the policies under which the Commission assigns frequencies for the use of licensees under this part, frequency coordination procedures, and procedures under which licensees may cooperatively share radio facilities.

Need: Sections 90.175(j)(18)-(22) provide types of applications that need not be accompanied by evidence of frequency coordination, including applications for frequencies in the 4940-4990 MHz band. This rule allows for efficiency and streamlining; the need for this rule is ongoing.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112–96, 126 Stat. 156.

Section Number and Title:

90.175(j)(18)-(21)	Frequency coordinator requirements.
90.175(j)(22)	Frequency coordinator requirements (title of 90.175).

SUBPART I—GENERAL TECHNICAL STANDARDS

Brief Description: Part 90 states the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart I sets forth the general technical requirements for use of frequencies and equipment in the radio services governed by this part. Such requirements include standards for acceptability of equipment, frequency tolerance, modulation, emissions, power, and bandwidths.

Need: These technical standards are needed to ensure that public safety communications devices are interoperable and do not cause harmful interference to other authorized communications. Section 90.205(j) specifies the rules for power and height limitations between 758-775 MHz and 788-805 MHz. Section 90.209(b)(5) Table 1, footnote 6 provides that operations using equipment designed to operate with a 25 kilohertz channel bandwidth may be authorized up to a 20 kilohertz bandwidth unless the equipment meets the Adjacent Channel Power limits of 90.221 in which case operations may be authorized up to a 22 kilohertz bandwidth. Section 90.209(b)(7) provides the conditions in which Economic Area (EA)-based licensees in frequencies 817-824/862-869 MHz (813.5-824/858.5-869 MHz) may exceed the standard channel spacing and authorized bandwidth. Section 90.210 Table 1, footnote 5 provides that equipment designed to operate on 25 kilohertz bandwidth channels must meet the requirements of either Emission Mask B or G, whichever is applicable, while equipment designed to operate on 12.5 kilohertz bandwidth channels must meet the requirements of Emission Mask D.

Section 90.221 specifies the frequencies and adjacent channel power limits equipment designed to operate with a 25 kHz channel bandwidth may be authorized up to a 22 kHz bandwidth. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7), 1401-1473, and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112–96, 126 Stat. 156.

Section Number and Title:

90.205(j)	Power and antenna height limits.
90.209(b)(5) Table 1, fn 6	Bandwidth limitations.
90.209(b)(7)	Bandwidth limitations.
90.210 Table 1, fn 5	Emission masks.
90.221	Adjacent channel power limits.

SUBPART J—NON-VOICE AND OTHER SPECIALIZED OPERATIONS

Brief Description: This subpart sets forth requirements and standards for licensing and operation of non-voice and other specialized radio uses (other than radiolocation, including mobile relay stations).

Need: Describes the policies, duties and requirements for frequency coordinators.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.243(b)(1) Mobile relay stations.

Brief Description: Subpart J sets forth requirements and standards for licensing and operation of non-voice and other specialized radio uses (other than radiolocation). Such uses include secondary signaling, telemetry, radioteleprinter, radiofacsimile, automatic vehicle monitoring (AVM), radio call box, relay, vehicular repeater, and control station operations.

Need: Amended provision to allow mobile repeaters to use either analog or digital control tones.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Number and Title:

90.247(f) Mobile repeater stations.

SUBPART K—STANDARDS FOR SPECIAL FREQUENCIES OR FREQUENCY BANDS

Brief Description: Sets Forth the policies under which the Commission assigns frequencies for the use of licensees under this part, frequency coordination procedures, and procedures under which licensees may cooperatively share radio facilities.

Need: Describes the policies, duties and requirements for frequency coordinators.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.528(d) Public Safety Broadband License.

SUBPART R—REGULATIONS GOVERNING LICENSING AND USE OF FREQUENCIES IN THE 763-775 AND 793-805 MHZ BANDS

Brief Description: This subpart regulates licensing and operations of all systems operating in the in the 763-775 and 793-805 MHz bands. It includes eligibility, operational, planning and licensing requirements and technical standards for stations licensed in these bands. Stations eligible to hold authorizations in these bands are state or local government entities, and nongovernmental organizations that provide services, the sole or principal purpose of which is to protect the safety of life, health, or property.

Need: Sections 90.542 and 90.543(e), respectively, set the broadband transmitting power limits and emission limits for this subpart. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7); Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

Section Number and Title:

90.542 Broadband transmitting power limits.

90.543(e) Emission limitations.

SUBPART S—REGULATIONS GOVERNING LICENSING AND USE OF FREQUENCIES IN THE 806-824, 851-869, 896-901, AND 935-940 MHZ BANDS

Brief Description: Subpart S regulates the frequencies in the 800 MHz band in order to foster the Provision of “Enhanced Specialized Mobile Radio,” a term used to designate 800 MHz systems that employ cellular system architecture.

Need: Revised the 800 MHz band plan for the U.S. Virgin Islands (USVI) in order to accomplish the Commission's goals for 800 MHz band reconfiguration. Created consistency between Puerto Rico and USV.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473.

Section Number and Title:

90.617(k)(1)-(4) Frequencies in the 809.750-824/854.750-869 MHz, and 896-901/935-940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

Brief Description: This subpart regulates licensing and operations of all systems operating in the 806-824/851-869 MHz and 896-901/935-940 MHz bands. It includes eligibility requirements, and operational and technical standards for stations licensed in these bands and also supplements the Commission's Part 1 rules regarding application procedures.

Need: Sections 90.617 (k)(3) and (4) set the minimum required median desired signal for mobile units and portable units for purposes of determining unacceptable interference. These rules result in efficient use of the spectrum regardless of the reconfiguration status of the band while preventing interference along the border and protecting operations by non-cellular licensees.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7); Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

Section Number and Title:

90.617(k)(3) and (4) Frequencies in the 809.750-824/854.750-869 MHz, and 896-901/935-940 MHz bands available for trunked, conventional or cellular system use in non-border areas (title of 90.617).

Brief Description: This subpart sets out the regulations governing the licensing and operations of all systems operating in the 806-824/851-869 MHz and 896-901/935-940 MHz bands. It includes eligibility requirements, and operational and technical standards for stations licensed in these bands. It also supplements the rules regarding application procedures contained in part 1, subpart F of this chapter. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands.

Need: Implements bilateral agreements with Canada and Mexico.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.619(c)(2) Operations within the U.S./Mexico and U.S./Canada border areas.
Table C3, (5)
Introductory text and
Table C5, 7(7) Table (C7 and
(11) introductory text.

Brief Description: Subpart S provides for the selection and assignment of frequencies in the 800 MHz band.

Need: Amended the provision to restore language that was inadvertently deleted when the rule was amended in another proceeding.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), 332(c)(7), and 1401-1473

Section Number and Title:

90.621(a) Selection and assignment of frequencies.

SUBPART Y—REGULATIONS GOVERNING LICENSING AND USE OF FREQUENCIES IN THE 4940-4990 MHZ BAND

Brief Description: This subpart sets out the regulations governing use of the 4940-4990 MHz (4.9 GHz) band. It includes eligibility requirements, and specific operational and technical standards for stations licensed in this band. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in this band.

Need: Implements bilateral agreements with Canada and Mexico.

Legal Basis: 47 U.S.C. §§ 154(i), 161, 303(g), 303(r), and 332(c)(7).

Section Number and Title:

90.1207(d) Licensing.

PART 95—PERSONAL RADIO SERVICES

SUBPART H—WIRELESS MEDICAL TELEMETRY SERVICE

Brief Description: Part 95 contains the Commission rules relating to personal radio services. Rules in subpart H contains rules that apply to the Wireless Medical Telemetry Service (WMTS) operating in the 608-614 MHz, 1395-1400 MHz and 1427-1432 MHz frequency bands. WMTS devices are used for remote monitoring of patients in thousands of health care facilities across the country.

Need: Section 95.2309(b) governs the initial registration requirements prior to the first use of a WMTS device by an authorized health care provider. The need for this rule is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 301, 302(a), 303, and 307.

Section Number and Title:

95.2309(b) WMTS frequency coordination.

SUBPART I—MEDICAL DEVICE RADIO COMMUNICATIONS SERVICE

Brief Description: Part 95 establishes the requirements and conditions under which stations and devices incorporating radio transmitters may be designed, manufactured, certified, marketed, operated and used in the Personal Radio Services. Subpart I contains rules that apply only to the Medical Device Radio Communications (MedRadio) Service.

Need: Section 95.2509 provides that the operation of Medical Body Area Network (MBAN) devices is subject to the frequency coordination procedures in this section. Section 95.2525 provides that to reduce interference and make the most efficient use of the authorized facilities, MedRadio transmitters must share the spectrum in accordance with other specified provisions within this subpart. Section 95.2533(c) provides that MedRadio programmer/control transmitters and medical implant transmitters may not be used to relay information in the 413-419 MHz, 426-432 MHz, 438-444 MHz, and 451-457 MHz bands to a receiver that is not a part of the same Medical Micropower Network (MMN). Section 95.2533(d) provides that medical body-worn transmitters may relay only information in the 2360-2400 MHz band to a MedRadio programmer/control transmitter or another medical body-worn transmitter device that is part of the same Medical Body Area Network (MBAN). Section 95.2557(d) provides that MedRadio programmer/control transmitters operating in the 413-419 MHz, 426-432 MHz, 438-444 MHz, and 451-457 MHz bands shall not transmit with a duty cycle greater than 3 percent.

Section 95.2559 provides that to reduce interference and make the most effective use of the MedRadio frequency bands, MedRadio transmitter types must be designed to operate in accordance with the rules in this section. Section 95.2563(e) provides that only MedRadio transmitters that are part of a Medical Micropower Network (MMN) may operate in the 413-419 MHz, 426-432 MHz, 438-444 MHz, and 451-457 MHz bands. Section 95.2565 provides that each MedRadio transmitter type must be designed to maintain a frequency stability of ± 100 ppm of the operating frequency over the applicable temperature range set forth in this section.

Section 95.2567 provides that each MedRadio transmitter type must be designed such that the MedRadio equivalent isotropically radiated power (M-EIRP) does not exceed the limits in this section. Section 95.2567(e) provides that for MedRadio transmitters operating in the 2360-2390 MHz band, the M-EIRP over the bands of operation must not exceed the lesser of zero dBm (1 mW) or $10 \log(B)$ dBm, where B is the MedRadio 20 dB emission bandwidth in megahertz.

Section 95.2567(f) provides that for MedRadio transmitters operating in the 2390-2400 MHz band, the M-EIRP over the bands of operation must not exceed the lesser of 13 dBm (20 mW) or $16 + 10 \log (B)$ dBm, where B is the MedRadio 20 dB emission bandwidth in megahertz.

Section 95.2569 provides that compliance with MedRadio equivalent isotropic radiated power (M-EIRP) limits can be determined by measuring the radiated field strength from the transmitter type, in accordance with the rules in this section. Section 95.2573 provides that each MedRadio transmitter type must be designed such that the MedRadio emission bandwidth (as defined in 95.2503) does not exceed the applicable limits set forth in this section. Section 95.2579(a)(5) provides that The field strengths of unwanted emissions from each MedRadio transmitter type, measured at a distance of 3 meters, must not exceed the field strength limits shown in the table in this paragraph for the indicated frequency ranges, if the frequencies of these emissions are, among other things, more than 2.5 MHz outside of the 2360-2400 MHz band (for devices designed to operate in the 2360-2400 MHz band). Section 95.2579(f) provides that for MedRadio transmitter types designed to operate in the 2360-2400 MHz band: In the first 2.5 megahertz above or below any of the frequency bands authorized for MBAN operation, the EIRP of any unwanted emission must be attenuated within a 1 megahertz bandwidth by at least 20 dB relative to the maximum EIRP within any 1 megahertz bandwidth of the fundamental emission.

Section 95.2587 provides that the antenna associated with any MedRadio transmitter must be supplied with the transmitter and is considered part of the transmitter subject to equipment authorization and that MedRadio transmitters shall be tested for frequency stability, radiated emissions and EIRP limit compliance in accordance with applicable rules. Section 95.2593(c) provides that MedRadio programmer/control transmitters operating in the 2360-2400 MHz band shall bear the following statement in a conspicuous location on the device: "This device may not interfere with stations authorized to operate on a primary basis in the 2360-2400 MHz band, and must accept any interference received, including interference that may cause undesired operation." Section 95.2595(c) provides that manufacturers of MedRadio transmitters must include with each transmitting device a disclosure that states that the transmitter must not cause harmful interference to stations operating in the 400.150-406.000 MHz band. The need for these sections is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 303, and 307.

Section Number and Title:

95.2509	MBAN registration and frequency coordination.
95.2525	MedRadio interference.
95.2533(c), (d)	Prohibited MedRadio uses.
95.2557(d)	MedRadio duration of transmission.
95.2559	MedRadio channel access requirements.
95.2563(e)	MedRadio frequency bands.
95.2565	MedRadio frequency accuracy.
95.2567	MedRadio radiated power limits.
95.2567(e)	Transmitters - 2360-2390 MHz band.
95.2567(f)	Transmitters - 2390-2400 MHz band.
95.2569	MedRadio field strength measurements.
95.2573	MedRadio authorized bandwidths.
95.2579(a)(5), (f)	MedRadio unwanted emissions limits.
95.2587	MedRadio additional requirements.
95.2593(c)	MedRadio labeling requirements.
95.2595(c)	MedRadio disclosures.

PART 97—AMATEUR RADIO SERVICE

SUBPART A—GENERAL PROVISIONS

Brief Description: Part 97 provides the rules and regulations for the amateur radio service. Subpart A provides general provisions for the service, including requirements, restrictions, and definitions.

Need: Section 97.3(a)(27) provides the definition of a licensee's "in-law." Section 97.31 provides the method and documentation required for requesting cancellation of a license grant on account of the licensee's death. The need for these rules is ongoing.

Legal Basis: 47 U.S.C. §§ 151-155, and 301-609.

Section Number and Title:

97.3(a)(27)	Definitions.
97.31	Cancellation on account of the licensee's death.

SUBPART C—SPECIAL OPERATIONS

Brief Description: Section 97.221 specifies the conditions under which a digital Amateur Radio Service station may be automatically controlled. Subsection (c) clarifies when a station may be automatically controlled while emitting a RTTY or data emission.

Need: These rules are needed to ensure that Amateur Radio Service stations operate as intended and do not cause harmful interference, including while being automatically controlled.

Legal Basis: 47 U.S.C. §§ 151-155, and 301-609.

Section Number and Title:

97.221(c)	Automatically controlled digital station.
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SUBPART D—TECHNICAL STANDARDS

Brief Description: These rules specify various technical rules for operation of Amateur Radio Service stations, including frequency sharing requirements, authorized emission types, emission standards, and transmitter power standards.

Need: These rules are needed to ensure that Amateur Radio Service stations operate as intended and do not cause harmful interference.

Legal Basis: 47 U.S.C. §§ 151-155, and 301-609.

Section Number and Title:

97.303(h)	Frequency sharing requirements.
97.305(c)	Authorized emission types.

Brief Description: The rules and regulations of Part 97 are designed to provide for an amateur radio service having, among other principles, (1) recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications, (2) continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art, and (3) encouragement and improvement of the amateur service through rules which provide for advancing skills in both the communication and technical phases of the art.

Subpart D sets forth the technical standards for equipment operating under this part including authorized frequency bands, emission standards and transmitter power standards.

Need: Section 97.307(f)(14) sets forth the emission standards for the 60 m amateur band. Section 97.313(j) states that no station may transmit with a transmitter output exceeding 10 W PEP when the station is transmitting a SS emission type. The need for these sections is ongoing.

Legal Basis: 47 U.S.C. §§ 151-155, and 301-609, unless otherwise noted.

Section Number and Title:

97.307(f)(14)	Emission standards.
97.313(f) and (i)	Transmitter power standards.
97.313(j)	Transmitter power standards.

PART 101—FIXED MICROWAVE SERVICES

SUBPART C—TECHNICAL STANDARDS

Brief Description: Part 101 contains service and licensing rules for Fixed Microwave Services. Subpart C sets forth technical standards for these services.

Need: The revised rules establish antenna standards in the 10,700-11,700 MHz band (101.115(f)) and assignments and conditions for 30 megahertz bandwidth channels in the 6,525-6,875 MHz band (101.147(a) n.33 and (k)(8)). The need for these rules is ongoing.

Legal Basis: 47 U.S.C. §§ 154, 301, 302, 303, 307, and 309.

Section Number and Title:

101.115(f)	Emission limitations.
101.147(a) n.33; (k)(8)	Frequency assignments.
101.147(a) note (34), (i)(9), (l), and (o)(8)	Frequency assignments.



PUBLIC NOTICE

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

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TTY (202) 418-2555

DA No. 23-711

Report No. SCL-00427

Thursday August 17, 2023

Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules. 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); see Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. 47 CFR §§ 1.767, 1.768. Cable landing licensees should review the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

SCL-T/C-20230210-00003 E PPC 1 (US), Inc.
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: PPC 1 (US), Inc.

FROM: Vodafone Europe BV

TO: Vodafone International Operations Limited

On February 10, 2023, PPC 1 (US), Inc. (PPC 1 (US)) filed a notification of the pro forma transfer of control of PPC 1 (US), from Vodafone Europe B.V. (VEBV) to Vodafone International Operations Limited (VIOL), effective January 11, 2023. PPC 1 (US), a Delaware corporation, is a licensee on the PPC-1 submarine cable system (SCL-LIC-20080213-00001, SCL-MOD-20180803-00030, SCL-T/C-20181119-00036). The Applicants filed a supplement on July 12, 2023. This transaction did not affect the other ownership interests in PPC 1 (US).

PPC 1 (US) is a wholly owned subsidiary of PPC 1 Limited, a Bermuda entity. PPC 1 Limited is an indirect wholly owned subsidiary of TPG Telecom Limited (TPG Telecom), an Australian entity. Prior to the transaction VEBV, a Netherlands entity, held an indirect ownership in TPG Telecom through (1) Vodafone Oceania Limited (VOL), which held an 11.14% interest in TPG Telecom, and (2) its 50% ownership of Vodafone Hutchison (Australia) Holdings Limited (Vodafone Hutchison Australia), an Australia company, which holds a 27.82% interest in TPG Telecom. Hutchison 3G Australia Holdings Pty Limited, an Australian entity, holds the other 50% ownership interest in Vodafone Hutchison Australia. VEBV was an indirect wholly owned subsidiary of VIOL, a United Kingdom entity.

In a corporate reorganization, VIOL (1) acquired the 50% interest in Vodafone Hutchison Australia held by VEBV and (2) acquired VOL. As a result, VIOL now holds a direct 11.14% interest in TPG Telecom and an indirect interest in TPG Telecom through its 50% interest in Vodafone Hutchison Australia.

VIOL continues to be wholly owned and controlled by Vodafone European Investments, which in turn continues to be wholly owned and controlled by Vodafone Group plc., both United Kingdom entities. PPC 1 (US) was and remains an indirect wholly owned subsidiary of TPG Telecom and an indirect subsidiary of VIOL.

SCL-T/C-20230210-00004 E PPC 1 Limited
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: PPC 1 Limited

FROM: Vodafone Europe BV

TO: Vodafone International Operations Limited

On February 10, 2023, PPC 1 Limited filed a notification of the pro forma transfer of control of PPC 1 Limited from Vodafone Europe B.V. (VEBV) to Vodafone International Operations Limited (VIOL), effective January 11, 2023. PPC 1 Limited, a Bermuda entity, is a licensee on the PPC-1 submarine cable system (SCL-LIC-20080213-00001, SCL-MOD-20180803-00030, SCL-T/C-20181119-00036). The Applicants filed a supplement on July 12, 2023. This transaction did not affect the other ownership interests in PPC 1 Limited.

PPC 1 Limited is an indirect wholly owned subsidiary of TPG Telecom Limited (TPG Telecom), an Australian entity. Prior to the transaction VEBV, a Netherlands entity, held an indirect ownership in TPG Telecom through (1) Vodafone Oceania Limited (VOL), which held a 11.14% interest in TPG Telecom, and (2) its 50% ownership of Vodafone Hutchison (Australia) Holdings Limited (Vodafone Hutchison Australia), an Australia company, which holds a 27.82% interest in TPG Telecom. Hutchison 3G Australia Holdings Pty Limited, an Australian entity, holds the other 50% ownership interest in Vodafone Hutchison Australia. VEBV was an indirect wholly owned subsidiary of VIOL, a United Kingdom entity.

In a corporate reorganization, VIOL (1) acquired the 50% interest in Vodafone Hutchison Australia held by VEBV and (2) acquired VOL. As a result, VIOL now holds a direct 11.14% interest in TPG Telecom and an indirect interest in TPG Telecom through its 50% interest in Vodafone Hutchison Australia

VIOL continues to be wholly owned and controlled by Vodafone European Investments, which in turn continues to be wholly owned and controlled by Vodafone Group plc., both United Kingdom entities. PPC 1 Limited was and remains an indirect wholly owned subsidiary of TPG Telecom and an indirect subsidiary of VIOL.

INFORMATIVE

SCL-MOD-20230411-00008

Latam Telecommunications, L.L.C.

By letter filed August 14, 2023, LATAM Telecommunications, L.L.C. notified the Commission of the withdrawal of the modification of the AMX1 Cable System.



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
45 L STREET NE
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News media information 202-418-0500
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DA No. 23-712

Report No. TEL-02296

Thursday August 17, 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).

Transfer of Control

Grant of Authority

Date of Action: 08/15/2023

Current Licensee: Meriplex Telecom LLC**FROM:** Clairvest Group Inc.**TO:** Vitruvian Partners LLP

Meriplex Telecom LLC (Meriplex Telecom), a Texas limited liability company that holds an international section 214 authorization (ITC-214-20100805-00325), has filed an application seeking consent to the transfer of control of Meriplex Telecom from Clairvest Group Inc. (Clairvest Group) to Vitruvian Partners LLP (Vitruvian). Applicants filed a supplement on December 5, 2022, clarifying the post-transaction ownership interests.

Meriplex Telecom is wholly owned by MTL Holdco LLC (MTL Holdco), a Delaware entity. The Clairvest Group, a Canadian entity, holds an aggregate 73.41% interest in MTL Holdco through three funds: Clairvest Equity Partners V Limited Partnership (Clairvest Equity V) (43.19%); CEP V Co-Investment Limited Partnership (CEP Co-Invest) (22.02%); and Clairvest Equity Partners V-A Limited Partnership (Clairvest Equity V-A) (8.2%), all Canadian entities. David Arthur Henley, a U.S. citizen, holds a 26.69% interest in MTL Holdco and serves as its CEO.

Pursuant to a May 19, 2022 agreement and plan of merger, amended on July 15, 2022, Meriplex Communications, Ltd. (MCom), which is indirectly majority owned and controlled by Vitruvian, will acquire all the membership interests of Meriplex Telecom from the Clairvest Group and David Arthur Henley. Upon consummation, Meriplex Telecom will be a direct wholly owned subsidiary of MCom.

MCom, a Delaware entity, is an indirect wholly owned subsidiary of Aggie Topco Inc. (Aggie Topco), a Delaware entity. Maggie Lux S.C. Sp (Maggie Lux), a Luxembourg entity, which is ultimately controlled by Vitruvian, an England and Wales entity, will hold an approximate 54.96% and controlling interest in Aggie Topco. The Clairvest Group will hold an aggregate 19% interest in Aggie Topco: Clairvest Equity V (approx. 11%); CEP Co-Invest (approx. 6%); and Clairvest Equity V-A (approx. 2%). David Arthur Henley will hold an aggregate 14% interest in Aggie Topco: 3% directly and 11% indirectly through the David Arthur Henley Inheritance Trust (7%) and Henley Capital Investments, Ltd. (3%), both Texas entities. According to the Applicants, no other individual or entity will hold a direct 10% or greater interest in Aggie Topco.

VIP IV Luxembourg S.C. Sp (VIP IV Lux) is the sole limited partner and holds 100% of the equity interest in Maggie Lux. Kind Lux Manager S.a.r.l. (Kind Lux Manager) is the general partner of Maggie Lux. Kind Lux Manager is wholly owned by VIP IV Luxembourg Manager S.a.r.l. (VIP IV Manager). VIP IV Manager is the general partner of VIP IV Lux. VIP IV Lux, Kind Lux Manager, and VIP IV Manager are Luxembourg entities.

VIP IV Nominees Limited (VIP IV Nominees), a U.K. entity, is the sole limited partner of and holds 100% equity interest in VIP IV Lux. VIP IV Nominees also holds 100% of VIP IV Manager. VIP IV LP (VIP IV), a U.K. entity, holds a 93.9% interest in VIP IV Nominees. VIP IV Feeder LP, a U.K. entity, owns 49.2% equity interest in VIP IV. According to the Applicants, no other individual or entity holds a 10% or greater interest in Meriplex Telecom through VIP IV.

Vitruvian General Partner LLP (Vitruvian General Partner) is the general partner of and holds 100% voting interest and zero equity interest in VIP IV. Vitruvian General Partner LLP is wholly owned by Vitruvian Partners LLP, both U.K. entities. Vitruvian Partners LLP is owned by the following individual members: Michael Risman, a U.K. citizen; David Nahama, a U.S. citizen; Torsten Winkler, a citizen of Germany; Stephen Byrne, a citizen of Ireland; Benjamin Johnson, a U.K. citizen; Jussi Wuoristo, a citizen of Finland; Thomas Studd, a U.K. citizen; Joseph O'Mara, a citizen of Ireland; Sophie Straziota, a U.K. citizen; Robert James Sanderson, a U.K. citizen; Fabian Wasmus, a citizen of Germany; and Yarrowmena AB, a Swedish company owned by Oscar Severin, a partner of Vitruvian, and a citizen of Sweden.

We grant the Petition to Adopt Conditions to Authorizations and Licenses filed in this proceeding on August 14, 2023, by the National Telecommunications and Information Administration on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector. Accordingly, we condition grant of the application on Meriplex Telecom LLC abiding by the commitments and undertakings set forth in the Letter of Agreement from David Henley, President, Meriplex Telecom LLC, to the Chief, Foreign Investment Review Section, and Deputy Chief, Compliance and Enforcement, Foreign Investment Review Section, on behalf of the Assistant Attorney General for National Security, United States Department of Justice, National Security Division, dated July 25, 2023 (LOA). The Petition and the LOA may be viewed on the FCC's website through the International Communications Filing System by searching for ITC-T/C-20221117-00135 and accessing the "Other Filings related to this application" from the Document Viewing Area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the authorization and thus grounds for declaring the authorization terminated without further action on the part of the Commission. Failure to meet a condition of the authorization may also result in monetary sanctions or other enforcement action by the Commission.

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

ITC-T/C-20230726-00080 E Blue Rooster Telecom, Inc.
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: Blue Rooster Telecom, Inc.

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, Blue Rooster Telecom, Inc. (BRT), a California corporation that holds an international section 214 authorization (ITC-214-20100317-00112), filed a notification of the transfer of control of BRT from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. BRT is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and BRT.

ITC-T/C-20230726-00081 E Norcast CommunicationsCorporation
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: Norcast CommunicationsCorporation

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, Norcast Communications Corporation (NCC), a California corporation that holds an international section 214 authorization (ITC-214-20030410-00183), filed a notification of the transfer of control of NCC from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. NCC is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and NCC.

ITC-T/C-20230726-00082 E ETS Telephone Company
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: ETS Telephone Company

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, ETS Telephone Company (ETS), a Delaware company that holds an international section 214 authorization (ITC-214-19960311-00007), filed a notification of the transfer of control of ETS from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. ETS is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and ETS.

ITC-T/C-20230726-00083 E Astound Phone Services, LLC
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: Astound Phone Services, LLC

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, Astound Phone Services, LLC (Astound Phone), a Delaware company that holds an international section 214 authorization (ITC-214-20171016-00172), filed a notification of the transfer of control of Astound Phone from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. Astound Phone is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and Astound Phone.

ITC-T/C-20230726-00084 E Grande Communications Networks, LLC
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: Grande Communications Networks, LLC

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, Grande Communications Networks, LLC (Grande Communications), a Delaware limited liability company that holds an international section 214 authorization (ITC-214-20001108-00651), filed a notification of the transfer of control of Grande Communications from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. Grande Communications is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and Grande Communications.

ITC-T/C-20230726-00085 E STARPOWER COMMUNICATIONS LLC
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: STARPOWER COMMUNICATIONS LLC

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, Starpower Communications LLC (Starpower), a Delaware limited liability company that holds an international section 214 authorization (ITC-214-19980116-00024), filed a notification of the transfer of control of Starpower from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. Starpower is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and Starpower.

ITC-T/C-20230726-00086 E RCN Telecom Services of Illinois, LLC
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: RCN Telecom Services of Illinois, LLC

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, RCN Telecom Services of Illinois, LLC (RCN Illinois), a Delaware limited liability company that holds an international section 214 authorization (ITC-214-19980731-00532), filed a notification of the transfer of control of RCN Illinois from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. RCN Illinois is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and RCN Illinois.

ITC-T/C-20230726-00087 E RCN Telecom Services of Massachusetts, Inc.
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: RCN Telecom Services of Massachusetts, Inc.

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, RCN Telecom Services of Massachusetts, Inc. (RCN Massachusetts), a Delaware company that holds an international section 214 authorization (ITC-214-19971027-00661), filed a notification of the transfer of control of RCN Massachusetts from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. RCN Massachusetts is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and RCN Massachusetts.

ITC-T/C-20230726-00088 E RCN Telecom Services of New York, LP
Transfer of Control
Grant of Authority Date of Action: 08/15/2023

Current Licensee: RCN Telecom Services of New York, LP

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, RCN Telecom Services of New York, LP (RCN New York), a Delaware limited partnership that holds an international section 214 authorization (ITC-214-19970707-00384), filed a notification of the transfer of control of RCN New York from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. RCN New York is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and RCN New York.

ITC-T/C-20230726-00089	E	RCN Telecom Services of Philadelphia, LLC
Transfer of Control		
Grant of Authority		Date of Action: 08/15/2023

Current Licensee: RCN Telecom Services of Philadelphia, LLC

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, RCN Telecom Services of Philadelphia, LLC (RCN Philadelphia, a Delaware limited liability company that holds an international section 214 authorization (ITC-214-19970707-00379), filed a notification of the transfer of control of RCN Philadelphia from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. RCN Philadelphia is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and RCN Philadelphia.

ITC-T/C-20230726-00090	E	RCN Telecom Services Lehigh LLC
Transfer of Control		
Grant of Authority		Date of Action: 08/15/2023

Current Licensee: RCN Telecom Services Lehigh LLC

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, RCN Telecom Services Lehigh LLC (RCN Lehigh), a Delaware limited liability company that holds international section 214 authorizations (ITC-214-19961004-00490, ITC-214-19970717-00411, ITC-214-19970723-00430 and ITC-214-19981002-00679), filed a notification of the transfer of control of RCN Lehigh from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. RCN Lehigh is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and RCN Lehigh.

ITC-T/C-20230726-00091	E	Astound Broadband, LLC
Transfer of Control		
Grant of Authority		Date of Action: 08/15/2023

Current Licensee: Astound Broadband, LLC

FROM: Stonepeak GP Investors IV LLC

TO: Stonepeak GP Investors Holdings LP

On July 26, 2023, Astound Broadband, LLC (Astound Broadband), a Washington limited liability company that holds an international section 214 authorization (ITC-214-20050701-00565), filed a notification of the transfer of control of Astound Broadband from Stonepeak GP Investors IV LLC (Stonepeak GP Investors IV) to Stonepeak GP Investors Holdings LP (Stonepeak GP Investors Holdings), effective June 26, 2023. Astound Broadband is a direct wholly owned subsidiary of Radiate Holdings, L.P., a Delaware entity. Radiate Holdings GP, LLC, a Delaware entity, is the general partner of Radiate Holdings, L.P. Radiate Holdings GP, LLC is a wholly owned subsidiary of Stonepeak Associates IV LLC and Stonepeak GP Investors IV is the general partner of Stonepeak Associates IV LLC, both Delaware entities. Stonepeak GP Investors IV is ultimately controlled by Michael Dorrell, a U.S. and Australian citizen.

Prior to the transaction, Michael Dorrell controlled Stonepeak GP Investors Manager LLC, a Delaware entity that controlled Stonepeak GP Investors IV. In a corporate reorganization, Stonepeak GP Investors Manager LLC was removed from the ownership chain, and three new entities were inserted into the ownership structure between Stonepeak GP Investors IV and Michael Dorrell - Stonepeak GP Investors Holdings LP, Stonepeak GP Investors Upper Holdings LP, and Stonepeak GP Investors Holdings Manager LLC, all Delaware entities. Michael Dorrell has direct control over Stonepeak GP Investors Holdings Manager LLC and retains indirect control over Stonepeak GP Investors IV and Astound Broadband.

SURRENDER

ITC-214-20050726-00286

Network Service Billing, Inc.

By letter dated August 11, 2023, Network Service Billing, Inc. notified the Commission that it surrendered its international section 214 authorization effective August 11, 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 D.C. 20554

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

DA No. 23-713

Report No. SCL-00428

Thursday August 17, 2023

Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules. 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); see Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. 47 CFR §§ 1.767, 1.768. Cable landing licensees should review the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

Acceptability for Filing Public Notice: On April 22, 2022, The Bahamas Telecommunications Company Limited (BTC or Applicant) filed an application for a new cable landing license to allow the continued operation of the Bahamas II Cable System (Bahamas II Cable) (SCL-LIC-19960329-00128, SCL-MOD-19980303-00004) for an additional 25 years following the expiration of the current license on April 1, 2022. BTC filed an amended and restated application on August 23, 2022 and a supplemental letter on October 24, 2022. See Non-Streamlined Submarine Cable Landing License Applications Accepted for Filing, File No. SCL-LIC-20220422-00016, Public Notice, Report No. SCL-00395NS (IB Nov. 18, 2022). No comments or oppositions were filed in response to the Public Notice. The Bahamas II Cable has been operating pursuant to special temporary authority following expiration of the license while the Commission considered the application for a new cable landing license. See SCL-STA-20220303-00010, SCL-STA-20221005-00027, and SCL-STA-20230404-00007. BTC filed a supplement on August 16, 2023.

The Bahamas II Cable connects Vero Beach, Florida to Nassau, the Bahamas, with an intermediate point at Eight Mile Rock, the Bahamas. In 1996, the Commission granted a cable landing license for the Bahamas II Cable to a four-member consortium. See AT&T Corp. (AT&T), MCI International, Inc., The St. Thomas and San Juan Telephone Company, Inc., Telefonica Larga Distancia de Puerto Rico, Inc. See File No. S-C-L-96-003, Joint Application for a License to Land and Operate a Digital Submarine Cable System Between the United States Mainland and the Bahamas, the BAHAMAS II Cable System, Cable Landing License, 11 FCC Rcd 9188 (IB 1996). In 1998, the Commission modified the Bahamas II license to add an additional licensee. See Ursus Telecom Corp., File No. SCL-96-003(M), Application to Amend the Submarine Cable Landing License for the Bahamas II Cable System to Add Ursus Telecom Corp. as a Licensee, Modification of Cable Landing License, 13 FCC Rcd 15672 (IB 1998). The Bahamas II Cable went into service on April 1, 1997. See Letter from James J.R. Talbot, Assistant Vice President-Senior Legal Counsel, AT&T Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in SCL-MOD-19980303-00004 (Mar. 14, 2018) (available on the FCC website through the International Communications Filing System (ICFS) by searching for SCL-MOD-19980303-00004 and accessing "Other filings related to this application" from the Document Viewing area).

BTC is the sole applicant and will be the sole operator of the Bahamas II Cable under the new license. BTC states that three of the original licensees, i.e., AT&T, The St. Thomas and San Juan Telephone Company, Inc., and Telefonica Larga Distancia de Puerto Rico, relinquished their interests in the Bahamas II Cable upon expiration of the original license. According to BTC, the fourth original licensee, MCI International, LLC, terminated its participation in the Bahamas II Cable as of September 30, 2022. BTC states that Ursus Telecom Corp., which became a licensee in 1998, has been defunct for over 10 years and no longer exists.

The Application has been coordinated with the Department of State as required by Executive Order 10530, pursuant to section 1.767(b) of the Commission's rules, and consistent with the established Department of State procedures. Executive Order 10530, Section 5(a) reprinted as amended in 3 U.S.C. § 301; 47 CFR § 1.767(b); Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022). The 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 letter to defer action on November 22, 2022. The National Telecommunications and Information Administration (NTIA), on behalf of the Committee, filed a Petition to Adopt Conditions to Authorization and License on August 1, 2023 (Petition). The Committee has no objection to the Commission granting the Application, provided that the Commission conditions its approval on the assurances of BTC to abide by the commitments and undertakings set forth in the July 12, 2023 Letter of Assurances (LOA) from BTC to the Department of Homeland Security, DOJ, and the Department of Defense.

Actions Taken: (1) Grant of Cable Landing License to The Bahamas Telecommunications Company Limited for the purpose of landing and operating a non-common carrier fiber optic submarine cable, the Bahamas II Cable System, that connects Vero Beach, Florida and Nassau, the Bahamas; (2) waiver of section 1.767(h)(1) of the Commission's rules, 47 CFR § 1.767(h)(1), in connection with the license; and (3) grant of the Petition filed by NTIA on August 1, 2023.

Licensee Information: BTC is a Bahamas limited company that is 49% owned (voting and equity) by the Treasurer of the Commonwealth of the Bahamas, a Bahamas government entity, and 49% owned (voting and equity) by CWC Bahamas Holding Limited, a Bahamas holding company. The BTC Foundation holds the remaining 2% interest in BTC.

CWC Bahamas Holding Limited is 100% owned (voting and equity) by Cable & Wireless (West Indies) Limited, an English holding company, which is 100% owned (voting and equity) by CWI Group Limited, an English holding company. CWI Group Limited is 100% owned (voting and equity) by Sable Holding Limited, an English holding company, which is 100% owned (voting and equity) by C&W Senior Secured Parent Limited, a Cayman Islands holding company, which is 100% owned (voting and equity) by C&W Senior Finance Limited, a Cayman Islands holding company. C&W Senior Finance Limited is 100% owned (voting and equity) by Cable & Wireless Limited, an English holding company, which is 100% owned (voting and equity) by Cable & Wireless Communications Limited, an English international telecommunications services company, which is 100% owned (voting and equity) by LGE Coral Holdco Limited, an English holding company, which is 100% owned (voting and equity) by Liberty CWC Holdings Limited, a Barbados holding company. Liberty CWC Holdings Limited is 100% owned (voting and equity) by LILAC Services Ltd., a Bermuda holding company, which is 100% owned (voting and equity) by Liberty Latin America Ltd., a Bermuda international provider of cable and telecommunications services. The only person or entity owning more than 10% of the voting interest in Liberty Latin America Ltd. is John C. Malone, a United States citizen who owns a 26.1% voting interest. The Applicant states that there are no other individuals or entities that own 10% or greater voting or equity interests in BTC as a result of their voting interest in Liberty Latin America Ltd. The Applicant states that, to its knowledge, no other persons or entities own or control a 10% or greater interest in BTC.

Cable Design and Capacity: The Bahamas II Cable connects Vero Beach, Florida to Nassau, the Bahamas, with an intermediate point at Eight Mile Rock, the Bahamas. The cable system consists of five optical fiber pairs, with the capacity of each pair comprised of sixteen 100 gigabits per second (Gbps) Basic System Modules. BTC states that the Bahamas II Cable connects with the domestic networks in the continental United States and the Bahamas and provides capacity for broadband traffic between the United States and the Bahamas.

Landing Points and Ownership: The Bahamas II Cable consists of four segments (A, B, C, and D) and three landing sites (Vero Beach, Florida; Eight Mile Rock, the Bahamas; and Nassau, the Bahamas). Segment A is located in U.S. territory and consists of a cable station at Vero Beach, Florida. Segment B consists of a structure to house amplification equipment at Eight Mile Rock, the Bahamas. Segment C consists of the cable station at Nassau, the Bahamas. Segment D comprises the whole of the submarine cable linking Segments A, B, and C, and consists of Subsegments D1, D2, and D3. Segment D1 consists of five fiber pairs linking the cable station at Vero Beach with the passive branch joint, a submerged device composed of a housing and any associated equipment to serve as a junction point for the undersea cable. Segment D2 consists of five fiber pairs linking the passive branch joint to the structure at Eight Mile Rock, and five fiber pairs linking back to the passive branch joint. Segment D3 consists of five fiber pairs linking the passive branch joint to the cable station at Nassau. BTC owns 100% of the ownership interests in all Bahamas II Cable segments except for Segment A, the cable station at Vero Beach, Florida, which is owned by AT&T Corp. The Applicant states that CWC Bahamas Holding Limited operates BTC's day-to-day management and ultimately effectively controls BTC.

BTC requests a waiver of section 1.767(h)(1) of the Commission's rules so that AT&T is not required to be an applicant for the Bahamas II Cable landing license. Section 1.767(h)(1) requires that "[a]ny entity that owns or controls a cable landing station in the United States" shall be "applicants for, and licensees on, a cable landing license." 47 CFR § 1.767(h)(1). According to BTC, AT&T owns the cable landing station in Vero Beach, Florida, while BTC is the landing party in Vero Beach pursuant to an agreement. BTC says that it intends to contract with AT&T for the right to use collocation space in the cable landing station. BTC has entered into a contract with AT&T for certain operation and maintenance services at the cable landing station, according to which AT&T will not have access to BTC's equipment, except: (i) to perform certain operation and maintenance services as per BTC's direction and instructions; or (ii) in cases of emergency. BTC states that the agreement with AT&T has an initial term of 5 years that can be extended by BTC to 25 years. BTC asserts that under this arrangement, BTC will retain operational authority over the Vero Beach landing station and provide direction to AT&T in all matters relating to the Bahamas II Cable.

The purpose of the 1.767(h)(1) requirement is to ensure that entities having a significant ability to affect the operation of the cable system become licensees so that they are subject to the conditions and responsibilities associated with the license. See Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22194-95, paras. 53-54. Although AT&T is the owner of the Vero Beach, FL cable landing station, we find that, based on the agreements between the Applicant and the cable station owner described above, AT&T will not have the ability to affect significantly the operation of the cable system. Accordingly, we grant Applicant a waiver of section 1.767(h)(1) and do not require AT&T to be an applicant/licensee for the Bahamas II Cable.

Regulatory Status of the Cable: The Bahamas II Cable is currently operated on a common carrier basis. BTC proposes to operate the cable on a non-common carrier basis under the new license. BTC contends that the operation of competitive cable systems demonstrates that there are other routing options and competitive alternatives to the Bahamas II Cable system for traffic between the United States and the Bahamas, and that the Bahamas II Cable is not a bottleneck facility requiring common carrier regulation. BTC notes that the ARCOS-1 and Bahamas Internet Cable System cables both currently provide service between the United States and the Bahamas on a non-common carrier basis. BTC argues that in order to respond to the competition from other non-common carrier cables, it must change the Bahamas II Cable from common carrier to non-common carrier status and make individualized decisions with regard to the rates, terms, and conditions pursuant to which it will offer capacity. BTC plans to offer Bahamas II Cable capacity to enterprise customers pursuant to contracts that are negotiated on an individual case basis. BTC may also sell excess capacity on a wholesale basis to other carriers pursuant to individually negotiated rates, terms, and conditions tailored to their particular needs. BTC states that customers have no expectation that the Bahamas II Cable will be operated on a common carrier basis due to the competition from competing (and non-common carrier) cable systems operating between the United States and the Bahamas.

Applicant has provided information and demonstrated that the proposed operation of the cable on a non-common carrier basis satisfies the requirements set forth in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630, 642 (D.C. Cir 1976) (NARUC I), cert. denied, 425 U.S. 992 (1976). See also Submarine Cable Landing License Report and Order, 16 FCC Rcd at 22202-22203, paras. 69-70; Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Notice of Proposed Rulemaking, 15 FCC Rcd 20789, 20815-20818, paras. 62-67.

Conditions and Requirements: BTC shall comply with the routine conditions specified in section 1.767(g) of the Commission's rules, 47 CFR § 1.767(g), and with the requirements of section 1.768 of the Commission's rules, 47 CFR § 1.768 (Notification by and prior approval for submarine cable landing licenses that are or propose to become affiliated with a foreign carrier).

BTC has market power in the Bahamas and must comply with the reporting requirements in section 1.767(l) of the Commission's rules on the U.S.-Bahamas route. 47 CFR § 1.767(l).

We grant the Petition filed in this proceeding by NTIA, on behalf of the Committee, on August 1, 2023. Accordingly, we condition grant of this Application on The Bahamas Telecommunications Company Limited abiding by the commitments and undertakings contained in its LOA with the Department of Homeland Security, the Department of Justice, and the Department of Defense, dated July 12, 2023. The Petition and the LOA are publicly available and may be viewed on the FCC website through the International Communications Filing System (ICFS) by searching SCL-LIC-20220422-00016 and accessing "Other filings related to this application" from the Document Viewing area.

A failure to comply and/or remain in compliance with any of these commitments and undertakings shall constitute a failure to meet a condition of the cable landing license and thus grounds for declaring the license terminated without further action on the part of the Commission. Failure to meet a condition of the license may also result in monetary sanctions or other enforcement action by the Commission.

License Term: Under the Commission's rules, a cable landing license shall expire 25 years after the in-service date for the cable. 47 CFR § 1.767(g)(15). As the Bahamas II Cable is already in service, this license shall expire 25 years from grant, August 17, 2048.

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

In the Matter of)	
)	
Guymon TV Translator, Inc.	)	Facility ID Nos. 25696, 25697, 25698, 25699
	)	NAL/Acct. No. 202341420034
Licensee of Stations K30FY-D, K28GI-D, K32GD-	)	FRN: 0004948618
D, and K26JO-D, Guymon, OK	)	LMS File No. 0000186000

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

Adopted: August 17, 2023

Released: August 17, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application) of Guymon TV Translator, Inc. (Licensee), for renewal of its licenses for K30FY-D, K28GI-D, K32GD-D, and K26JO-D, Guymon, OK (Stations).¹ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*, we find the Licensee apparently willfully violated section 73.3539(a) of the Commission's rules (Rules)² by failing to timely file a license renewal application for the Stations. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of six thousand dollars (\$6,000).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."³ The application for renewal of the Stations' licenses should have been filed by February 1, 2022, the first day of the fourth full calendar month prior to the Stations' license expiration date of June 1, 2022.⁴ However, the Licensee did not file the Application until March 07, 2022. The Licensee noted in an attachment to its Application that the late filing was "inadvertently overlooked."

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

¹ Application Guymon TV Translator, Inc. for Renewal of License, LMS File No. 0000186000 (filed March. 07, 2022). K30FY-D, K28GI-D, K32GD-D, and K26JO-D are each television translators. In this case, the Licensee filed for the joint renewal of the licenses of the Stations in a single renewal application.

² 47 CFR § 73.3539(a).

³ *Id.*

⁴ See 47 CFR §§ 73.1020, 73.3539(a); *Media Bureau Announces Procedures for 2020-2023 Television License Renewal Cycle*, Public Notice, 35 FCC Rcd 3656 (MB 2020).

forfeiture penalty.⁵ 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.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 \$6,000. In this case, the Licensee failed to file the Application on or before February 1, 2022, as required by section 73.3539(a) of the Rules.¹⁰ The Application was filed on March 07, 2022, over one month 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 per station for failure to file a required form or information.¹¹ In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹²

6. In this case, the Licensee failed to timely file a license renewal application for four (4) stations, as required by section 73.3539(a) of the Rules.¹³ The Licensee noted in an attachment to its Application that the late filing was “inadvertently overlooked”. We note that inadvertence is, at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.¹⁴ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*,¹⁵ we will reduce the forfeiture from the base amount to \$1,500 per station for the Stations’ failure to file a timely renewal application, because, as television translators, the Stations are providing a

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

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

¹⁵ *Supra* note 11.

secondary service.¹⁶ Furthermore, as translators, the Stations are not originating programming, but instead providing important “fill-in” service to areas that otherwise may be unable to receive over-the-air television signals. Because the Application included four (4) stations the total proposed forfeiture amount is \$6,000.

7. *License Renewal Application.* In evaluating an application for license renewal, the Commission’s decision is governed by section 309(k) of the Act.¹⁷ That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁸ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application “on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.”¹⁹

8. We find that the Licensee’s apparent violation of section 73.3539(a) of the Rules²⁰ does not constitute a “serious violation” warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.²¹ Further, based on our review of the Application, we find that the Stations served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,²² and sections 1.80 and 0.283(d) of the Commission’s Rules,²³ that Guymon TV Translator, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the

¹⁶ See, e.g., *Juan Carlos Matos*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8932 (Vid. Div. 2021) (paid Jun. 11, 2021); *H&R Production Group*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8937 (Vid. Div. 2021) (paid Jun. 9, 2021); *Nichols Broadcasting Group, LLC*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (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.”).

¹⁷ 47 U.S.C. § 309(k).

¹⁸ 47 U.S.C. § 309(k)(1).

¹⁹ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

²⁰ 47 CFR § 73.3539(a).

²¹ For example, we do not find here that the Licensee’s operation of the 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).

²² 47 U.S.C. § 503(b).

²³ 47 CFR §§ 1.80 and 0.283.

amount of six thousand dollars (\$6,000) for its apparent willful violation of section 73.3539(a) of the Commission's Rules.²⁴

10. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,²⁵ within thirty (30) days of the release date of this *NAL*, Guymon TV Translator, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),²⁶ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Upon payment, it is requested that Licensee send notice that payment has been made to VideoRenewals@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:²⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/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

²⁴ 47 CFR § 73.3539(a).

²⁵ 47 CFR § 1.80.

²⁶ Payments made using CORES do not require the submission of an FCC Form 159.

²⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

²⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.³⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the *NAL*/Acct. No. referenced above. A courtesy copy should also be emailed to VideoRenewals@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.³¹

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.³²

15. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Guymon TV Translator, Inc., P.O. Box 613 Guymon, OK

²⁹ See 47 CFR § 1.1914.

³⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

³¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

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

73942. A copy shall also be sent to the Stations' consultant, Arnold Cruze, by electronic mail to acruz@valornet.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau



PUBLIC NOTICE

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

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

DA 23-715
Released: August 17, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF MERIPLEX TELECOM, LLC TO VITRUVIAN PARTNERS LLP

WC Docket No. 22-400

By this Public Notice, the Wireline Competition Bureau (Bureau) grants, as conditioned, the application filed by Meriplex Telecom, LLC (Meriplex Telecom), The Clairvest Group, Inc. (Clairvest), and Vitruvian Partners LLP (Vitruvian) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of Meriplex Telecom from Clairvest to Vitruvian.²

On December 9, 2022, the Bureau released a public notice seeking comment in this proceeding³ and did not receive comments or petitions in opposition to the Application.

On August 14, 2023, the National Telecommunications and Information Administration (NTIA), on behalf of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), submitted a Petition to Adopt Conditions to Authorization and License (Committee Petition).⁴ We grant the Committee Petition and condition grant of the Application on compliance by the Applicants with the commitments and undertakings set out in the Letter of Agreement (LOA) filed with the Committee Petition.

When analyzing a transfer of control or assignment application that includes foreign investment, we also consider public interest issues related to national security, law enforcement, foreign policy, or trade policy concerns.⁵ As part of our public interest analysis, the Commission coordinates with the

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

² See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. Joint Section 214 Application to Transfer Control of Meriplex Telecom, LLC, WC Docket No. 22-400 (filed Nov. 17, 2022) (Application). On December 5, 2022, Applicants filed a supplement to their domestic section 214 application. Letter from Dana Frix, Advisor to Meriplex Communications Ltd., and Rebekah Goodheart, Counsel to Vitruvian Partners LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-400 (filed Dec. 5, 2022) (Supplement). Applicants also filed an application for the transfer of an authorization associated with international services. See ITC-T/C-20221117-00135. 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 Meriplex Telecom, LLC to Vitruvian Partners LLP*, WC Docket No. 22-400, Public Notice, DA 22-1274 (WCB 2022) (*Public Notice*).

⁴ National Telecommunications and Information Administration, Petition to Adopt Conditions to Authorization and License, WC Docket No. 22-400, ITC-T/C-20221117-00135 (filed Aug. 14, 2023).

⁵ 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* (continued....))

relevant Executive Branch agencies that have expertise in these particular issues.⁶ 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.⁷ The Commission, however, ultimately makes an independent decision on the application based on the record in the proceedings.⁸

Pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20221117-00135, 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.⁹ On December 19, 2022, the U.S. Department of Justice (DOJ), on behalf of the Committee, informed the Commission that the Committee was reviewing the Application for any national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector and requested that the Commission defer action on the Application.¹⁰ We deferred action in response to this request from the Committee. Then, on April 3, 2023, DOJ notified the Commission that the Committee was “conducting [a 120-day] initial review to assess whether granting the Application will pose a risk to national security or law enforcement interests of the United States.”¹¹

In the Committee Petition, the Committee advises that it “has no objection to the Commission granting the above-captioned application, provided that the Commission conditions its consent” on

Review Order); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-21, paras. 59-66 (1997) (*Foreign Participation Order*), *recon. denied*, 15 FCC Rcd 18158 (2000) (in opening the U.S. telecommunications market to foreign entry in 1997, the Commission affirmed that it would consider national security, law enforcement, foreign policy, and trade policy concerns related to reportable foreign ownership as part of its overall public interest review of application for international section 214 authority, submarine cable landing licenses, and declaratory rulings to exceed the foreign ownership benchmarks of section 310(b) of the Act). *See also Applications of T-Mobile US, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et al.*, WT Docket 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10732-33, para. 349 (2019) (*T-Mobile/Sprint Order*).

⁶ *See Executive Branch Review Order*, 35 FCC Rcd at 10935-36, paras. 17, 24.

⁷ *Id.* at 10930, para. 7 (citing *Foreign Participation Order*, 12 FCC Rcd at 23920-21, paras. 65-66; *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; Amendment of Section 25.131 of the Commission’s Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations*, IB Docket No. 96-111, CC Docket No 93-23, RM-7931, Report and Order, 12 FCC Rcd 24094, 24171-72, paras. 179, 182 (1997)); *see also T-Mobile/Sprint Order*, 34 FCC Rcd at 10733, paras. 349; *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Report and Order, 31 FCC Rcd 11271, 11277, para. 6 (2016), *Pet. for recon. dismissed*, 32 FCC Rcd 4780 (2017).

⁸ 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.”).

⁹ *See Public Notice* at 3.

¹⁰ Letter from Jake O. Seaboch, Attorney Advisor, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-400; ITC-T/C-20221117-00135, and Attach. (filed Dec. 19, 2022).

¹¹ Letter from Jake O. Seaboch, Attorney Advisor, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-400; ITC-T/C-20221117-00135, and Attach. (filed Apr. 3, 2023). DOJ subsequently granted an extension so that the initial review period ended on August 16, 2023. Letter from Jake O. Seaboch, Attorney Advisor, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-400; ITC-T/C-20221117-00135, and Attach. (filed Jul. 5, 2023).

compliance with the July 25, 2023, LOA, which NTIA filed with the Committee Petition.¹²

In accordance with the request of the Committee, and in the absence of any objection from the Applicants, we grant the Committee Petition. Accordingly, we condition grant of the Application to transfer of domestic section 214 authority on compliance by the Applicants with the commitments and undertakings set forth in the LOA that apply to the Application.¹³ A failure to comply with and/or remain in compliance with any of the provisions of the LOA shall constitute a failure to meet a condition of this grant and the underlying authorizations and licenses and thus grounds for declaring the underlying authorizations and licenses terminated without further action on the part of the Commission. A failure to meet a condition of this grant and the underlying authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

Grant of Application, Subject to Condition

We find, upon consideration of the record, that the proposed transfer will serve the public interest, convenience, and necessity.¹⁴ This grant of the Application is conditioned as set out in this Public Notice.

Pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03-63.04, we grant the Application with the condition described above. Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the consent granted herein is effective upon the release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

Pursuant to sections 4(i)-(j) and 214(a), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j) and 214(a), and sections 63.03-63.04, of the Commission's rules, 47 CFR §§ 63.03-63.04, we grant the Committee Petition to Adopt Conditions to Authorization and License filed by the NTIA. Grant of the Application is conditioned upon compliance by the Applicants with the Letter of Agreement from David Henley, President, Meriplex Telecom LLC, to Chief, Foreign Investment Review Section (FIRS) and Deputy Chief, Compliance and Enforcement (FIRS), on behalf of the Assistant Attorney General for National Security, National Security Division, United States Department of Justice, dated July 25, 2023. Any failure to comply and/or remain in compliance with any of the conditions set out in the Public Notice shall constitute a failure to meet a condition of the grant and the underlying authorizations and licenses and thus grounds for declaring the authorizations and licenses terminated without any further action on the part of the Commission. Failure to meet a condition of the grant and the underlying authorizations and licenses may also result in monetary sanctions or other enforcement action by the Commission.

For further information, please contact Gregory Kwan, Wireline Competition Bureau, (202) 418-1191.

- FCC -

¹² Committee Petition at 1-2.

¹³ *T-Mobile/Sprint Order*, 34 FCC Rcd at 10732-33, para. 349; *Foreign Participation Order*, 12 FCC Rcd at 23918-21, paras. 59-66.

¹⁴ See 47 U.S.C. § 214(a); 47 CFR § 63.03.



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 23-716
Released: August 17, 2023

**DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF
THE FARMERS & MERCHANTS MUTUAL TELEPHONE COMPANY OF
WAYLAND, IOWA TO COMMUNICATIONS NETWORK, INC.**

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-256

Comments Due: August 31, 2023
Reply Comment Due: September 7, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by The Farmers & Merchants Mutual Telephone Company of Wayland, Iowa (Farmers) and Communications Network, Inc. (CNI) (collectively, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of Farmers to CNI.²

Farmers, an Iowa corporation and an Eligible Telecommunications Carrier (ETC), provides telecommunications services as an incumbent local exchange carrier (LEC) in Iowa.³ Farmers is a privately held, community-based service provider with no individual or entity holding a direct or indirect interest of 10% or greater in Farmers' stock.

CNI, an Iowa corporation, provides wireless telecommunications services in Iowa. CNI is a wholly-owned subsidiary of Kalona Cooperative Telephone Company (KCTC), an Iowa cooperative association. KCTC, an ETC, provides local exchange service and other services in Iowa. KCTC also provides fiber-based communications and advanced communications services in Washington, Iowa.

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

² Application for Consent to Transfer Control of Farmers & Merchants Mutual Telephone Company of Wayland, Iowa to Communications Network, Inc., WC Docket No. 23-256 (filed July 25, 2023) (Application). Applicants filed supplements to their application on August 7, 2023 and August 14, 2023. Letter from Michael Bennet, Counsel for Communications Network, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-256 (filed Aug. 7, 2023); Letter from Michael Bennet, Counsel for Communications Network, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-256 (filed Aug. 14, 2023). Applicants also filed applications for the transfer of authorizations associated with international services and wireless services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ Applicants state that Farmers participates in the Lifeline program and the Affordable Connectivity Program and will continue to participate in those programs after the transaction is consummated.

KCTC is owned by its subscribers, none of whom own ten (10%) or more of the equity of KCTC. Applicants state that KCTC's service areas do not overlap CNI's service areas.

Pursuant to the terms of the merger agreement, immediately prior to the merger, outstanding shares of Farmers stock will be converted into the right to receive a cash amount per share, and outstanding shares of Merger Sub, a wholly-owned subsidiary of CNI created for the purposes of the transaction, will be converted into shares of Farmers. As a result, immediately following the proposed transaction, Merger Sub will cease to exist and Farmers will remain in existence as a wholly-owned subsidiary of CNI. CNI would thereby acquire control of Farmers.

Applicants request streamlined treatment of the proposed transaction under the Commission's rules and assert that a grant of the application would serve the public interest, convenience, and necessity. We accept the application for streamlined filing under section 63.03(b)(2)(iii) of the Commission's rules.⁴

Domestic Section 214 Application Filed for the Transfer of Control of
The Farmers & Merchants Mutual Telephone Company of Wayland, Iowa to
Communications Network, Inc., WC Docket No. 23-256 (filed July 25, 2023).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before August 31, 2023**, and reply comments **on or before September 7, 2023**. Pursuant to section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

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

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

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov; and
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

⁴ 47 CFR § 63.03(b)(2)(iii).

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.⁵ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Dennis Johnson at dennis.johnson@fcc.gov.

FCC

⁵ 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: <https://www.fcc.gov>

DA 23-717

Released: August 17, 2023

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES SECOND ROUND OF ACP OUTREACH GRANT PROGRAM AWARDS

WC Docket No. 21-450

The Federal Communications Commission (FCC or Commission) today is announcing final funding allocations for the Affordable Connectivity Outreach Grant Program (ACP Outreach Grant Program), National Competitive Outreach Program (NCOP) Round 2. The total amount of final funds announced today for NCOP Round 2 is over \$4.3 million.

In March 2023, the FCC adopted the Affordable Connectivity Program (ACP) Fifth Report & Order making available a second funding opportunity for the ACP Outreach Grant Program.¹ The ACP plays an integral role in helping to bridge the digital divide, which remains a top priority for the Commission.² As part of its efforts to encourage participation in the ACP, the Commission established the ACP Outreach Grant Program in order to engage with partners around the country to help inform ACP-eligible households about the program in their local communities, with funding and resources to support such outreach and community engagement.³ The extensive demand for ACP outreach funding so far underscores the need for these funds and the importance of reaching the eligible households that have not yet enrolled in the ACP.⁴ This new funding opportunity for ACP outreach is intended to provide targeted funding towards 12 states and territories where funding minimums were not met during Round 1 as part of the Commission's March 10, 2023 funding announcement.⁵

In determining funding allocations for the second round of NCOP final allocations, the FCC reviewed 21 grant applications to determine the impact of proposed projects against the grant program's goal, objectives, and priorities. Submitted applications were assessed using the following three-step review process:

- 1. Eligibility** review to determine if the applicant is eligible and submitted a complete application package as required in the NCOP Round 2 Notice of Funding Opportunity (NOFO);

¹ *Affordable Connectivity Program*, Fifth Report and Order, WC Docket No. 21-450, FCC 23-15 (rel. Mar. 15, 2023) (*ACP Fifth Report and Order*).

² See *Affordable Connectivity Program*, *Emergency Broadband Benefit Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450, 20-445, FCC 22-2, at 98, para. 211 (2022) (*ACP Order*) ("Narrowing the digital divide has been an ongoing priority for the Commission....").

³ *Affordable Connectivity Program*, Second Report and Order, WC Docket No. 21-450, FCC 22-64, at 2, para. 2 (2022).

⁴ *Id.* at 4-6, paras. 4-6 (discussing the need for and importance of ACP outreach).

⁵ *Consumer and Governmental Affairs Bureau Announces ACP Outreach Grant Program Target Funding*, Public Notice, WC Docket No. 21-450, DA 22-194 (CGB Mar. 10, 2023). On March 15, 2023, the Commission announced the awards for the Your Home, Your Internet and ACP Navigator Pilot Programs.

Federal Communications Commission

2. **Merit** review to determine the quality of proposed projects against program objectives, activities, and costs/budget using pre-determined criteria; and
3. **Risk** review to determine the fiscal stability of an applicant using many factors including the quality of the management systems, history of grant performance, and audit reports and findings.

At the conclusion of the three-step review process, applicants were selected for funding consistent with the funding determination process outlined in the NCOP Round 2 NOFO.

Entity-specific final funding allocations are enclosed as part of the Appendix contained within this Public Notice. Following today's announcement, the FCC's Consumer and Governmental Affairs Bureau will contact applicable entities over the course of the next few weeks to prepare for and issue Notices of Award (NOAs). Entities that have been selected for funding do not need to reach out to the FCC as the FCC will initiate outreach and coordination for award issuance. Once NOAs are issued, entities will have no more than 30 days to accept their award which will mark the start of their one-year (12 months) period of performance for NCOP Round 2.

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

– FCC –

Federal Communications Commission

The FY 2023 NCOP Round 2 funding recipients announced on August 17, 2023 and final funding amounts are provided in the table below. Eligibility for NCOP Round 2 was limited to governmental and non-governmental entities in the following States and Territories where funding minimums were not met during Round 1 funding announcement: American Samoa, Commonwealth of the Northern Mariana Islands, Delaware, Guam, Idaho, Iowa, New Hampshire, Rhode Island, South Carolina, South Dakota, West Virginia, and Wyoming. Note, “ * ” denotes entities that applied as a nationally-based nonprofit organization. Nationally-based nonprofit organizations were deemed eligible for funding consideration if they met one of the following conditions:

- **Condition 1:** Named sub-recipients, with plans to pass through a portion of grant funding, that are located in and will be conducting ACP outreach and/or enrollment activities in at least three (3) or more of the above States/Territories; or
- **Condition 2:** Demonstrate a meaningful multi-state, multi-faceted ACP outreach and enrollment grant strategy that covers seven (7) or more States, to include at least four (4) from the above States/Territories in a proportional manner.

ACP Outreach Grant Program National Competitive Outreach Program (NCOP) Round 2			
#	Applicant Name	State/Territory Name	Final Award Amount
1	American Samoa Department of Commerce	American Samoa	\$342,760
2	FSIC American Innovation and Opportunity Fund*	District of Columbia	\$305,000
3	Department of Administration, Office of Infrastructure Policy and Development	Guam	\$383,586
4	Regents of the University of Idaho	Idaho	\$392,666
5	Iowa Department of Management	Iowa	\$399,704
6	National Collaborative for Digital Equity	New Hampshire	\$316,200
7	Hispanic Federation, Inc.*	New York	\$574,016
8	Executive Office of the State of South Carolina Broadband Office	South Carolina	\$400,000
9	Palmetto Care Connections	South Carolina	\$374,947
10	South Dakota Department of Labor and Regulation	South Dakota	\$400,000
11	National Association of Elementary School Principals*	Virginia	\$96,973
12	Department of Economic Development Office of Broadband	West Virginia	\$400,000
TOTAL:			\$4,385,852

*Entity applied as a nationally-based nonprofit organization.

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

In the Matter of)	
)	
Telecommunications Relay Services and Speech-	)	CG Docket No. 03-123
to-Speech Services for Individuals with Hearing)	
and Speech Disabilities)	
)	
Structure and Practices of the Video Relay Service	)	CG Docket No. 10-51
Program)	
)	

ORDER

Adopted: August 17, 2023

Released: August 17, 2023

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (Commission) grants several temporary conditional waivers to permit, for a limited wind-down period, reimbursement from the Telecommunications Relay Services (TRS) Fund for exogenous costs incurred and to be incurred by ASL Services Holdings, LLC dba GlobalVRS (GlobalVRS or the Company), in providing Video Relay Service (VRS). GlobalVRS is terminating its involvement in the VRS program and is winding down its provision of VRS. However, the Company has undertaken to continue providing, for a limited period, a specialized form of VRS to people who are deafblind (referred to herein as Video-Text Service) to provide for a smooth transition for consumers who rely on it for functionally equivalent communication, while a different VRS provider is completing preparations to make an equivalent service available to such consumers.

2. Pursuant to this Order, we grant these waivers to permit GlobalVRS to be reimbursed, on an expedited basis, for the expenses it incurs to continue providing Video-Text Service on a “bare-bones” basis, to the extent that such expenses exceed its TRS Fund compensation under the applicable formula. As explained below, we find that such relief is warranted because these additional expenses are the result of causes beyond GlobalVRS’s control and hence qualify as exogenous costs under our rules. We direct the TRS Fund administrator¹ to confirm that the expenses submitted by GlobalVRS are limited to costs needed for a “bare-bones” operation and to provide expedited compensation accordingly, subject to true-up and as further described below. This reimbursement arrangement (and the attendant waivers) will remain effective through September 30, 2023, or the last day that GlobalVRS provides service in accordance with this Order, whichever is earlier.

¹ See 47 CFR § 64.604(c)(5)(iii). The current administrator is Rolka Loube Associates LLC (Rolka Loube).

II. BACKGROUND

3. VRS is a relay service,² supported by the TRS Fund, that “allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment.”³ In a typical VRS call, a deaf or hard of hearing person communicates in American Sign Language (ASL), by video over a broadband link, to a communications assistant (CA), who then voices the message to a hearing person using ordinary telephone service. The same process then occurs in reverse: the CA receives the hearing party’s voice response over the telephone and signs that response, by video, to the ASL user.⁴

4. *Video-Text Service.* Some VRS users, who are deafblind, are able to sign to a CA but are unable to see the signs received from the CA well enough to understand them. For such users, GlobalVRS provides a special variant of VRS (referred to in this Order as Video-Text Service), which is currently available only from GlobalVRS. In this service, the ASL user continues to use a video link to sign to the CA. However, the other party’s contributions to the conversation are converted to text (instead of ASL video), which the deafblind party can read using a refreshable braille display. For persons who are deafblind and whose primary language is ASL, this Video-Text Service offers an alternative to text-to-voice relay services, such as Internet Protocol Relay Service, allowing such users the opportunity to send messages in their first language, ASL, while receiving a text response.

5. *VRS Compensation.* VRS providers are compensated for the reasonable cost of providing service in accordance with payment formulas approved by the Commission.⁵ Currently, GlobalVRS is compensated under a special “emergent provider” formula, \$5.29 per minute, which is applicable only to VRS providers handling 500,000 or fewer monthly VRS minutes.⁶ The Commission adopted this separate formula in 2017, concluding that such a special compensation plan was “appropriate for a limited period to take into account,” among other things, “the generally much higher cost of service for very small providers.”⁷ The Commission recognized that “this rate is generally lower than the actual costs reported by emergent providers.”⁸ Thus, the emergent-provider formula was not intended to guarantee full cost recovery, but rather to “extend the window of opportunity” for new entrants and very small providers to grow their operations, to a point where they might be sustainable under the generally applicable, tiered compensation plan.⁹ In May 2021, the Commission sought comment on a revised VRS

² Section 225 of the Communications Act of 1934, as amended (the Act), requires the Commission to ensure the availability of TRS to persons who are deaf, hard of hearing, deafblind or have speech disabilities, “to the extent possible and in the most efficient manner.” 47 U.S.C. § 225(b)(1). TRS are defined as “telephone transmission services” enabling such persons to communicate by wire or radio “in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.” *Id.* § 225(a)(3).

³ 47 CFR § 64.601(a)(51).

⁴ See *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5548-49, para. 2 (2011).

⁵ See 47 CFR § 64.604(c)(5)(iii)(E)(1).

⁶ See *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Order, 32 FCC Rcd 5891, 5916-17, paras. 49-50 (2017) (*2017 VRS Compensation Order*).

⁷ *Id.* at 5916-17, para. 49.

⁸ *Id.* at 5917, para. 50.

⁹ *Id.* at 5916-17, para. 49.

compensation plan.¹⁰ The current VRS compensation formulas, which were set to expire June 30, 2021, were extended and remain applicable pending completion of the compensation rulemaking.¹¹

6. *Exogenous Cost Reimbursement.* In the *2017 VRS Compensation Order*, the Commission determined that, in addition to receiving compensation under generally applicable formulas,

[VRS p]roviders may seek reimbursement for well-documented exogenous costs that (1) belong to a category of costs that the Commission has deemed allowable; (2) result from new TRS service requirements or other causes beyond the provider's control; (3) are new costs that were not factored into the applicable compensation rates, and (4) if unrecovered, would cause a provider's current allowable-expenses-plus-operating margin to exceed its VRS revenues.¹²

7. *Recent Developments.* On March 21, 2023, GlobalVRS filed an "Emergency Petition" seeking reimbursement, on an emergency basis, for certain costs previously incurred to provide Video-Text Service to persons who are deafblind, as well as full recovery, going forward, of its costs of providing VRS.¹³ The Petition stated that the Company "can no longer sustain the growing, unreimbursed costs of serving the DeafBlind and the significant adverse impacts on its operations without affirmative, emergency reimbursement of its associated exogenous costs."¹⁴ On April 4, the Commission sought comment on the Petition.¹⁵ On April 28, GlobalVRS filed a letter with the Commission notifying it of a "potential service interruption on or about June 30, 2023" absent affirmative Commission action on the Petition.¹⁶ In a letter dated May 26, the Company notified users that absent such action, GlobalVRS "will have no choice but to cease operations effective June 30, 2023."¹⁷ In a subsequent notice dated June 8, the Company notified users that "[a]fter nearly twelve years of service, GlobalVRS has no choice but to cease operations effective June 30, 2023."¹⁸

8. Later in June, Commission staff had discussions with GlobalVRS regarding whether the Company could continue providing service for a limited period after June 30, to avoid disruption of Video-Text Service pending the availability of that or a comparable service for VRS users who are

¹⁰ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802 (2021) (*Notice*).

¹¹ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 23-577, at 6-7, paras. 14-17 (CGB June 30, 2023).

¹² *2017 VRS Compensation Order*, 32 FCC Rcd at 5925-26, para. 66 (footnotes omitted).

¹³ Emergency Petition of ASL Services Holdings, LLC dba GlobalVRS for DeafBlind Video Relay Services Exogenous Cost Reimbursement, CG Docket Nos. 03-123 and 10-51 (filed Mar. 21, 2023) <https://www.fcc.gov/ecfs/document/10321175009780/1> (redacted) (GlobalVRS Petition). This Order does not address the merits of the GlobalVRS Petition.

¹⁴ *Id.* at 5.

¹⁵ See *Comments Sought on Petition of GlobalVRS for Video Relay Service Exogenous Cost Reimbursement*, CG Docket Nos. 03-123 and 10-51, Public Notice, DA 23-289 (CGB Apr. 4, 2023).

¹⁶ Letter from Gabrielle Joseph, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51 (filed Apr. 28, 2023) (April 28 Termination Notice).

¹⁷ See Sorenson Communications, LLC, Petition for Expedited Waiver, CG Docket Nos. 03-123 and 10-51, at 2-3, Attach. A (filed July 24, 2023) (Sorenson Waiver Petition).

¹⁸ See *id.*, Attach. B.

deafblind. On June 30, GlobalVRS provided a further notice to its VRS users, stating that it would temporarily continue to provide VRS, while working with Sorenson Communications, LLC (Sorenson), and the Commission to transition Video-Text Service customers to a new provider. On July 24, Sorenson filed a request for an expedited waiver of certain Commission rules to facilitate the porting of GlobalVRS customers to Sorenson. Sorenson explained that it was preparing to begin providing a specialized service to deafblind users, comparable to the service offered by GlobalVRS.¹⁹ On August 3, GlobalVRS filed a letter with the Commission seeking reimbursement of expenses incurred to maintain its provision of VRS to deafblind users after June 30, to ensure uninterrupted provision of service to these customers, pending the availability of service from a new provider.²⁰

III. DISCUSSION

A. Need for Exogenous Cost Reimbursement

9. Pursuant to this Order, we grant waivers authorizing reimbursement to GlobalVRS for exogenous costs incurred in the following highly unusual circumstances. As noted above, in June 2023 GlobalVRS notified customers of its termination of VRS operations, effective June 30.²¹ The Company has explained that it is financially unable to continue providing VRS at the current level of compensation.²² For the last eight years, GlobalVRS has offered a unique form of VRS that is designed to make functionally equivalent communication available to ASL users who are deafblind.²³ At present, no other VRS provider offers a comparable service. While Sorenson is preparing to offer such a service, it is not yet available.²⁴ Due to the Company's decision to discontinue its provision of VRS, current users of Video-Text Service could lose access to a form of TRS on which they rely for functionally equivalent communication.²⁵ After discussions with FCC staff, GlobalVRS has undertaken to maintain the availability of its relay service for a limited period, to enable users of its Video-Text Service to continue receiving service pending the availability of a comparable service from another VRS provider.²⁶ GlobalVRS seeks reimbursement of its monthly expenses for temporarily maintaining this bare-bones VRS service.²⁷ The Company has submitted an estimate of such expenses, with supporting details.²⁸

¹⁹ See *id.* Sorenson's waiver requests will be addressed in a separate order.

²⁰ Letter from Gabrielle Joseph, GlobalVRS, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123 and 10-51, at 1 (filed Aug. 3, 2023) (GlobalVRS Request).

²¹ See Sorenson Waiver Petition, Attach. B.

²² GlobalVRS Request at 2; see also GlobalVRS Petition at 5.

²³ See GlobalVRS Petition at 3-4.

²⁴ See Sorenson Waiver Petition at 3.

²⁵ See 47 U.S.C. § 225(a)(3) (defining TRS as telephone transmission services enabling such persons to communicate by wire or radio "in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services"). As the Commission has previously recognized, VRS is more effective than text-only alternatives such as IP Relay in providing functionally equivalent communication for TRS users whose primary language is ASL. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5152-53, para. 23 (2000) (*2000 TRS Order*) (explaining that VRS "will make relay services functionally equivalent to conventional telephone services for individuals whose first language is American Sign Language.").

²⁶ GlobalVRS Request at 1. According to GlobalVRS, there are 112 active users of GlobalVRS's Video-Text Service. *Id.*

²⁷ *Id.* at 1.

²⁸ *Id.*, Attach.

10. We conclude that under the Commission’s exogenous cost reimbursement criteria, GlobalVRS may be reimbursed for “well-documented”²⁹ allowable expenses it incurs to maintain a bare-bones VRS operation³⁰ for a brief period—beginning July 1, 2023, and ending on the earlier of September 30, 2023, or when all GlobalVRS’s deafblind customers have been ported to a different default VRS provider, if earlier. We also conclude that the types of expenses described in GlobalVRS’s August 3 letter are needed for a bare-bones operation—and that under the circumstances these categories of expenses meet the Commission’s exogenous cost criteria, for the reasons explained below. However, the Commission has not authorized the inclusion of an operating margin in such reimbursement.³¹

11. *Exogenous Cost Reimbursement Criteria.* In the *2017 VRS Compensation Order*, the Commission determined that, in addition to receiving compensation under generally applicable formulas, VRS providers may receive reimbursement for “well-documented exogenous costs” that:

- (1) Belong to a category of costs that the Commission has deemed allowable;
- (2) Result from new TRS service requirements or other causes beyond the provider’s control;
- (3) Are new costs that were not factored into the applicable compensation rates, and
- (4) If unrecovered, would cause a provider’s current allowable-expenses-plus-operating margin to exceed its VRS revenues.³²

12. *Allowable Costs.* The categories of expenses described in GlobalVRS’s estimate are: labor for CAs and administrative support personnel; license fees for a call processing platform leased from a third party; regulatory, telecommunications, and 911-related expenses; expenses to maintain the Company’s website and software applications; and operational costs. These categories of expenses are generally supported by the TRS Fund.³³ Therefore, assuming that GlobalVRS’s documentation is sufficient to support these costs, the Commission’s first criterion for reimbursable exogenous costs is satisfied.

²⁹ *2017 VRS Compensation Order*, 32 FCC Rcd at 5925-26, para. 66.

³⁰ By “bare-bones VRS” we mean VRS that is limited to the provision of Video-Text Service, and includes only those staff, facilities, and other resources needed to maintain the availability of that service for the relatively few customers that use it. For example, the costs of such a bare-bones service would not include the cost of CAs not qualified or not needed to provide Video-Text Service, nor would it include marketing costs for any form of VRS, since GlobalVRS is exiting the business and has no need to recruit additional customers.

³¹ See *2017 VRS Compensation Order*, 32 FCC Rcd at 5925-26, para. 66; GlobalVRS Request, Attach. (including an operating margin in estimate of exogenous costs).

³² *2017 VRS Compensation Order*, 32 FCC Rcd at 5925-26, para. 66.

³³ See Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Appx. B, Provider Annual Cost and Demand Filing Instructions (filed May 1, 2023) (2023 TRS Fund Annual Report); see also *2017 VRS Compensation Order*, 32 FCC Rcd at 5895-96, paras. 10-11; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, 22 FCC Rcd 20140, 20175-77, paras. 73-82 (2007) (*2007 TRS Compensation Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order, 21 FCC Rcd 8063, 8071, para. 17 (2006).

13. *Causes Beyond the Provider's Control.* As to the second criterion, the costs for which GlobalVRS seeks reimbursement do not result from new service requirements.³⁴ However, given the unusual circumstances present here, we conclude that these costs are appropriately described as resulting from causes beyond GlobalVRS's control. The situation in which GlobalVRS finds itself after June 30 is not of its own making. The record is clear that, for several months prior to June 30, GlobalVRS intended to shut down its VRS service³⁵ (absent extraordinary Commission action, which has not occurred to date), and was preparing to do so. The record is also clear that Global has been and is providing VRS, including Video-Text Service, at a substantial loss—even though GlobalVRS has been and is the only option for deafblind individuals who want this service.³⁶ Only after the Commission staff had a discussion with GlobalVRS regarding the need for a transitional arrangement, did the Company change course and agree to temporarily continue a bare-bones VRS operation after June 30 (and even that bare bones operation is being provided at a loss).³⁷ Further, the reason that a transitional arrangement became necessary—the lack of any immediately available, functionally equivalent alternative for Video-Text Service customers—is not a condition subject to the Company's control.³⁸ In summary, despite its clearly stated intention to terminate the provision of VRS as of June 30, GlobalVRS is incurring unintended costs by agreeing to extend its service termination date as an accommodation to its customers, solely because no service alternative for its Video-Text Service customers is immediately available. Under these highly unusual circumstances, we conclude that the additional costs incurred by GlobalVRS are the result of causes beyond the Company's control.

14. *New Costs Not Factored into Compensation Rates.* The third criterion for exogenous cost reimbursement is also satisfied. The submitted costs are new costs incurred by a VRS provider to extend its relay service operation beyond its scheduled shutdown date, to provide service at the minimal level needed to serve customers that have not yet subscribed to a new provider. Such a bare-bones operation is not the type of operation that the Commission contemplated when it established the current compensation formulas.

15. *Costs In Excess of Compensation Revenues.* As required by the fourth criterion, we also find that, absent recovery of the costs listed in GlobalVRS's submission, the Company's allowable-

³⁴ We also note that, contrary to the Company's assertions, Petition at 3, the Commission has never required the provision of VRS or Video-Text Service by GlobalVRS or any other TRS provider. *See 2000 TRS Order*, 15 FCC Rcd at 5152-53, para. 23 (“[W]e disagree with those commenters who argue that we should require [VRS].”).

³⁵ *See* GlobalVRS Petition at 5 (stating it “can no longer sustain the growing, unreimbursed costs of serving the DeafBlind and the significant adverse impacts on its operations without affirmative, emergency reimbursement of its associated exogenous costs”); April 28 Termination Notice.

³⁶ *See* GlobalVRS Request at 4-5; *see also* Letter from Eliot Greenwald, FCC, to Marlene Dortch, FCC, CG Docket Nos. 03-123 and 10-51, Attach. (filed May 9, 2023) (2023 VRS Cost and Demand Data) (confidential) (showing VRS cost and demand for each VRS provider).

³⁷ GlobalVRS Request at 1 & Attach.

³⁸ The Company alerted the Commission on April 28 of its intention to terminate the provision of VRS, and it subsequently notified its customers of this decision on May 26 and June 8. April 28 Termination Notice; Sorenson Waiver Petition, Attachs. A & B. Therefore, other providers, as well as the Company's customers, were aware of GlobalVRS's intention to terminate service. We note that section 64.606(h) of the Commission's rules requires a VRS provider to “obtain Commission authorization” for a voluntary service interruption by submitting a request at least 60 days before such interruption. 47 CFR § 64.606(h)(2). To the extent that this rule applies to a “service interruption” caused by a provider's decision to permanently terminate the provision of VRS, we find no basis to conclude that GlobalVRS failed to comply with the rule.

expenses-plus-operating margin will exceed its VRS revenues. Specifically, the Company's estimated monthly expenses exceed the compensation it would earn for its projected VRS service.³⁹

B. Payment Plan

16. Ordinarily, requests for exogenous cost reimbursement are submitted after all relevant costs have been incurred.⁴⁰ In this instance, GlobalVRS is seeking reimbursement for expenses incurred both before and after the filing of its request. GlobalVRS states it is experiencing significant cash flow issues due to the unexpected temporary extension of its VRS operation, which has required the Company to redirect resources and extend supply contracts that it had assumed would no longer be needed.⁴¹

17. Under these unusual circumstances, to avoid inflicting such hardship and to maintain uninterrupted service to a group of customers for whom an alternative service provider is not yet available, and for whom a service cutoff could have especially harmful effects, the Bureau adopts a conditional waiver authorizing reimbursement of exogenous costs—as well as payments under the applicable compensation formula⁴²—on an accelerated schedule, subject to a possible true-up as discussed below. For service provided after July 31, payments shall be made on a semi-monthly basis. To address these special circumstances, we temporarily waive the relevant provisions of section 64.604(c)(5)(iii) of the Commission's rules, to the extent that this accelerated payment arrangement for GlobalVRS is inconsistent with the requirement for monthly compensation payments.⁴³

18. A Commission rule may be waived for “good cause shown.”⁴⁴ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁴⁵ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴⁶ Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁴⁷

³⁹ GlobalVRS Request, Attach. Except for this brief period of bare-bones operation, GlobalVRS will not be providing VRS in the 2023-24 Fund Year. Therefore, the submitted expenses and projected revenues for this period are the only relevant expenses and revenues for purposes of applying the fourth exogenous cost reimbursement criterion. However, the Company's 2023 annual cost report, which shows historical cost and demand for calendar year 2022 and projected costs and demand for 2023, provides added assurance that this criterion is satisfied. See 2023 VRS Cost and Demand Data (showing VRS cost and demand for each VRS provider).

⁴⁰ See 2007 TRS Compensation Order, 22 FCC Rcd at 20174-75, para. 72 (“Annually, VRS providers will be allowed to request exogenous treatment for costs they incurred during the three-year period that are the result of new regulations or otherwise beyond their control.”).

⁴¹ GlobalVRS Request at 2.

⁴² Although exogenous cost reimbursement is ordinarily handled through a separate process, in this instance, the two kinds of payments are necessarily mingled, as the amount of each exogenous cost reimbursement is equal to the difference between the Company's total allowable expenses for the payment period and the compensation that is otherwise payable pursuant to the applicable formula.

⁴³ The Commission's rules contemplate that compensation payments pursuant to the formulas approved by the Commission will be made on a monthly basis. See 47 CFR § 64.604(c)(5)(iii)(E)(I) (providing that compensation formulas “shall be based on total monthly interstate TRS minutes of use”); *id.* § 64.604(c)(5)(iii)(L)(I) (referring to the Fund administrator's “practice of reviewing monthly requests for compensation”).

⁴⁴ *Id.* § 1.3.

⁴⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁴⁷ *Northeast Cellular*, 897 F.2d at 1166.

19. To address the unusual circumstances of this case, we briefly waive the monthly payment rule and allow an accelerated payment schedule as described below, subject to the following conditions. GlobalVRS may submit an invoice to the TRS Fund administrator, on or after the first business day after the end of each semi-monthly period in which the Company continues providing service.⁴⁸ Each invoice shall state the number of days in that period for which Video-Text Service was provided by the Company, and shall be accompanied by: (1) a provisional count of the Company's compensable minutes of service;⁴⁹ and (2) a certification under penalty of perjury by the Company's chief financial officer or other senior executive, attesting that the invoice and supporting documentation accurately identify the expenses actually incurred to provide VRS and that GlobalVRS has provided service in compliance with the Commission's rules and orders.⁵⁰ In addition, within 10 calendar days after the end of each month of service, GlobalVRS shall submit and certify the accuracy of call detail records (CDRs) for all service provided during that month, in accordance with 47 CFR § 64.604(c)(5)(iii)(D).

20. We direct the TRS Fund administrator to confirm that the submitted costs likely qualify for exogenous treatment pursuant to this Order and, if so, to make a provisional payment within five business days after submission of the documentation described above.⁵¹ Provisional payments are subject to true-up after the Fund administrator has had an opportunity to request and review additional information, if needed, and to review GlobalVRS's monthly CDRs. If the TRS Fund administrator later determines that the amount owed to GlobalVRS for a given period is less than the provisional payment made for that period, and an additional provisional payment is due for a subsequent period, the amount of the overpayment may be deducted from such subsequent provisional payment.

21. As an example of how this schedule would work, if each invoice is submitted on the first day allowed, the payment schedule would be as follows:

Period of Service	If invoice and documentation are submitted on:	Provisional payment, if warranted, to be made on or before: ⁵²	CDR to be submitted on or before:
August 1-15	August 16	August 23	September 11
August 16-31	September 1	September 11	September 11
September 1-15	September 18	September 25	October 10
September 16-30	October 2	October 10	October 10

⁴⁸ For the month of August, one of these periods is 16 days.

⁴⁹ If it chooses, in lieu of a preliminary count, GlobalVRS may submit complete call detail records for the relevant period, in accordance with 47 CFR § 64.604(c)(5)(iii)(D).

⁵⁰ Cf. 47 CFR § 64.604(C)(5)(iii)(D)(5) (requiring such certification when TRS providers submit requests for compensation).

⁵¹ We note that GlobalVRS has already submitted an invoice and documentation for exogenous cost reimbursement for service provided in July 2023. If such invoice and documentation conform to paragraph 19 and the TRS Fund administrator confirms that the submitted costs likely qualify for exogenous cost reimbursement pursuant to this Order, provisional payment of that invoice shall be made within five business days after release of this Order.

⁵² If the Company submits its invoice and certification to the TRS Fund administrator later than the date indicated, payment would be made within five business days after the date of submission.

22. The payments authorized by this Order do not extend to periods of service later than September 30. We anticipate that by September 30, Video-Text Service will be available from another VRS provider, and that the circumstances warranting reimbursement of GlobalVRS pursuant to the Commission's exogenous cost criteria will have ended. We note that an accelerated payment schedule of this kind will *not* apply to any future payments made to a TRS provider for TRS Fund compensation or exogenous cost reimbursement, absent extraordinary circumstances.

C. Additional Waivers

23. In the extraordinary circumstances described above, to facilitate the orderly termination of the Company's service and ensure that public safety is protected during this transitional period, we also grant GlobalVRS partial waivers of the following rules. These waivers are applicable only during GlobalVRS's period of extended service, beginning July 1, 2023, and ending no later than September 30, 2023.

24. We grant GlobalVRS a partial waiver of the user registration rule, under which any eligible TRS user may register with a VRS provider as the user's "default" provider.⁵³ Under this waiver, to accommodate the winding down of the Company's service, GlobalVRS may decline to register new or porting-in VRS users. GlobalVRS is terminating its provision of VRS, and is continuing to provide Video-Text Service after its announced termination date solely because a substitute for its Video-Text Service is not yet available. Under these extraordinary circumstances, it would unnecessarily burden the Company to compel it to register new users while it is preparing to terminate service. Further, there would be little or no benefit to a new user in registering with GlobalVRS during this temporary extension of service.⁵⁴

25. We also grant GlobalVRS a partial waiver of the rule that prohibits CAs from limiting the duration of a TRS call or refusing sequential calls.⁵⁵ In anticipation of terminating service, GlobalVRS has reduced the number of CAs available to handle VRS calls. GlobalVRS has not requested waiver of any service rules for VRS. Therefore, we assume it can continue to comply with, for example, the 24-hour service and speed-of-answer requirements.⁵⁶ However, to provide extra assurance that all emergency calls will be answered promptly during this transition, we grant the Company, on our own motion, a partial waiver of the rule prohibiting CAs from limiting the duration of a call and from refusing sequential calls.⁵⁷ Pursuant to this waiver, in the event that no other GlobalVRS CA is available to take a 911 call, a CA who is serving another user when the 911 call arrives may disconnect from that call (or, if the call is ending, may refuse to allow a sequential call) in order to handle the 911 call.

IV. PROCEDURAL MATTERS

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

⁵³ 47 CFR § 64.611(a).

⁵⁴ To the extent that some users of GlobalVRS's regular (i.e., non-Video-Text) VRS have not yet switched to a different default VRS provider, nothing in this order precludes the Company from being compensated for calls it handles for such users, subject to the applicable compensation formula of \$5.29 per minute.

⁵⁵ *Id.* § 64.604(a)(3)(i).

⁵⁶ *Id.* § 64.604(b)(2)(iii).

⁵⁷ *Id.* § 64.604(a)(3)(i).

V. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, this Order IS ADOPTED.

28. IT IS FURTHER ORDERED that, pursuant to section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, waivers of sections 64.604(a)(3)(i) and 64.611(a) of the Commission's rules, 47 CFR §§ 64.604(c)(5)(iii)(E)(I), 64.604(c)(5)(iii)(L)(I), 64.611(a), 64.604(a)(3)(i), to the extent described herein, are granted with respect to the application of such rules to service provided by GlobalVRS between July 1, 2023, and September 30, 2023.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

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

In the Matter of)	
)	
Implementing Section 13(d) of the Pallone-Thune	)	EB Docket No. 20-22
Telephone Robocall Abuse Criminal Enforcement)	
and Deterrence Act (TRACED Act))	
)	
)	

REPORT AND ORDER

Adopted: August 18, 2023

Released: August 18, 2023

By the Chief, Enforcement Bureau:

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I. INTRODUCTION

1. Congress enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) to combat unlawful robocalls, including calls that unlawfully contain false or misleading caller ID, known as “spoofing.”¹ The source of these calls may be detected through a process known as traceback. Accordingly, the TRACED Act required the Federal Communications Commission (Commission or FCC) to issue rules regarding “the registration of a single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.”² The TRACED Act further required the Commission to issue an annual public notice to solicit applicants to serve as the registered consortium.³ In this Order, the Enforcement Bureau (Bureau) selects the incumbent, the Industry Traceback Group established by USTelecom – The Broadband Association (collectively,

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(d)(1); *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 and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3113, 3115-16, paras. 9-14 (2020) (*Consortium Registration Order*).

³ TRACED Act, § 13(d)(2).

USTelecom or Traceback Group), to continue as the registered consortium for private-led traceback efforts.

II. BACKGROUND

2. Section 227 of the Communications Act of 1934, as amended (the Communications Act), is designed to protect consumers from unlawful calls.⁴ Sections 227(b), (c), and (d) impose specific requirements on telemarketing calls and calls made using an automatic telephone dialing system or an artificial or prerecorded voice to limit calls consumers have not consented to receive.⁵ Section 227(e) prohibits unlawful spoofing—the transmission of “misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.”⁶

3. On March 27, 2020, pursuant to the TRACED Act, the Commission adopted rules to establish an annual process to register a single consortium to conduct the private-led efforts to trace back suspected unlawful robocalls.⁷ An entity that wishes to serve as the consortium for private-led traceback efforts must submit a Letter of Intent as directed by a public notice.⁸ The Letter of Intent must include the name of the entity, a statement of its intent to conduct private-led traceback efforts, and a statement of its intent to register as the single consortium that conducts private-led efforts to trace back the origin of suspected unlawful robocalls.⁹ Under Commission rules,¹⁰ in its Letter of Intent, the entity must also satisfy the following requirements pursuant to the TRACED Act.

(i) **Neutrality.** The entity must demonstrate that it will be a neutral third party by explaining its openness to allowing voice service providers to participate in an unbiased, non-discriminatory, and technology-neutral manner.¹¹

(ii) **Competence.** The entity must demonstrate that it will be a “competent manager of the private-led traceback efforts” by explaining its ability “to effectively and efficiently manage a traceback process” that includes “timely and successfully finding the origin of suspected unlawful robocalls.”¹²

(iii) **Best Practices.** The entity must demonstrate that it will maintain and conform its actions to written best practices which explain how the entity will manage traceback efforts and voice service providers’ participation in traceback efforts.¹³ The entity must also provide a copy of its written best practices.¹⁴

⁴ 47 U.S.C. § 227.

⁵ *Id.* § 227(b)-(d).

⁶ *Id.* § 227(e)(1).

⁷ See 47 CFR § 64.1203; *Consortium Registration Order*, *supra* note 2, at 3115-16, paras. 9-14.

⁸ 47 CFR § 64.1203(b); *Consortium Registration Order*, *supra* note 2, at 3115, para. 10.

⁹ See *Consortium Registration Order*, *supra* note 2, at 3115, para. 10.

¹⁰ 47 CFR § 64.1203(b).

¹¹ See *Consortium Registration Order*, *supra* note 2, at 3117, para. 16; 47 CFR § 64.1203(b)(1); TRACED Act § 13(d)(1)(A).

¹² *Consortium Registration Order*, *supra* note 2, at 3119, para. 21; see 47 CFR § 64.1203(b)(1); TRACED Act § 13(d)(1)(A).

¹³ See 47 CFR § 64.1203(b)(2); *Consortium Registration Order*, *supra* note 2, at 3119-20, paras. 24-25; TRACED Act § 13(d)(1)(B).

¹⁴ See 47 CFR § 64.1203(b)(2); *Consortium Registration Order*, *supra* note 2, at 3115, para. 11.

(iv) **Focus on Fraudulent, Abusive, or Unlawful Traffic.** The entity must certify that, consistent with section 222(d)(2) of the Communications Act, it will focus its private-led traceback efforts on fraudulent, abusive, or unlawful traffic.¹⁵

The entity must also certify that it has “notified the Commission that it intends to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium.”¹⁶ Additionally, under Commission rules, the entity must also certify that, if selected, the entity will “(i) [r]emain in compliance with the requirements of paragraphs (b)(1) through (4) of [section 64.1203]; (ii) [c]onduct an annual review to ensure compliance with [such requirements]; and (iii) [p]romptly notify the Commission of any changes that reasonably bear on its certification.”¹⁷

4. The Bureau evaluates any Letters of Intent based upon the forgoing statutory and regulatory requirements. “In the event that more than one consortium submits a Letter of Intent, meets the statutory requirements . . . , and fulfills the [Commission’s rules] . . . the Bureau must select only one” based on which consortium “most fully satisfies the statutory requirements and the principles that the Commission has identified.”¹⁸

5. The Commission delegated to the Bureau the responsibility for selecting, annually, the registered traceback consortium.¹⁹ On July 27, 2020, the Bureau selected the Traceback Group as the registered traceback consortium to conduct private led traceback efforts.²⁰ In August 2021 and August 2022, the Bureau also selected the incumbent Traceback Group to continue as the registered traceback consortium.²¹

6. The Bureau must publish a public notice every year seeking applicants (via Letters of Intent) to serve as the registered traceback consortium.²² The incumbent registered traceback consortium is not required to submit an application.²³ The incumbent’s certifications “continue for the duration of each subsequent year unless the registered consortium notifies the Commission otherwise in writing.”²⁴ On April 24, 2023, the Bureau issued a Public Notice seeking Letters of Intent.²⁵ On May 24, 2023, iconectiv, LLC (iconectiv) submitted a Letter of Intent and supporting documents seeking to be designated as the registered traceback consortium.²⁶ While the Traceback Group was not required to

¹⁵ See 47 CFR § 64.1203(b)(3); *Consortium Registration Order*, *supra* note 2, at 3121, para. 26; TRACED Act § 13(d)(1)(C).

¹⁶ 47 CFR § 64.1203(b)(4); see *Consortium Registration Order*, *supra* note 2, at 3115, para. 11; TRACED Act § 13(d)(1)(D).

¹⁷ 47 CFR § 64.1203(b)(5).

¹⁸ *Consortium Registration Order*, *supra* note 2, at 3121, para 28.

¹⁹ *Id.* at 3116, para. 12.

²⁰ *Implementing Section 13(d) of the Pallone-Thune 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).

²¹ *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 36 FCC Rcd 12782 (EB 2021); *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 22-870 (EB Aug. 22, 2022).

²² 47 CFR § 64.1203(a).

²³ *Id.* § 64.1203(c).

²⁴ *Id.*

²⁵ *Enforcement Bureau Requests Letters of Intent to Become the Registered Industry Consortium for Tracebacks*, EB Docket No. 20-22, Public Notice, DA 23-347 (EB Apr. 24, 2023).

²⁶ Letter of Intent from David Wilson, Vice President of Global Sales, iconectiv, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket 20-22 (filed May 24, 2023) (iconectiv Letter).

submit a new Letter of Intent, USTelecom did submit a Letter supporting its Traceback Group's continued designation as the registered traceback consortium.²⁷ On June 8, 2023, USTelecom submitted comments²⁸ and, on June 15, 2023, iconectiv submitted reply comments in response to USTelecom's comments.²⁹ The Bureau also met with representatives of the Traceback Group on July 18, 2023,³⁰ and with representatives of iconectiv on July 26, 2023.³¹ The Internet & Television Association (NCTA) also submitted comments.³² Additionally, AT&T Services, Inc., Bandwidth, Inc., Blackfoot Communications, Charter Communications, Comcast Corporation, Consolidated Communications, Intrado Communications, LLC, Lumen Technologies, Inc., Sinch Voice, USCellular, Verizon, and Windstream (collectively, Commenting Providers) submitted joint comments outside of the comment period.³³ ZipDX LLC (ZipDX) filed reply comments.³⁴ The Commission also received one express comment filed outside of the comment period.³⁵

III. DISCUSSION

7. The Bureau reviewed and assessed iconectiv's submissions as well as USTelecom's submissions since 2020. Both applicants have certified that they notified the Commission of their intent "to conduct traceback efforts of suspected unlawful robocalls in advance of registration as the single consortium."³⁶ Additionally, both applicants have submitted the certification required by section 64.1203(b)(5) of the Commission's rules.³⁷ After consideration of all statutory and regulatory requirements for the registered traceback consortium along with the input of commenters, we find that the incumbent Traceback Group most fully satisfies the statutory and regulatory requirements.³⁸ Consequently, the Bureau selects the Traceback Group to remain as the single registered traceback consortium for private-led traceback efforts.³⁹

²⁷ Letter from Joshua M. Bercu, Vice President of Policy & Advocacy, USTelecom, to Loyaan Egal, Chief, Enforcement Bureau, FCC, EB Docket 20-22 (filed May 24, 2023) (USTelecom Letter).

²⁸ USTelecom Comments, EB Docket 20-22 (filed June 8, 2023) (USTelecom Comments).

²⁹ iconectiv, LLC Reply Comments, EB Docket 20-22 (filed June 15, 2023) (iconectiv Reply).

³⁰ Letter from Joshua M. Bercu, Executive Director, Industry Traceback Group, to Marlene H. Dortch, Secretary, FCC, EB Docket 20-22 (filed July 20, 2023).

³¹ Letter from Chris Drake, Senior Vice President, iconectiv, LLC, to Marlene H. Dortch, Secretary, FCC, EB Docket 20-22 (filed July 27, 2023).

³² NCTA – The Internet & Television Association (NCTA) Comments, EB Docket 20-22 (filed June 8, 2023) (NCTA Comments).

³³ Letter from Linda S. Vandeloop, Assistant Vice President, External Affairs/Regulatory, AT&T Services, Inc. *et al.* to Marlene H. Dortch, Secretary, FCC, EB Docket No. 20-22 (filed July 13, 2023) (Joint Provider Comments).

³⁴ ZipDX LLC Reply Comments, EB Docket 20-22 (filed June 15, 2023) (ZipDX Reply).

³⁵ Jaret Aucoin, Express Comment, EB Docket 20-22 (filed July 24, 2023).

³⁶ 47 CFR § 64.1203(b)(4) (requiring such certification); iconectiv Letter, *supra* note 26, at 5; Letter from Patrick R. Halley, Senior Vice President, Policy & Advocacy, USTelecom, to Marlene H. Dortch, Secretary, FCC, EB Docket No. 20-22, at Appendix A (filed May 21, 2020) (USTelecom Initial Letter of Intent).

³⁷ 47 CFR § 64.1203(b)(5) (requiring such certification); iconectiv Letter, *supra* note 26, at 5; USTelecom Initial Letter of Intent at 2.

³⁸ TRACED Act § 13(d)(1)(A)-(D) (requiring neutrality; competent management; written best practices; a focus on fraudulent, abusive, or unlawful traffic; and notice to the Commission of an intent to conduct traceback efforts in advance of registration); 47 CFR § 64.1203(b); *Consortium Registration Order*, *supra* note 2, at 3115, para. 11.

³⁹ In adherence to section 64.1203(a) of our rules, the Enforcement Bureau will solicit Letters of Intent to register as the Consortium for the following year by April 29, 2024. *See* 47 CFR § 64.1203(a) (requiring the public notice to be issued "no later than April 28 annually"); *id.* § 1.4(l) ("When Commission action is required by statute to be

(continued....)

A. The Registered Consortium Must Be a Neutral Third Party

8. Under the TRACED Act and the Commission’s rules, the registered consortium must be “a neutral third party.”⁴⁰ The Commission is granted the discretion to determine an applicant’s neutrality.⁴¹ In the *Consortium Registration Order*, the Commission determined that the neutrality of a third party is demonstrated by openness. An applicant may demonstrate openness by showing—at the very least—how it will allow voice service providers to participate in traceback efforts in a manner that is unbiased, non-discriminatory, and technology-neutral.⁴² Further, an applicant’s openness should allow for and encourage the broad participation of voice service providers. This is because the collaboration and cooperation of voice service providers is “necessary to fulfill the fundamental purpose of traceback—timely and successfully finding the origin of suspected unlawful robocalls that traverse multiple voice service providers’ networks.”⁴³ A consortium’s neutrality should ensure that no industry segment is subject to bias within the consortium’s participation structure.⁴⁴ “In order to ensure that the registered consortium fulfills the statutory obligation of neutrality, applicants will need to demonstrate in their Letters of Intent that they meet that requirement.”⁴⁵ Thus, the Letters of Intent submitted by the applicants should include specific information sufficient to allow the Bureau to evaluate the neutrality of the respective applicant.⁴⁶

9. *USTelecom’s Assertions of Neutrality.* The Traceback Group refers to its structure and composition as evidence of its openness and its ability to be neutral. Its Letter specifically references the Bureau’s prior finding that the “multi-member structure of the Traceback Group, and its widespread industry support, encourages neutrality and openness.”⁴⁷ As evidence of its ability to encourage broad participation in the traceback process, the Traceback Group highlights its “long track record of building and sustaining a broad and diverse industry coalition representing every part of the voice provider ecosystem to work together to stop illegal robocalls.”⁴⁸ The Traceback Group further explains that “the majority of the members of the [Traceback Group’s] Executive Committee, which oversees the operation and overall direction of the Traceback Group, are not USTelecom members.”⁴⁹

10. *iconectiv’s Assertion of Neutrality.* iconectiv states that it is “a trusted neutral third party” that “serv[es] the telecom industry as the Secure Telephone Identity-Policy Administrator (STI-

taken by a date that falls on a holiday, such action may be taken by the next business day (unless the statute provides otherwise).”; *id.* § 1.4(e)(1) (defining the term “holiday”). As April 28, 2024 falls on a Sunday, the public notice must be issued no later than April 29, 2024. Our selection in this Order will be effective until that 2024 selection process is complete.

⁴⁰ TRACED Act § 13(d)(1)(A); 47 CFR § 64.1203(b)(1); *see also Consortium Registration Order*, *supra* note 2, at 3117, para. 16.

⁴¹ *See* TRACED Act § 13(d)(1)(A).

⁴² *Consortium Registration Order*, *supra* note 2, at 3117, para. 16.

⁴³ *Id.*

⁴⁴ *Id.* at 3117, para. 17.

⁴⁵ *Id.* at 3117, para. 18.

⁴⁶ *See Consortium Registration Order*, *supra* note 2, at 3117-18, para. 18 (“Consistent with the openness principle, consortia should provide information to demonstrate that their internal structural, procedural, and administrative mechanisms, as well as other operational criteria do not result in an overall lack of neutrality.”). The Bureau will “evaluate each such Letter of Intent in light of a consortium’s showings of compliance with the neutrality and other requirements of section 13(d).” *Id.* at 3118, para. 18. Furthermore, generally, an entity that seeks to become the registered consortium must sufficiently and meaningfully fulfill the statutory requirements. *Id.* at 3117, para. 15.

⁴⁷ USTelecom Letter, *supra* note 27, at 8.

⁴⁸ *Id.*

⁴⁹ *Id.*

PA), the Local Number Portability Administrator (LNPA) for the United States managing the nation's Number Portability Administration Center (NPAC), and operating the TRS Numbering Directory for iTRS services on behalf of the [FCC].”⁵⁰

11. iconectiv states that it will be transparent about the traceback process but for security reasons will keep the details of the process to those with a “need to know.”⁵¹ iconectiv would provide traceback details and results to law enforcement through a secure portal.⁵² iconectiv states that it “is committed to have traceback operations governed by a group of authoritative public/private/government stakeholders and will not be influenced by any industry entity that could profit from illegal calling.”⁵³ iconectiv emphasizes that the governing body will police bad actors and, as a neutral third party, iconectiv asserts that it will not “engage in any disciplinary actions or enforcement of any member of the traceback consortium.”⁵⁴ Further, iconectiv states that “[b]y using publicly available data sources, robocall campaign evidence and volumes, [it] would be able to help continuously monitor and pursue unlawful campaigns indefinitely without any subjectivity in human analysts deciding when and which campaigns to trace.”⁵⁵

12. *Comments.* USTelecom submitted comments in favor of the Traceback Group that questioned iconectiv’s ability to serve as a neutral third-party. USTelecom’s comments make three main arguments regarding iconectiv’s neutrality: (1) iconectiv declares that it would be a neutral third party but does not demonstrate it;⁵⁶ (2) iconectiv has undisclosed potential conflicts of interest that could hamper its ability to remain a neutral third-party;⁵⁷ and (3) iconectiv’s proposed traceback process requires it to exercise judgment which could involve bias and discrimination in the absence of any defined governance structure, policies, or methods.⁵⁸

13. USTelecom states that iconectiv’s Letter of Intent “does not demonstrate that iconectiv would be able to act as a neutral third-party.”⁵⁹ USTelecom argues that “[i]nstead, the [Letter of Intent] merely summarily asserts that iconectiv ‘is a neutral third party and will carry out its mandate as the registered consortium in a non-discriminatory manner[.]’”⁶⁰ USTelecom states that iconectiv “refers to but provides no detail regarding ‘a group of authoritative public/private/government stakeholders’ that would govern traceback operations”⁶¹ and does not “state who these stakeholders are, how they would be selected, or how decisional authority would be allocated among them.”⁶²

14. USTelecom argues that iconectiv’s business interests might affect its traceback operations because those interests “could benefit from how it designs and conducts the industry traceback operation.”⁶³ USTelecom also states that because iconectiv has not provided any information about how

⁵⁰ iconectiv Letter, *supra* note 26, at 2.

⁵¹ *Id.* at 4.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 3.

⁵⁶ USTelecom Comments, *supra* note 28, at 2.

⁵⁷ *Id.* at 9-10.

⁵⁸ *Id.* at 10.

⁵⁹ *Id.* at 2.

⁶⁰ *Id.* at 6 (quoting iconectiv Letter, *supra* note 26, at 5).

⁶¹ *Id.* (quoting iconectiv Letter, *supra* note 26, at 4).

⁶² *Id.* at 6-7.

⁶³ *Id.* at 2.

its traceback operations would be funded, the Bureau and other stakeholders cannot evaluate whether potential conflicts of interest exist.⁶⁴ Additionally, USTelecom notes that iconectiv did not disclose in its Letter of Intent that “an affiliate of iconectiv’s minority owner, F.P.-Icon Holdings, L.P. (‘FP-Icon’), acquired an indirect majority interest in four interconnected VoIP providers”⁶⁵ despite the fact that the Commission identified this acquisition in another proceeding.⁶⁶ USTelecom asserts that iconectiv’s failure “to proactively disclose iconectiv’s ownership and accompanying risks of non-neutrality undermine the company’s unsubstantiated and conclusory statement that it ‘has no relationships . . . that could give a party opportunity to interfere with its neutrality.’”⁶⁷ In addition, USTelecom notes that iconectiv’s majority owner is Ericsson, and Ericsson’s acquisition of Vonage, a large VoIP provider, further complicates iconectiv’s assertion of neutrality.⁶⁸ USTelecom opines that iconectiv should have disclosed these potential conflicts of interest in its Letter of Intent and described how it would manage the traceback process neutrally in spite of these interests.⁶⁹

15. Furthermore, USTelecom claims that “iconectiv would manage the traceback process in non-neutral fashion by discriminating between ‘good’ and ‘bad’ providers.”⁷⁰ USTelecom argues that “[d]etermining ‘good’ and ‘bad’ actors among providers that cooperate with tracebacks is not simple and requires the application of judgment”⁷¹ and “there is no way to review whether or not iconectiv’s proposed approach would amount to the application of bias and discrimination” in the absence of “any defined governance structure, policies, or methods to define ‘good’ and ‘bad.’”⁷² USTelecom further argues that iconectiv’s Letter of Intent “appears to contemplate delegating evaluations to the undefined and undeveloped ‘governing body’ so that iconectiv itself ‘will not engage in any disciplinary actions or enforcement of any member of the traceback consortium.’”⁷³ USTelecom also claims that “the [Letter of Intent] provides no reason to assume that the governing body would act in an unbiased, non-discriminatory, and technologically-neutral manner.”⁷⁴

16. The Commenting Providers submitted comments in support of the Traceback Group’s neutrality. Specifically, the Commenting Providers applaud the Traceback Group’s “creat[ion of] a collaborative environment where a diverse group of voice service providers, most of which are not members of its trade association, have been able to work together productively to combat illicit robocalling.”⁷⁵ The Commenting Providers highlight the beneficial growth of the Traceback Group’s coalition, which now includes over 500 voice service providers.⁷⁶ The Commenting Providers argue that “[i]t is unlikely that we would see such high levels of participation by industry as well as law enforcement, regulators, and others without USTelecom’s track record and commitment to an unbiased

⁶⁴ *Id.* at 8 (citing iconectiv Letter, *supra* note 26, at 5).

⁶⁵ *Id.* (citing *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability*, WC Docket Nos. 07-149, 09-109, CC Docket No. 95-116, Memorandum Opinion and Order, 35 FCC Rcd 7106, 7108, para. 7 (WCB 2020)).

⁶⁶ *Id.* at 8-9.

⁶⁷ *Id.* at 9.

⁶⁸ *See id.* at 9.

⁶⁹ *Id.* at 9-10.

⁷⁰ *Id.* at 10.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 11 (quoting iconectiv Letter, *supra* note 26, at 4).

⁷⁴ *Id.*

⁷⁵ Joint Provider Comments, *supra* note 33, at 1.

⁷⁶ *Id.*

and impartial approach.”⁷⁷ The Commenting Providers also argue that iconectiv failed to provide information that would clarify its ability to act neutrally. Specifically, the Commenting Providers find that iconectiv’s Letter of Intent contained “no mention of a funding structure” and did not explain how iconectiv would “recover its operating expenses, especially given its fiduciary duty to maximize profit for its shareholders.”⁷⁸ Further, the Commenting Providers expressed concern regarding iconectiv’s failure to identify governing stakeholders, which they stated was inconsistent with the Traceback Group’s policies and procedures.⁷⁹ The Commenting Providers argue that “[w]ithout more detailed information . . . it is impossible to evaluate and assess whether or not [iconectiv] is likely to be a more successful alternative.”⁸⁰ NCTA also submitted comments in favor of the Traceback Group but did not address the neutrality requirement.

17. *Reply Comments.* iconectiv submitted reply comments in response to USTelecom in order to address “misconceptions raised in [USTelecom’s] comments.”⁸¹ iconectiv states that its satisfaction of neutrality requirements as the LNPA and the iTRS Numbering Administrator demonstrates neutrality sufficient to serve as the Traceback Consortium.⁸² In the context of numbering administration, the neutrality safeguards adopted by iconectiv include “a voting trust for all current ownership interests, restrictions on the number of board seats the owners may appoint, a plurality of independent directors, and semi-annual neutrality audits, among others[.]”⁸³ iconectiv argues that conversely, USTelecom has aligned itself with a “particular telecommunications industry segment.”⁸⁴ iconectiv states that the “many vendor-neutral positions that [it] holds for the industry demonstrate that iconectiv is capable of operating in such an open, non-discriminatory, and technology-neutral manner[.]”⁸⁵ which it argues satisfies the Commission’s neutrality criterion.⁸⁶

18. Regarding USTelecom’s concern regarding “a group of authoritative public/private/government stakeholders” that have not yet been named, iconectiv explains that “iconectiv intends the future selection of the governance group to be open and transparent, consistent with the Commission’s neutrality requirements.”⁸⁷ To bolster its argument, iconectiv points to its experience “operating consortium-led solutions, almost a decade of that with FCC oversight much like the Traceback service today.”⁸⁸

19. ZipDX also submitted reply comments regarding neutrality. ZipDX supports a “more widespread dissemination of traceback findings”⁸⁹ and, as a result, questions iconectiv’s intent to make the results of tracebacks available to those with a “need to know.”⁹⁰ ZipDX opines that iconectiv’s Letter of Intent failed to provide specificities regarding how the “need to know” determination is made

⁷⁷ *Id.* at 2.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ iconectiv Reply, *supra* note 29, at 2.

⁸² *Id.* at 3-4.

⁸³ *Id.* at 4.

⁸⁴ *Id.* at 3 (quoting 47 CFR § 52.12(a)(1)).

⁸⁵ *Id.*

⁸⁶ *Id.* (citing *Consortium Registration Order*, *supra* note 2, at 3117, para. 16).

⁸⁷ *Id.* at 4.

⁸⁸ *Id.* at 5.

⁸⁹ ZipDX Reply, *supra* note 34, at 2.

⁹⁰ *Id.* at 2.

by the consortium's governing body.⁹¹ Furthermore, ZipDX reiterates its concern for "the financial secrecy that surrounds the traceback operation" currently managed by the Traceback Group and states that "iconectiv does nothing to address this [matter]."⁹²

20. *Analysis.* We find that the Traceback Group most fully satisfies the statutory neutrality obligation. Although we acknowledge that iconectiv has served as a valued party in the context of its role as the LNPA and iTRS Numbering Administrator,⁹³ we find that it did not provide sufficient evidence in its Letter of Intent to enable the Bureau to analyze how specifically it would serve as a neutral consortium and how specifically it would allow for and encourage the broad participation of voice service providers in the traceback context in an unbiased, non-discriminatory, and technology-neutral manner. iconectiv explains its robust role in the telecom industry; however, it does not sufficiently elaborate on how it would leverage its industry contacts to encourage broad participation in traceback. iconectiv attempts to do so in its reply comments, stating that a group of stakeholders will govern the traceback process;⁹⁴ however it still does not provide specific information about which entities will comprise the consortium or specifically how the consortium will enable voice service providers to participate in an unbiased, non-discriminatory, and technology-neutral manner. Conversely, the Traceback Group's track record, multi-member structure, and widespread industry support foster openness and encourage broad participation in traceback.⁹⁵ The Traceback Group also specifically addresses the contribution of its Executive Committee to neutrality, highlighting the Committee's inclusion of both USTelecom members and non-members.⁹⁶ The Commission has not imposed "a single, specific structure or administrative methodology to ensure neutrality."⁹⁷ However, we find the Traceback Group's evidence of its neutrality and openness more compelling than the evidence presented by iconectiv.

B. The Registered Consortium Must Be a Competent Manager

21. The TRACED Act mandates that the registered consortium be "competent to manage the private-led effort to trace back the origin of suspected unlawful robocalls."⁹⁸ This requires the consortium to have the capacity to "effectively and efficiently manage a traceback process of suspected unlawful robocalls," which includes "timely and successfully" identifying the origin of suspected illegal robocalls that travel across multiple voice service providers' networks.⁹⁹ Competent management also necessitates cooperation and collaboration with industry participants, as well as the prompt exchange of information in response to state and federal enforcement efforts.¹⁰⁰ Further, the consortium must comply with applicable legal requirements including those pertaining to legal procedure and confidentiality.¹⁰¹ The Commission

⁹¹ *Id.*

⁹² *Id.* at 3.

⁹³ We note that iconectiv's request for the Wireline Competition Bureau to confirm that iconectiv continues to meet the LNPA neutrality requirements following the acquisition of Vonage Holdings Corp. by subsidiaries of Telefonaktiebolaget LM Ericsson (Ericsson), an 83% owner of iconectiv, remains pending, and nothing in this item should be construed to suggest that matter's resolution. Letter from John Nakahata, Counsel for iconectiv, LLC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket Nos. 95-116 et al. (filed Jan. 17, 2022).

⁹⁴ iconectiv Reply, *supra* note 29, at 4.

⁹⁵ USTelecom Letter, *supra* note 27, at 8.

⁹⁶ *Id.*

⁹⁷ *Consortium Registration Order*, *supra* note 2, at 3118, para. 19.

⁹⁸ TRACED Act § 13(d)(1)(A).

⁹⁹ *Consortium Registration Order*, *supra* note 2, at 3119, para. 21.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

is granted the discretion to determine an applicant's competence,¹⁰² and demonstrated expertise and success of the applicant is "particularly relevant" when making this evaluation.¹⁰³

22. *USTelecom's Assertion of Competence.* USTelecom asserts that, by serving as the registered traceback consortium over the past three years, the Traceback Group has demonstrated its ability to competently manage private-led traceback efforts.¹⁰⁴ The Traceback Group has conducted over 10,000 tracebacks and the robocall campaigns associated with these tracebacks represent "billions of illegal calls targeting consumers."¹⁰⁵ Specifically, between January and November 2022, the Traceback Group conducted 2,600 tracebacks.¹⁰⁶ Further, in 2022, nearly 500 domestic and foreign providers have cooperated with tracebacks, 180 of which had not been previously identified in tracebacks.¹⁰⁷ USTelecom represents that the Traceback Group has also worked closely with state and federal enforcement authorities, responding promptly to civil and criminal investigative demands.¹⁰⁸

23. USTelecom also asserts that the Traceback Group has taken an innovative approach to improving the traceback process. *First*, it states that the Traceback Group has taken several actions to improve its traceback portal and traceback technology.¹⁰⁹ These actions include launching a new platform for law enforcement that will enable authorities to review traceback data and traceback trends, deploying an automatic alert system to notify providers of potential compliance issues, and integrating comment features and a formal dispute mechanism for providers.¹¹⁰ *Second*, USTelecom represents that the Traceback Group has integrated additional data into its traceback process. For instance, USTelecom explains that the Traceback Group now "collects STIR/SHAKEN information regarding calls the ITG traces back"¹¹¹ and "incorporates its [Do Not Originate] Registry to the [Traceback Group] portal."¹¹² Further, the Traceback Group has increased its number of data partners, sourcing ZipDX's RRAPTOR data, in addition to data from YouMail and Verizon, to "traceback more examples of live fraud and illegal telemarketing calls."¹¹³ The Traceback Group has also engaged a data science team to suggest additional data partners and develop insights that could be used by voice service providers in their due diligence processes.¹¹⁴ *Third*, USTelecom states that the Traceback Group has increased cybersecurity and data privacy efforts. Specifically, it asserts that the Traceback Group implemented "new privacy and data

¹⁰² See TRACED Act § 13(d)(1)(A); *Consortium Registration Order*, *supra* note 2, at 3119, para. 22.

¹⁰³ *Consortium Registration Order*, *supra* note 2, at 3119, para. 22 ("As we state in the *NPRM*, it is reasonable to weigh that expertise and success when selecting between or among consortia to ensure that private-led efforts result in effective traceback. We note, however, that while a consortium's expertise in managing traceback processes is particularly relevant, such experience is not a prerequisite.").

¹⁰⁴ USTelecom Comments, *supra* note 28, at 1-2; *see also* USTelecom Letter, *supra* note 27, at 8.

¹⁰⁵ Letter from Joshua M. Bercu, Vice President, Policy & Advocacy, USTelecom to Marlene Dortch, Secretary, Federal Communications Commission, EB Docket No. 20-195, at 1 (filed Nov. 21, 2022).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 3.

¹⁰⁸ USTelecom Letter, *supra* note 27, at 4.

¹⁰⁹ *See id.* at 6.

¹¹⁰ *Id.* at 6-7.

¹¹¹ *Id.* at 5.

¹¹² *Id.* at 6.

¹¹³ *Id.* at 5.

¹¹⁴ *Id.* at 7.

minimization-focused features to redact old personally identifiable information and call detail record information that is no longer needed.”¹¹⁵

24. *iconectiv’s Assertion of Competence.* As evidence of its managerial competence, iconectiv asserts that it has a robust history as a “premiere developer of switching, porting and national software platforms and registries with billions of records created for governments, regulators, and telecoms around the world.”¹¹⁶ iconectiv references its successful implementation of projects such as the NPAC (as part of its work as the LNPA), the Short Code Registry, and the iTRS Numbering Directory, to show that it has the ability to adhere to deadlines and deliver effective, operational products.¹¹⁷ iconectiv further asserts that it will contribute a “broad industry perspective, along with deep technological expertise” to the consortium.¹¹⁸ iconectiv also asserts that it plans to utilize its industry contacts, such as that with YouMail, “disparate data sources,” and “evidence through secure APIs,” to more rapidly identify and minimize robocall campaigns.¹¹⁹ Additionally, iconectiv generally states, without additional detail, that it “is in a unique position to assist with the goal of automating traceback queries and responses” due to its experience building automated interfaces for various carriers and service providers in the telecom industry.¹²⁰ iconectiv did not provide specific details regarding its ability to manage the traceback process or its planned innovations for the traceback process.

25. *Comments.* NCTA filed comments in support of the Traceback Group’s competence, stating that the Traceback Group plays a critical role in combatting illegal robocalls.¹²¹ NCTA further states that the Traceback Group’s work has continued to grow since its initial selection and that “under USTelecom’s leadership, the [Traceback Group] continues to expand the scope of its efforts to combat robocalls.”¹²² NCTA also commends the upgrades that the Traceback Group has incorporated into its portal, noting that the Traceback Group portal provides both law enforcement and voice service providers with real-time traceback information needed to make enforcement or business decisions.¹²³

26. The Commenting Providers also filed comments supporting the Traceback Group’s competency, asserting that the Traceback Group has continued “to develop and refine tools to increase the efficiency and effectiveness of the traceback process and continues to grow relationships with others fighting illegal robocalls.”¹²⁴ The Commenting Providers state that the Traceback Group “has a proven track record of technical expertise, policy expertise, and knowledge of applicable laws and regulations.”¹²⁵ The Commenting Providers also note their support of the Traceback’s Group continued dedication to improving the traceback process to fight illegal robocalls.¹²⁶ Specifically, the Commenting Providers laud the Traceback Group’s ongoing investments into the traceback process, including “expand[ing] its significant technical expertise, hir[ing] specialized staff, and advanc[ing] industry-specific resources to

¹¹⁵ *Id.*

¹¹⁶ iconectiv Letter, *supra* note 26, at 7.

¹¹⁷ *Id.* at 7-9.

¹¹⁸ *Id.* at 9.

¹¹⁹ *Id.* at 3.

¹²⁰ *Id.*

¹²¹ NCTA Comments, *supra* note 32, at 1.

¹²² *Id.* at 1.

¹²³ *Id.* at 2.

¹²⁴ Joint Provider Comments, *supra* note 33, at 1.

¹²⁵ *Id.*

¹²⁶ *Id.*

automate and improve the process . . . and is continually enhancing its processes.”¹²⁷ The Commenting Providers also find that iconectiv’s Letter of Intent “provides very little information from which to evaluate how [iconectiv] would operate and provide value.”¹²⁸ The Commenting Providers further asserted that the Traceback Group “remains best positioned to adapt to a challenging and often-changing call-tracing environment, where illegal robocallers continuously adapt tactics, gain sophistication, and annoy and prey upon unsuspecting consumers.”¹²⁹

27. USTelecom also highlighted concerns over the lack of detail regarding competency in iconectiv’s Letter of Intent. USTelecom argues that iconectiv’s Letter of Intent is “far too cursory to demonstrate, as required, that iconectiv would be a competent traceback manager.”¹³⁰ USTelecom argues that iconectiv’s Letter of Intent does not satisfy the statutory requirement because it “fails to identify whether or how iconectiv will exercise necessary legal oversight”¹³¹ and does not provide any evidence to support iconectiv’s claim that it has “demonstrated competence in the execution of traceback.”¹³² Specifically, USTelecom states that “iconectiv indicates it would meet this requirement, but it does not state how.”¹³³ Further, USTelecom expresses concern that iconectiv would “pursue a scale and method of traceback operations”¹³⁴ for which “it would not be possible to provide a legal review of each campaign to determine the lawfulness of the traceback.”¹³⁵ While recognizing the importance of innovation, USTelecom also notes that iconectiv’s suggestion that it would rely on automation, without further detail, “raises the risk of inconsistency with Section 222 [of the Communications Act] and, in turn, the risk of undermining the proven and successful traceback process.”¹³⁶

28. *Reply Comments.* iconectiv submitted reply comments in response to USTelecom’s comments regarding iconectiv’s competency.¹³⁷ iconectiv contends that it “has an impeccable reputation and is recognized in the telecommunications industry as a trusted, neutral steward of data.”¹³⁸ iconectiv asserts that it has had extensive experience with “international, federal, state and local regulation and laws pertaining to data collection, data access, and data storage.”¹³⁹ iconectiv states that it is well-versed in data protection regulations, including those relevant to performing tracebacks, which “focus on the protection of and access to customer proprietary network information (‘CPNI’) and rules as to when CPNI can be shared.”¹⁴⁰ iconectiv also addresses USTelecom’s “baseless” argument that its desire to automate the traceback operation would render iconectiv an incompetent manager.¹⁴¹ iconectiv argues

¹²⁷ *Id.*

¹²⁸ *Id.* at 2.

¹²⁹ *Id.*

¹³⁰ USTelecom Comments, *supra* note 28, at 11.

¹³¹ *Id.* at 11.

¹³² *Id.* at 13 (quoting *iconectiv Letter*, *supra* note 26, at 5).

¹³³ *Id.* at 12.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ iconectiv Reply, *supra* note 29, at 5.

¹³⁸ *Id.*

¹³⁹ *Id.* at 5-6.

¹⁴⁰ *Id.* at 6.

¹⁴¹ *Id.*

that it's Letter of Intent does not propose full reliance on automated traceback operations.¹⁴² iconectiv states instead that it will not preclude manual processes, but that increasing automation would allow it to both innovate traceback operations and reduce operating costs.¹⁴³

29. ZipDX filed reply comments in support of the Traceback Group.¹⁴⁴ ZipDX argues that iconectiv failed to provide specificity regarding how it would implement automation into the traceback process.¹⁴⁵ ZipDX questioned the value of iconectiv's representation of conducting a larger number of tracebacks.¹⁴⁶ Further, ZipDX noted that iconectiv failed to explain how its "global presence" would benefit the traceback process and fight against robocalls.¹⁴⁷ ZipDX also supported the Traceback Group's use of STIR/SHAKEN data, finding that it allows the Traceback Group to more effectively determine the originating point of problematic calls.¹⁴⁸ ZipDX notes that iconectiv made the case that it was in the STI-PA, but did not state that it would tie STIR/SHAKEN data into the traceback process.¹⁴⁹ With regard to iconectiv's proposal to make traceback analysis available on a "need to know" basis, ZipDX notes that iconectiv is not clear on how that determination will be made, and thus it is not clear "how that would be a change from the status quo."¹⁵⁰ Overall, ZipDX states that it "iconectiv's submission does not rise to the necessary level."¹⁵¹

30. *Analysis.* We find that the Traceback Group most fully satisfies the statutory competency requirement. We also find that iconectiv's Letter of Intent and subsequent reply comments do not provide adequately specific details for the Bureau to fully evaluate iconectiv's competency. Although iconectiv asserts that it "has demonstrated competence in the execution of traceback, both technically and administratively,"¹⁵² the Letter of Intent lacks support for that assertion. Despite iconectiv's assertions that it has knowledge of legal regulations governing tracebacks, it does not specifically state the measures it will engage to apply that knowledge to the traceback process. Additionally, while iconectiv describes its experience as an administrator within other industry-led and Commission-led groups, that is insufficient, by itself, to demonstrate that it is competent to manage the traceback process; iconectiv does not sufficiently explain, for example, how its experience managing numbering resources is transferable to the experience of managing a private-led traceback consortium. iconectiv provided insufficient detail regarding its development of any operational traceback processes. For example, iconectiv's Letter of Intent states that iconectiv would seek to implement innovative changes, including automation,¹⁵³ however, it does not detail how exactly the automation would work and the level of oversight that iconectiv would maintain over the process. Based on the evidence submitted in the record, the Commission is unable to fully evaluate iconectiv's assertion that it would act as a competent manager of the traceback consortium. The Traceback Group has demonstrated consistent cooperation with the industry and law enforcement to effectively and efficiently process and facilitate traceback requests. The

¹⁴² *Id.*

¹⁴³ *Id.* at 6-7.

¹⁴⁴ ZipDX Reply, *supra* note 34, at 1.

¹⁴⁵ *Id.* at 1.

¹⁴⁶ *Id.* at 1-2.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* ("It is not clear to us how that would be a change from the status quo. If it would be a change, we do not know if for better or worse.").

¹⁵¹ *Id.* at 3.

¹⁵² iconectiv Letter, *supra* note 26, at 5.

¹⁵³ iconectiv Letter, *supra* note 26, at 3.

Commission's observations of the Traceback Group's processes and the input of Commenters demonstrate that the Traceback Group has the requisite legal knowledge, management competence, and resources to conduct timely and accurate tracebacks, including large scale requests. USTelecom provided specific examples in its Letter highlighting recent upgrades to its law enforcement portal and traceback process generally.¹⁵⁴ USTelecom also provided explicit details regarding the role of automatic alerts for providers in its traceback process.¹⁵⁵ Accordingly, we find that the Traceback Group best meets the statutory requirement of being competent to manage the private-led traceback process.

C. The Registered Consortium Must Maintain and Conform to Written Best Practices

31. The registered consortium must maintain, and conform its actions to, written best practices regarding the management of private-led efforts to trace back the origin of suspected unlawful robocalls.¹⁵⁶ Written best practices, at a minimum, must address the consortium's compliance with statutory requirements,¹⁵⁷ consistent with the principles the Commission set forth in the Commission's *Consortium Registration Order*.¹⁵⁸ The registered consortium's written best practices must establish processes and criteria for management of its traceback efforts and determining how voice service providers will participate in traceback efforts,¹⁵⁹ and those processes and criteria must be fair and reasonable.¹⁶⁰ Best practices evolve over time to reflect empirical knowledge and practical experience, as with technology-dependent activities such as combatting caller ID spoofing.¹⁶¹

32. *USTelecom's Written Best Practices.* USTelecom refers to the Traceback Group's Policies and Procedures, which it updates regularly, as evidence of its maintenance of and conformity to written best practices.¹⁶² USTelecom further asserts that the Traceback Group "updates its Policies and Procedures as necessary to ensure that they adequately address applicable legal and policy considerations and accurately describe the [Traceback Group's] operations."¹⁶³

33. *iconectiv's Written Best Practices.* iconectiv did not present its own written best practices for the traceback process. iconectiv states that it will adopt as its initial best practices the Traceback Group's Policies and Procedures and will attempt to build upon them while adapting as the robocalling landscape evolves.¹⁶⁴ iconectiv attached the Traceback Group's Policies and Procedures to its Letter of Intent.

34. *Comments.* The comments lauded the Traceback Group's procedures and underscored the fact that iconectiv provided only the Traceback Group's procedures, with the intent to temporarily

¹⁵⁴ USTelecom Letter, *supra* note 27, at 6-7.

¹⁵⁵ *Id.*

¹⁵⁶ See TRACED Act § 13(d)(1)(B); *Consortium Registration Order*, *supra* note 2, at 3119-20, para. 24; *see also* 47 CFR § 64.1203(b)(2).

¹⁵⁷ *Consortium Registration Order*, *supra* note 2, at 3120, para. 24; *see also* TRACED Act § 13(d)(1)(A)-(D); 47 CFR § 64.1203(b)(2).

¹⁵⁸ *Consortium Registration Order*, *supra* note 2, at 3117-22, paras. 15-29 (discussing the Commission's interpretation of section 13(d) of the TRACED Act).

¹⁵⁹ 47 CFR § 64.1203(b)(2); *Consortium Registration Order*, *supra* note 2, at 3120, para. 24.

¹⁶⁰ *Consortium Registration Order*, *supra* note 2, at 3120, para. 24.

¹⁶¹ *Call Authentication Trust Anchor, Implementation of TRACED Act Section 6(a)—Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97 and 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241 (2020).

¹⁶² USTelecom Letter, *supra* note 27, at 8-9.

¹⁶³ *Id.*

¹⁶⁴ iconectiv Letter, *supra* note 26, at 5.

follow them. NCTA states that the Traceback Group “plays a critical role in developing and maintaining the robust traceback processes needed to effectively combat illegal robocalls. As the Commission has acknowledged, the Traceback Group’s tracebacks ‘have accelerated the investigation process[.]’”¹⁶⁵ Likewise, the Commenting Providers find that “the industry traceback process managed by [the Traceback Group] continues to perform admirably.”¹⁶⁶ The Commenting Providers question iconectiv’s adherence to the ITG Policies and Procedures, which iconectiv proposed to adopt.¹⁶⁷ The Commenting Providers specifically point to the lack of transparency regarding the selection of iconectiv’s group of governing stakeholders, noting that the lack of transparency “seems to deviate from the ITG Policies and Procedures” and questioning “[w]hat other deviations are proposed?”¹⁶⁸ USTelecom similarly states that the Traceback Group “conforms its actions to written best practices that it devised based on its stakeholder-driven process.”¹⁶⁹ USTelecom further argues that iconectiv’s Letter of Intent “provides almost no concrete information about how iconectiv would conduct its operations as the registered consortium, failing to provide adequate information for interested stakeholders and, in turn, the Bureau to consider whether iconectiv meets the requirements for selection.”¹⁷⁰ USTelecom adds that iconectiv “indicates that it will rely on the Traceback Group’s best practices on an interim basis, but it does not include best practices that reflect iconectiv’s intended operations after that interim period. Without this information, stakeholders and the Bureau cannot know how iconectiv hopes to operate.”¹⁷¹

35. *Reply Comments.* iconectiv represents that it “has been contributing to best practices and threat mitigation for many years as part of the GSMA Fraud and Security Group and the Communications Fraud Control Association.”¹⁷² iconectiv also states that although it would utilize the Traceback Group’s policies and procedures initially, the best practices “would continue to evolve.”¹⁷³ iconectiv states that it “has a demonstrable and proven track record of implementing best practices for industry-led and consortium-based solutions.”¹⁷⁴ iconectiv further asserts that due to its “roles as the LNPA on behalf of the NAPM with oversight from the FCC, as well as the Short Code Registry Administrator on behalf of CTIA,” it has experience with transitioning services from an incumbent provider.¹⁷⁵ iconectiv states that it did not present any new best practices because it would be “inappropriate for iconectiv to suggest specific changes to the existing best practices at this time without the collaboration and involvement of key stakeholders, such as the Commission and Traceback Group Steering Committee members.”¹⁷⁶ To “reinforce [its] commitment to industry best practices,” iconectiv makes several “key declarations,” briefly describing its project management, operation and administration, and system security and data protection skills and priorities.¹⁷⁷

¹⁶⁵ NCTA Comments, *supra* note 32, at 1 (internal citations omitted).

¹⁶⁶ Joint Provider Comments, *supra* note 33, at 2.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ USTelecom Comments, *supra* note 28, at 2.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² iconectiv Reply, *supra* note 29, at 2.

¹⁷³ *Id.* at 7.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 8.

¹⁷⁷ *Id.* at 8-9.

36. *Analysis.* We find that the Traceback Group’s maintenance of and conformance to its best practices—which have proven to accelerate the traceback process—most fully satisfies the statutory requirement. The Traceback Group has a proven track record of maintaining and conforming to its best practices. The Traceback Group has demonstrated its commitment to regularly reviewing and revising its Policies and Procedures in order to address and incorporate legal and policy changes.¹⁷⁸ iconectiv’s Letter of Intent did not offer any of its own practices for us to consider beyond its initial adoption of the Traceback Group’s procedures.¹⁷⁹ iconectiv states that it intends to “build on what is working, while adapting as the robocalling landscape evolves.”¹⁸⁰ In its reply comments, iconectiv explains that the “fact that best practices would continue to evolve is unremarkable” and that it would be inappropriate to offer changes to the Traceback Group’s best practices until iconectiv has spoken with stakeholders.¹⁸¹ However, with only the Traceback Group’s best practices to consider, there is some uncertainty as to whether iconectiv will satisfy the statutory requirement of maintaining and conforming to written best practices.

D. The Registered Consortium Must Focus on “Fraudulent, Abusive, or Unlawful” Traffic

37. Consistent with section 222(d)(2) of the Communications Act, the registered consortium’s traceback efforts must focus on “fraudulent, abusive, or unlawful” traffic.¹⁸² Telecommunications carriers may use, disclose, or permit access to customer proprietary network information “to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services[.]”¹⁸³ A traceback process that at the very least considers scope, scale, and harm should lead to a focus on fraudulent, abusive, or unlawful traffic.¹⁸⁴

38. *USTelecom’s Commitment to Focus on Fraudulent, Abusive, or Unlawful Traffic.* The Traceback Group asserts that it is committed to focusing on fraudulent, abusive, or unlawful traffic.¹⁸⁵ Specifically, the Traceback Group, in its filings, states that it assures that private led efforts to trace calls are consistent with section 222 of the Communications Act.¹⁸⁶ Additionally, the Traceback Group asserts that it prevents privacy infringements by ensuring that it only shares traceback data that satisfies three criteria: (1) a credible source provided the data; (2) the nature of the traffic is deemed to be fraudulent, abusive, or unlawful after analysis by Traceback Group staff; and (3) the initiation of the traceback warrants use of the Traceback Group’s resources.¹⁸⁷ Further, the Traceback Group asserts that it “judiciously review[s] both traceback requests and acquired call examples to ensure that all traffic traced back meets the criteria [of fraudulent, abusive, or unlawful traffic]” in addition to implementing a formal dispute mechanism for providers to challenge the designation of the traceback as fraudulent, abusive, or

¹⁷⁸ USTelecom Letter, *supra* note 27, at 8-9.

¹⁷⁹ iconectiv Letter, *supra* note 26, at 5.

¹⁸⁰ *Id.*

¹⁸¹ iconectiv Reply, *supra* note 29, at 7, 8.

¹⁸² TRACED Act § 13(d)(1)(C) (stating the effort must be consistent with section 222(d)(2) of the Communications Act, which governs the privacy of customer information). Section 222(d)(2) allows telecommunications carriers to use, disclose, or permit access to customer proprietary network information “to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.” 47 U.S.C. § 222(d)(2).

¹⁸³ 47 U.S.C. § 222(d)(2).

¹⁸⁴ TRACED Act § 13(d)(1)(C).

¹⁸⁵ USTelecom Letter, *supra* note 27, at 9.

¹⁸⁶ USTelecom Initial Letter of Intent, *supra* note 36, at 2.

¹⁸⁷ *Id.* at 9.

unlawful.¹⁸⁸ The Traceback Group, also represents that it has also expanded its traceback efforts to address the “ever-growing range of illegal activity,” while still remaining “committed to stopping high-volume illegal robocalls.”¹⁸⁹

39. *iconectiv’s Commitment to Focus on Fraudulent, Abusive, or Unlawful Traffic.* iconectiv states that it would focus on fraudulent, abusive, or unlawful traffic as described in the Traceback Group’s Policies and Procedures.¹⁹⁰ Additionally, iconectiv asserts that its “history with traceback has always maintained this focus.”¹⁹¹

40. *Comments.* USTelecom asserts that iconectiv’s Letter of Intent does not state whether requested tracebacks will be evaluated for involvement with fraud, abuse, or unlawful traffic.¹⁹² While USTelecom acknowledges that iconectiv indicated it would meet requirements to protect customers and carriers from fraudulent, abusive, and unlawful calls, it argues that iconectiv does not specify how it would do so.¹⁹³ USTelecom further states that iconectiv’s commitment to automation could hamper its ability to evaluate the tracebacks.¹⁹⁴ Additionally, USTelecom questioned iconectiv’s commitment to accepting traceback requests from multiple sources, stating that this could lead to iconectiv conducting indiscriminate tracebacks without proper evaluation.¹⁹⁵ The Commenting Providers and NCTA did not comment on the applicants’ focus on fraudulent, abusive, or unlawful traffic.

41. *Reply Comments.* iconectiv responded to USTelecom’s comments, arguing that USTelecom’s assertions are inaccurate.¹⁹⁶ iconectiv states that it has extensive experience with data protection regulations which would prevent infringement on privacy¹⁹⁷ and contends that it is “well-versed in . . . rules as to when CPNI can be shared to protect both customers and service providers from fraudulent, abusive, or unlawful calls.”¹⁹⁸ iconectiv further responds that it will conduct all proper legal reviews to ensure traceback requests focus on fraudulent, abusive, or unlawful traffic.¹⁹⁹ iconectiv represents that it has an in-house legal staff which would assist with traceback request reviews, and it would engage outside counsel when required.²⁰⁰ iconectiv further contends that the entire traceback process would not be automated, only the traceback query and response processes and the interface for carriers and providers, thus allowing it to effectively evaluate each request.²⁰¹ iconectiv additionally highlights that it “has been partnering with the industry to mitigate fraud for over a decade with its fraud protection products covering Wangiri one-ring scams and International Revenue Share Fraud,[] in addition to other threats.”²⁰²

¹⁸⁸ USTelecom Letter, *supra* note 27, at 9 & n.33.

¹⁸⁹ *Id.* at 4.

¹⁹⁰ iconectiv Letter, *supra* note 26, at 5.

¹⁹¹ *Id.*

¹⁹² USTelecom Comments, *supra* note 28, at 13.

¹⁹³ *Id.* at 11-12.

¹⁹⁴ *Id.* at 13.

¹⁹⁵ *Id.* at 13-14.

¹⁹⁶ iconectiv Reply, *supra* note 29, at 9.

¹⁹⁷ *Id.* at 6.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 9.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 6-7.

²⁰² iconectiv Reply, *supra* note 29, at 2 (internal citations omitted).

42. *Analysis.* We find that the Traceback Group’s submission most fully satisfies the statutory requirement to focus on fraudulent, abusive, or unlawful robocall traffic. We find that iconectiv’s Letter of Intent only asserts iconectiv’s focus on fraudulent, abusive, or unlawful traffic without providing details regarding how iconectiv would incorporate these evaluations into its traceback process. iconectiv asserts that it has knowledge of legal regulations regarding section 222 of the Communications Act, which contains exceptions allowing telecommunications carriers to disclose CPNI “to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.”²⁰³ However, iconectiv did not provide specifics regarding how it would deploy this knowledge or implement it into the traceback screening process to protect the privacy interests of telecommunications users. Additionally, iconectiv states that the automation it highlighted in its Letter of Intent would not encompass all tasks of the traceback process, thus, allowing for effective evaluation.²⁰⁴ However, iconectiv fails to breakdown in requisite detail which tasks are manual and which are automated, preventing the Bureau from fully evaluating whether iconectiv would be able to properly focus on only fraudulent, abusive, or unlawful traffic. Additionally, we find that the Traceback Group has a proven track record of focusing its activities on targeting fraudulent, abusive or unlawful traffic, particularly when such traffic is egregious or voluminous. USTelecom, in its Letter, explained the Traceback Group’s focus on evaluating incoming traceback requests and call examples to ensure they are properly designated as fraudulent, abusive, or unlawful and also its implementation of dispute mechanisms to question these designations.²⁰⁵ Specifically, the Traceback Group relies on its three step sourcing policy to ensure proper designation.²⁰⁶ Further, we find that the Traceback Group has detailed procedures and policies in place to ensure that it acts in accordance with section 222 of the Communications Act.²⁰⁷

IV. CONCLUSION

43. We determine that the incumbent Traceback Group most fully satisfies the statutory requirements of the TRACED Act and the Commission rules. We determine that iconectiv’s Letter of Intent and subsequent reply comments provide insufficient support for its compliance with the statutory and regulatory requirements. After considering each of the statutory factors as well as our regulatory requirements, and assessing both applicants’ filings, their experience, and the comments submitted in regard to their candidacy, we select the incumbent Traceback Group to continue as the registered traceback consortium.

V. PROCEDURAL MATTERS

44. *People with Disabilities.* To request material 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).

45. *Further Information.* For further information about the *Report and Order*, contact Caitlin Barbas, Attorney Advisor, Telecommunications Consumers Division, Enforcement Bureau, at (202) 418-2985 or Caitlin.Barbas@fcc.gov.

VI. ORDERING CLAUSES

46. Accordingly, **IT IS ORDERED**, pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 154(j), and section 13(d) of the

²⁰³ 47 U.S.C. § 222(d)(2).

²⁰⁴ *Id.* at 6-7.

²⁰⁵ USTelecom Letter, *supra* note 27, at 9 & n.33.

²⁰⁶ USTelecom Initial Letter of Intent, *supra* note 36, at 2, 9.

²⁰⁷ *Id.*

Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274, 3287-88, this *Report and Order* **IS ADOPTED**.

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

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau



PUBLIC NOTICE

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DA No. 23-720

Report No. SAT-01751

Friday August 18, 2023

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-MPL-20230629-00155 E S2949 Inmarsat Group Holdings Limited
Modification to PDR/PPL

Effective Date:

Nature of Service: Mobile Satellite Service

On June 29, 2023, Inmarsat Group Holdings Limited notified the Commission of the consummation of the transaction reviewed in DA 23-427, through which Inmarsat was acquired by Viasat, Inc. See also Letter from Alfred Mamlet, Counsel to Connect Topco Limited, to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. SES-LIC-20120426-00397 et al. (filed Jan. 31, 2022).

On July 14, 2023, pursuant to Section 25.137(g) of the Commission's rules, the Satellite Programs and Policy Division sought comment on whether this transaction affected any of the considerations made when the Inmarsat space station was granted U. S. market entry. See Public Notice, Report No. SAT-01741. No comments were filed. After review, the Division has 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-20230629-00156 E S2932 Inmarsat Group Holdings Limited
Modification to PDR/PPL

Effective Date:

Nature of Service: Mobile Satellite Service

On June 29, 2023, Inmarsat Group Holdings Limited notified the Commission of the consummation of the transaction reviewed in DA 23-427, through which Inmarsat was acquired by Viasat, Inc. See also Letter from Alfred Mamlet, Counsel to Connect Topco Limited, to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. SES-LIC-20120426-00397 et al. (filed Jan. 31, 2022).

On July 14, 2023, pursuant to Section 25.137(g) of the Commission's rules, the Satellite Programs and Policy Division sought comment on whether this transaction affected any of the considerations made when the Inmarsat space station was granted U. S. market entry. See Public Notice, Report No. SAT-01741. No comments were filed. After review, the Division has 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-PDR-20190321-00018 E S3045 Spire Global, Inc.
Petition for Declaratory Ruling
Granted in Part/ Deferred in Part

Effective Date: 04/10/2023

Nature of Service: Earth Exploration Satellite Service, Other

On August 16, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Spire Global, Inc. for authority to operate Luxembourg-licensed MINAS satellites previously granted U.S. market access with U.S. earth stations for satellite command operations using the 400.02-400.05 MHz (Earth-to-space) frequency band.

SAT-STA-20230628-00154 E
Special Temporary Authority
Withdrawn

Space Exploration Holdings, LLC

Effective Date: 08/11/2023

INFORMATIVE

SAT-MPL-20230120-00007 S2963 WorldVu Satellites Limited

On February 5, 2023, WorldVu Satellites Limited was approved, pursuant to section 25.118(f) of the Commission's rules, to engage in fleet management operations to reposition satellites of its non-geostationary satellite system within their respective orbital planes. WorldVu must comport its space station operations with the orbital parameters specified in its notification. All other operations by WorldVu must comport with the terms of WorldVu's prior grants of market access, as conditioned.

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



Federal Communications Commission
Washington, D.C. 20554

August 18, 2023

DA 23-721
In Reply Refer to:
1800B3-ATS
Released: August 18, 2023

Albuquerque Board of Education
c/o Ernest T. Sanchez, Esq.
The Sanchez Law Firm PC
1629 K Street NW, Suite 300
Washington, DC 20006
(sent by email to: ernestsanchez2348@gmail.com)

In re: **Gillian Sutton**
Station DKRSN(AM),
Los Alamos, New Mexico
Facility ID No. 49128
Application File No. BL-19990611AE

FM Translator DK296GI,
Los Alamos, New Mexico
Facility ID No. 154369
Application File No. BLFT-20130819AGC

“Emergency Petition for Extraordinary Relief”

Dear Counsel:

We have before us a pleading styled “Emergency Petition for Extraordinary Relief” (Petition) filed on August 2, 2023,¹ by Albuquerque Board of Education (ABE) requesting that the Commission reinstate the cancelled licenses of Station DKRSN(AM), Los Alamos, New Mexico (Station) and FM Translator Station DK296GI, Los Alamos, New Mexico (Translator), which were formerly licensed to Gillian Sutton (Sutton). ABE, which appears to have no relationship to Sutton, the Station, or the Translator, proposes to take over operation of the Station and Translator. For the reasons discussed below, we dismiss the Petition as procedurally defective pursuant to section 405 of the Communications Acts of 1934, as amended (Act) and section 1.106(f) of the Commission’s rules (Rules),² and, on a separate and independent basis, dismiss the Petition because ABE lacks standing to file it, as required by section 405 of the Act and section 1.106(b)(1) of the Rules.³

Background. On May 1, 2023, Sutton voluntarily surrendered the licenses for the Station and the Translator,⁴ and the Media Bureau published public notice of that cancellation on May 5, 2023.⁵

¹ Although the pleading is dated August 1, 2023, it was emailed to the staff on August 2, 2023. Email from Ernest T. Sanchez, Esq., to Albert Shuldiner, Audio Division, FCC Media Bureau (August 2, 2023 2:48 PM EDT) (explaining that the Commission’s broadcast database, LMS, would not accept the Petition through electronic filing). Accordingly, we will consider it filed as of August 2, 2023.

² 47 U.S.C. § 405; 47 CFR § 1.106(f).

³ 47 U.S.C. § 405; 47 CFR § 1.106(b)(1).

⁴ Letter from Lauren Lynch Flick, Esq., to Son Nguyen, Audio Division, FCC Media Bureau (May 1, 2023) (cancellation notice for Station); Application File No. 0000214473 (filed May 2, 2023) (cancellation notice for Translator).

Three months later, ABE submitted the Petition, seeking reinstatement of the licenses for the Station and Translator so that ABE can serve as the “temporary trustee of these licenses, so that the facilities can resume operating on an emergency basis.”⁶ ABE explains that “[t]he FCC cancellation leaves Los Alamos County with no local, licensed AM broadcast service whatsoever.”⁷ The Petition includes a letter from Sutton stating that she supports the reinstatement request.⁸

Discussion. Although the Petition is styled as an “Emergency Petition for Extraordinary Relief,” such a pleading is not contemplated by our Rules, and we will treat it as a petition for reconsideration because it seeks reconsideration of the cancellation of the licenses for the Station and the Translator. Section 405 of the Act and section 1.106(f) of the Rules require any petition for reconsideration to be filed within thirty days of the date upon which the Commission gives public notice of the decision.⁹ In this case, the *Cancellation Public Notice* was released on May 4, 2023, and any petition for reconsideration of that Public Notice was due on Monday, June 5, 2023.¹⁰ However, the Petition was not filed until August 2, 2023, almost two months after the filing deadline. The Petition is therefore untimely. Moreover, the Commission has held that “[a] petitioner cannot avoid filing deadlines by calling its petition something other than a petition for reconsideration when it, in effect, seeks reconsideration or review.”¹¹ Accordingly, we dismiss the Petition.

As a separate and independent basis for dismissing the Petition, we find that ABE lacks standing to file it.¹² In the broadcast regulatory context, a non-party attempting to establish standing as someone aggrieved or whose interests were adversely affected generally must show it in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station’s service area or regular listener of the station.¹³ A petitioner claiming its interest is adversely affected must demonstrate a direct causal link between the challenged action and its alleged injury, and show that the injury would be prevented or redressed by the relief requested.¹⁴

ABE was not a party to Sutton’s surrender of the licenses for the Station or the Translator and has not demonstrated what alleged injury it has suffered, or how grant of the Petition would redress that injury. Moreover, the Commission has previously held that a third party (*i.e.*, someone with no attributable interest in the former station or stations) lacks standing to seek reinstatement of a surrendered

⁵ *Actions*, Public Notice, Report No. PM-2-230504-01 (MB May 4, 2023) (*Cancellation Public Notice*).

⁶ Petition at 1.

⁷ *Id.*

⁸ *Id.* at 4.

⁹ 47 U.S.C. § 405(a); 47 CFR § 1.106(f); 47 CFR § 1.4(b)(2) (“For non-rulemaking documents released by the Commission or staff . . . the release date” is the date of public notice).

¹⁰ Because the 30-day period ran on Saturday, June 3, 2023, the filing deadline was the next business day, which was Monday, June 5, 2023. See 47 § CFR 1.4(e).

¹¹ *Holy Family Oratory of St. Philip Neri*, Memorandum Opinion and Order, 29 FCC Rcd 13273, 13274, para. 5 (2014).

¹² 47 U.S.C. § 405; 47 CFR § 1.106(b)(1).

¹³ See *Punjabi American Media, LLC*, Memorandum Opinion and Order, 35 FCC Rcd 6869, 6872, n.26 (2020) (citing *Tribune Media Co.*, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8448, para. 23 (2019)).

¹⁴ *Susquehanna Radio Corp.*, Memorandum Opinion and Order, 29 FCC Rcd 13276, 13277, para. 3 (2014) (*Susquehanna MO&O*), *recon. denied*, Memorandum Opinion and Order, 30 FCC Rcd 13978 (2015).

Commission authorization, even if the third party seeks to obtain that authorization for itself.¹⁵ We would thus dismiss the Petition even it were timely filed.

Conclusion/Action. Accordingly, **IT IS ORDERED** that the “Emergency Petition for Extraordinary Relief” filed by Albuquerque Board of Education on August 2, 2023, treated as a Petition for Reconsideration, **IS DISMISSED**.¹⁶

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁵ *Id.* (affirming dismissal of petition for reconsideration of a license cancellation based on petitioners’ lack of standing where petitioner sought to reinstate and obtain license for itself).

¹⁶ 47 U.S.C. § 405; 47 CFR § 1.106(f).

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

In the Matter of)	
)	
Telephone Number Portability	)	CC Docket No. 95-116
)	
Numbering Resource Optimization	)	CC Docket No. 99-200

ORDER

Adopted: August 18, 2023

Released: August 18, 2023

By the Chief, Wireline Competition Bureau:

1. On August 10, 2023, the Federal Emergency Management Agency (FEMA), Department of Homeland Security, announced that the President has signed a Major Disaster Declaration for certain areas in Hawaii due to severe wildfires.¹ To assist telephone customers in those areas subject to the Major Disaster Declaration, we grant, on our own motion, a temporary waiver of the Commission's telephone number "aging" rule. Specifically, we waive section 52.15(f)(1)(ii), which says that service providers may only age telephone numbers that have been disconnected for up to 90 days before assigning them to other customers.² We also encourage service providers to port telephone numbers to locations that may be outside of a customer's telephone rate center and to waive certain service charges in order to assist customers experiencing this disaster.

2. There is good cause for this waiver, as required by section 1.3 of our rules.³ We recognize that customers who have been displaced by the wildfires in Hawaii may want to discontinue their service temporarily and reinstate it at a later time. Due to the catastrophic nature of the damage to telecommunications systems in Hawaii, we expect that in many cases these customers may seek to reinstate their service after the 90-day period has lapsed. Assisting residential customers who are dealing with the effects of a wildfire is in the public interest and thus warrants a temporary waiver of section 52.15(f)(1)(ii) of the Commission's rules. Waiver of section 52.15(f)(1)(ii) will allow service providers in the affected areas, upon customers' request, to disconnect temporarily customers' telephone service to avoid billing issues, and then reinstate the customers' same numbers when service is reconnected. This waiver applies to all companies that provide service in areas of Hawaii covered by the Major Disaster Declaration. This waiver is in effect immediately and for a 270-day period, expiring on May 14, 2024. This waiver of the aging rule will also apply to residential customers in other areas subject to future Major Disaster and Emergency Declarations signed by the President, due to wildfires during 2023.⁴ Any future

¹ FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Hawaii (Aug. 10, 2023), <https://www.fema.gov/press-release/20230810/president-joseph-r-biden-jr-approves-major-disaster-declaration-hawaii>.

² 47 CFR § 52.15(f)(1)(ii) ("Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days.").

³ 47 CFR § 1.3 (providing that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown").

⁴ The Federal Emergency Management Agency (FEMA) maintains a list of declared disasters on its website. FEMA, *Declared Disasters*, <https://www.fema.gov/disaster/declarations> (last visited Aug. 18, 2023).

waivers will expire 270 days from the date the President declares a state of emergency or major disaster for affected areas. If service providers are unable to resume service on a normal basis after this time period has lapsed, they should request additional relief from the Wireline Competition Bureau.

3. Also, because of substantial damage to telecommunications systems caused by the Hawaii wildfires, we recognize that customers in the affected areas may wish to port numbers to locations outside their rate centers. To facilitate their customers' continued access to telecommunications service following the wildfires, we encourage service providers to port telephone numbers geographically outside a rate center to the extent it is technically feasible. We also encourage all service providers in the areas affected by the Hawaii wildfires, and any future wildfires covered under this Order, to waive call forwarding, message center, and voicemail service charges for affected customers, to the extent lawfully permitted, until the customers' service is restored.

4. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 251(b)(2), and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251(b)(2) and 251(e), and sections 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.291, 1.3, that section 52.15(f)(1)(ii), 47 CFR § 52.15(f)(1)(ii), is waived to the extent herein described herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

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

In the Matter of)	
)	
Affordable Connectivity Program	)	WC Docket No. 21-450
)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
)	
Schools and Libraries Universal Service Support Mechanism	)	WC Docket No. 02-6
)	
Establishing Emergency Connectivity Fund to Close the Homework Gap	)	WC Docket No. 21-93
)	
Rural Health Care Universal Service Support Mechanism	)	WC Docket No. 02-60
)	
Connect America Fund	)	WC Docket No. 10-90
)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
)	

ORDER

Adopted: August 18, 2023

Released: August 18, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we waive, on our own motion, certain Affordable Connectivity Program, Lifeline, E-Rate,¹ Emergency Connectivity Fund, Rural Health Care, and High Cost rules and deadlines to assist participants and service providers, including Universal Service Fund (USF) contributors, located in the areas affected by the Hawaii Wildfires, which started in Maui County on August 8, 2023.² The wildfires caused significant power outages and property damage in homes, schools, libraries, and health care facilities throughout the impacted areas. Because of these compelling and unique circumstances, we find good cause to waive certain rules and deadlines to assist program participants, service providers, and USF contributors in the affected areas.³

¹ E-Rate is formally known as the schools and libraries universal support mechanism.

² Jonathan Oatis, Reuters, *Hawaii wildfires: How did the Maui fires start and are they still burning?* (Aug. 15, 2023), <https://www.reuters.com/world/us/how-did-hawaii-wildfires-start-what-know-about-maui-big-island-blazes-2023-08-11/>.

³ See *Schools and Libraries Universal Service Support Mechanism*; *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; *Rural Health Care Universal Support Mechanism*; *COVID-19 Telehealth Program*; *Universal Service Contribution Methodology*; *Lifeline and Link Up Reform and Modernization*; *Affordable Connectivity Program*; *Connect America Fund*, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-998 (WCB Sept. 22, 2022) (*Hurricane Fiona Order*); *Schools and* (continued....)

II. BACKGROUND

2. On Tuesday, August 8, 2023, wildfires started in Maui and Hawaii counties in the State of Hawaii and quickly grew in size and power, causing catastrophic damage and destruction to homes and businesses.⁴ In the historic town of Lahaina in Maui County these fires have caused at least 106 deaths, destroyed more than 2,700 structures, and burned 2,170 acres.⁵ The wildfires and hurricane strength winds also cut off power and disrupted 911 and other communications services on parts of the island.⁶ More than 5,000 homes and businesses in Maui lost power⁷ and thousands have been displaced from their homes.⁸ At the same time, the same hurricane force winds that caused the devastation on Maui also sparked two wildfires that burned approximately 1,500 acres in Hawaii County.⁹ The fires initially threatened nearly 200 homes and electrical transmission lines.¹⁰ While the full picture of the wildfires' damage is still being determined, initial assessments estimate that the economic cost could approach \$7 billion.¹¹ It is unknown at this time when power will be fully restored for all customers. In response, the

(Continued from previous page)

Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Service Support Mechanism; COVID-19 Telehealth Program; Universal Service Contribution Methodology; Lifeline and Link Up Reform and Modernization; Affordable Connectivity Program; Connect America Fund, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-1063 (WCB Oct. 4, 2022) (*Hurricane Ian Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket Nos. 02-60, 11-42, and 06-122, Order, 32 FCC Rcd 7456 (2017) (*Hurricanes Harvey, Irma & Maria Order*) (waiving certain E-Rate, RHC, Lifeline, and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (*Hurricane Katrina Order*) (adopting temporary rules to provide rural and non-rural public and nonprofit health care providers in areas devastated by Hurricane Katrina, and in areas where evacuees are located, with assistance in order to help in the recovery efforts).

⁴ [Kiara Alfonseca](https://abcnews.go.com/US/timeline-deadly-wildfires-maui-day-day/story?id=102253075), ABC News, *Timeline: How the deadly wildfires took over Maui day by day*, (Aug. 14, 2023), <https://abcnews.go.com/US/timeline-deadly-wildfires-maui-day-day/story?id=102253075>; [Nouran Salahieh and Raja Razek](https://www.cnn.com/2023/08/15/us/hawaii-maui-wildfires-death-toll-tuesday/index.html), CNN, *At least 106 people were killed in Maui's wildfires, officials say*, (Aug. 16, 2023), <https://www.cnn.com/2023/08/15/us/hawaii-maui-wildfires-death-toll-tuesday/index.html>.

⁵ *Id.*

⁶ Holly Yan et al., *'Like something out of a horror movie': At least 6 dead and communities decimated in Maui wildfires* (Aug. 10, 2023), <https://www.cnn.com/2023/08/09/weather/maui-county-wildfires-hurricane-dora/index.html>.

⁷ The Maui News, *5,000 customers still without power in West Maui, Upcountry* (Aug. 14, 2023), <https://www.mauinews.com/news/local-news/2023/08/5000-customers-still-without-power-in-west-maui-upcountry/>.

⁸ Nouran Salahieh et al., *The death toll from the Maui wildfires has climbed to 99. Here's what we know about the deadliest US fire in over a century* (Aug. 14, 2023), <https://www.cnn.com/2023/08/14/us/maui-wildfires-what-we-know/index.html>.

⁹ N'dea Yancey-Bragg, et al., USA Today, *'Apocalyptic': People scramble for safety as Hawaii wildfires rage; at least 36 dead in Maui: Updates* (Aug. 10, 2023), <https://www.usatoday.com/story/news/nation/2023/08/09/maui-hawaii-wildfire-live-updates/70556894007/>.

¹⁰ *Id.*

¹¹ NBC News, *Maui fires live updates: Search covers a quarter of Lahaina with hundreds still missing*, <https://www.nbcnews.com/news/us-news/live-blog/maui-fires-live-updates-lahaina-search-missing-death-toll-rcna99933>.

President has declared a state of emergency for Maui and Hawaii counties, allowing authorities to provide disaster relief.¹²

3. Historically, the Wireline Competition Bureau (Bureau) has granted waivers of certain Program deadlines for areas affected by natural disasters.¹³ For the purposes of the waivers we grant today, we define “Affected Disaster Areas” as the areas in the State of Hawaii that the Federal Emergency Management Agency (FEMA) has designated as eligible for Individual or Public Assistance for the purposes of federal disaster relief as of the release date of this Order.¹⁴

III. DISCUSSION

4. In response to the damage caused by the Hawaii Wildfires, on our own motion, we waive various provisions of the Lifeline, Affordable Connectivity Program (ACP), E-Rate, Emergency Connectivity Fund (ECF) Program, Rural Health Care (RHC) Program, and High Cost rules for those Federal Communications Commission (FCC or Commission) programs’ participants and for USF contributors located in the Affected Disaster Areas.¹⁵ Generally, the Commission’s rules may be waived for good cause shown.¹⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, the Commission may take

¹² See FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Hawaii (Aug. 10, 2023), <https://www.fema.gov/press-release/20230810/president-joseph-r-biden-jr-approves-major-disaster-declaration-hawaii> (last visited Aug. 15, 2023); The White House, President Joseph R. Biden, Jr. Approves Hawaii Disaster Declaration (Aug. 10, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/10/president-joseph-r-biden-jr-approves-hawaii-disaster-declaration-3/> (last visited Aug. 15, 2023). The Major Disaster Declaration authorized assistance for individuals affected by the wildfires in Maui County, and public assistance for emergency protective measures in Hawaii County. *Id.*

¹³ See, e.g., *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization; Connect America Fund; Federal-State Joint Board on Universal Service High-Cost Universal Service Support; Establishing Emergency Connectivity Fund to Close the Homework Gap; Emergency Broadband Benefits Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, Order, DA 21-1107, 36 FCC Rcd 13405 (WCB 2021) (*Hurricane Ida Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, Order, 32 FCC Rcd 7456, 7457, para. 2 (WCB 2017) (*Hurricanes Harvey, Irma, and Maria Order*); *Schools and Libraries Universal Support Mechanism*, WC Docket No. 02-6, Order, 34 FCC Rcd 56, 57, para. 2 (WCB 2019) (*California Wildfires Order*); *Request for Waiver of Section 54.514 of the Commission’s Rules by Florida Department of Management Services; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 10186, 10188, para. 5 (WCB 2018) (*Florida Hurricanes Order*); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9540, para. 4 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16885, para. 4 (2005) (*Hurricane Katrina Order*).

¹⁴ Currently, Hawaii and Maui counties are covered within the Affected Disaster Areas designated by FEMA. See FEMA, Hawaii Wild Fires (Aug. 15, 2023), <https://www.fema.gov/disaster/4724/designated-areas>. We note that while the corresponding map includes Kalawao county, the text of the FEMA disaster declaration includes only Maui and Hawaii counties.

¹⁵ We recognize that entities in the Affected Disaster Areas may need additional relief relating to Lifeline, ACP, E-Rate, ECF, RHC, High Cost, and Contributions obligations not addressed in this Order as they complete assessments of the damage to their networks; such entities should request specific relief from the Bureau to address these individualized circumstances.

¹⁶ 47 CFR § 1.3.

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1159.

into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸

A. Lifeline

5. We first waive the Lifeline non-usage, recertification, and reverification requirements for subscribers residing in the Affected Disaster Areas. We find that good cause exists to waive sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing in the Affected Disaster Areas through October 31, 2023.¹⁹ Given the devastation caused by the wildfires to infrastructure in the Affected Disaster Areas, strict compliance with these rules may be impracticable and may risk harm to Lifeline subscribers who may be inappropriately de-enrolled during the recovery efforts.²⁰

6. To promote the maintenance and rebuilding of communities affected by the wildfires and to facilitate continued access to telecommunications services for disaster victims, we find it is in the public interest to temporarily waive sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules.²¹ Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their Lifeline-supported service and do not use that service for 30 consecutive days.²² Waiving these rules will

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ See 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f).

²⁰ See, e.g., *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, *Order*, 32 FCC Rcd. 7456 (2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Order*, 32 FCC Rcd 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Order*, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, *Order*, DA-22-998 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors located in the areas affected by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program, Connect America Fund*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, WC Docket No. 10-90, *Order*, DA-22-1063 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, High Cost, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian).

²¹ 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

²² See *id.*

help low-income consumers retain access to emergency communications services during this natural disaster, and allows ETCs to continue providing Lifeline service to disaster victims in the Affected Disaster Areas without requiring those subscribers to de-enroll and re-enroll in the program as they continue to work through the damage of the wildfires.²³

7. We also find that good cause exists to waive sections 54.405(e)(4) and 54.410(f) of the Commission's rules, which require Lifeline subscribers to demonstrate continued eligibility for the program, through October 31, 2023.²⁴ This waiver will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Verifier during the waiver period.²⁵ Waiver of these rules will allow the Universal Service Administrative Company (USAC) and ETCs serving Lifeline subscribers in the Affected Disaster Areas additional time to complete the recertification process. Disruptions to telephone and Internet service resulting from the wildfires could make it difficult, if not impossible, for Lifeline subscribers to receive and respond to recertification requests and reminders. At the expiration of the waiver period, recertification efforts will resume and subscribers who were subject to the waiver will have an additional 60 days to respond to recertification notices.

8. Where USAC has already conducted recertification outreach, we direct USAC to not conduct de-enrollments for any subscriber who would have been de-enrolled, and was not actually de-enrolled, after August 10, 2023. USAC should send new outreach to these subscribers at the end of this waiver period, as is practicable, and give such subscribers an additional 60 days to complete their recertification activity. Any subscriber who has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission's rules.

9. USAC also conducts a one-time reverification of eligibility for each existing Lifeline subscriber to confirm that all existing Lifeline subscribers meet the National Verifier's eligibility standards. We direct USAC not to de-enroll any Lifeline subscriber residing in the Affected Disaster Areas for failure to successfully respond to a pending reverification request with documentation deadlines that will occur before October 31, 2023. We also direct USAC not to open any new reverification requests requiring documentation for Lifeline subscribers or ETCs in the Affected Disaster Areas until after October 31, 2023 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

10. ETCs in the Affected Disaster Areas that are unable to comply with the Lifeline non-usage, recertification, and reverification requirements at the end of this waiver period may request additional, narrowly tailored relief from these requirements from the Bureau. Additionally, if the wildfires have significantly impacted an ETC's ability to complete an ongoing Lifeline audit, the Bureau will consider requests for extension of any relevant deadlines on a case-by-case basis.

B. Affordable Connectivity Program

11. In order to promote continued access to broadband service for Affordable Connectivity Program (ACP) households affected by the wildfires, we find that it is in the public interest to temporarily waive through October 31, 2023, for ACP households in the Affected Disaster Areas, sections 54.1808(c)(1) and (2) and 54.1809(c) of the Commission's rules²⁶ concerning the non-usage requirement

²³ As noted above, the waiver period is through October 31, 2023. At the end of the waiver period, the subscriber will have 30 days (beginning on November 1, 2023) to use their Lifeline-supported service. If the subscriber does not use their Lifeline-supported service during that 30-day timeframe, they will enter their 15-day cure period on December 1, 2023.

²⁴ 47 CFR §§ 54.405(e)(4), 54.410(f).

²⁵ See 47 CFR § 54.405(e)(4) (requiring 60 days' notice to subscribers to respond to recertification efforts prior to de-enrollment).

and de-enrollment for non-usage, and sections 54.1806(f)(1) and (5) and 54.1809(d) of the ACP rules concerning the annual recertification and de-enrollment for failure to recertify.²⁷ Strict compliance with these rules may be impracticable and may risk harm to ACP subscribers who may be de-enrolled during the rebuilding and recovery efforts.²⁸

12. Under the ACP rules in sections 54.1808(c)(1) and (2) and 54.1809(c), participating providers offering an ACP service for which the household does not pay a monthly fee are required to certify that every such household has used its supported service at least once every consecutive 30 days, as usage is defined in section 54.407(c)(2) of the Commission's rules, in order to claim ACP reimbursement for discounted ACP service for a specific subscriber in a given service month.²⁹ Providers cannot claim support for, and must de-enroll, subscribers who do not cure their non-usage during the 15-day cure period.³⁰ We recognize that power and service outages caused by the wildfires may interfere with a household's ability to use their ACP-supported service, perhaps for an extended period of time. Allowing participating providers in the Affected Disaster Areas to maintain service for these ACP households as they experience the aftermath of the wildfires, and claim reimbursement for the service

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²⁶ 47 CFR §§ 54.1808(c)(1), (2), and 54.1809(c). We make clear that the temporary waiver of these rules does not waive the language in section 54.1808(c)(2) that allows providers to seek reimbursement only after the subscriber activates their ACP service.

²⁷ 47 CFR §§ 54.1806(f)(1), (5), 54.1809(d).

²⁸ See, e.g., *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, *Order*, 32 FCC Rcd. 7456 (2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Order*, 32 FCC Rcd 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Order*, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, *Order*, DA-22-998, 1 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors located in the areas affected by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program, Connect America Fund*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, WC Docket No. 10-90, *Order*, DA-22-1063, 1 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, High Cost, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian).

²⁹ 47 CFR § 54.1808(c)(1) and (2).

³⁰ 47 CFR §§ 54.1808(c)(1) and (2), and 54.1809(c).

provided to them, helps to ensure that these households are not de-enrolled from the program during the limited waiver period when it may be impossible for them to use their ACP-supported service. It will also ensure that subscribers who lose service due to the wildfires will be able to regain access to their ACP-supported service when it again becomes available to them. After the expiration of the waiver period, ACP subscribers who are subject to the non-usage rule will have 30 days to use their ACP service for the purposes of sections 54.1808(c)(1) and (2) of the Commission's rules, and 15 days to cure any non-usage.³¹ ACP providers in the Affected Disaster Areas that are unable to comply with the ACP non-usage and related de-enrollment requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Bureau.

13. We find it is also in the public interest to temporarily waive sections 54.1806(f)(1) and (5), and 54.1809(d), of the Commission's rules for ACP subscribers in the Affected Disaster Areas who would have been required to respond to recertification outreach during the waiver period.³² Waiver of these rules will allow USAC and providers serving ACP subscribers in the Affected Disaster Areas additional time to complete the annual recertification process. Disruptions to electricity and communication services resulting from the wildfires could make it difficult, if not impossible, for ACP subscribers in the Affected Disaster Areas to receive and respond to recertification requests and reminders during the waiver period. After the waiver period ends on October 31, 2023, pursuant to section 54.1809(d) of the ACP rules, ACP-only households will have 60 days to respond to recertification outreach by USAC or their service provider as applicable.³³ Where USAC or the participating provider has already conducted recertification outreach to an ACP subscriber in the Affected Disaster Areas, after the end of the waiver period, new outreach should be sent to these subscribers within 14 days of the waiver period ending on October 31, 2023, and such subscribers should have an additional 60 days to complete their recertification activity.³⁴

14. Under the ACP rules, qualifying households that are enrolled in both the ACP and Lifeline may rely on a successful Lifeline recertification to satisfy the annual ACP recertification requirement.³⁵ Households that are enrolled in both programs who do not pass Lifeline recertification still have an opportunity to demonstrate that they qualify for the ACP, if required, after completion of the

³¹ As noted above, the waiver period is through October 31, 2023. At the end of the waiver period, the subscriber will have 30 days (beginning on November 1, 2023) to use their ACP-supported service. If the subscriber does not use their ACP-supported service during that 30-day timeframe, they will enter their 15-day cure period on December 1, 2023.

³² During the waiver period, USAC may continue to check the continued eligibility of ACP households in the Affected Disaster Areas using the database connections through the National Verifier to the extent that access to those databases has not been impacted by the wildfires. For these automated database checks, USAC is able to verify the continued eligibility of households enrolled in the ACP without any action on the part of the subscriber. During the waiver period, participating providers that are required to recertify their ACP subscribers under the ACP rules may similarly use any permitted eligibility confirmation mechanisms or methods that do not require affirmative action on the part of the subscribers. During the temporary waiver period, participating providers and USAC should otherwise cease any recertification measures that require affirmative action from ACP-households. USAC and participating providers may resume such recertification measures steps after the end of the waiver period.

³³ 47 CFR § 54.1809(d). We note that given the progress of ACP recertification efforts in the Affected Disaster Areas there is no near-term subscriber de-enrollment concern, as there is, and was addressed above, in the Lifeline program.

³⁴ For the ACP, unlike Lifeline, in certain circumstances participating providers and not USAC are responsible for conducting the required ACP annual recertification. *See* 47 CFR § 54.1806(f)(1) (outlining when USAC and when service providers, respectively, conduct ACP recertifications).

³⁵ 47 CFR § 54.1806(f)(1).

Lifeline recertification process.³⁶ Households that are enrolled in both Lifeline and the ACP, and that do not pass their Lifeline recertification for calendar year 2023, will be afforded time to demonstrate their continued eligibility for the ACP even if this extends into 2024.³⁷ We expect USAC and participating providers to start the recertification process for such subscribers in the Affected Disaster Areas within 14 days of the waiver period ending on October 31, 2023. To the extent that an ACP subscriber (whether enrolled in the ACP only or in both the ACP and Lifeline) successfully completes their recertification process in 2024, they would not be required to undergo ACP recertification again in 2024.

C. E-Rate Program

15. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following E-Rate program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the deadline to file FCC Forms 486, 472, and 474; (3) the September 30, 2023 service implementation deadline for non-recurring services; (4) portions of the service and equipment substitution rule; and (5) document retention and production requirements for participating E-Rate applicants and service providers whose documents were destroyed by the Hawaii Wildfires.

16. *E-Rate Program Deadlines.* For applicants located in Affected Disaster Areas, we waive, on a temporary basis, the following deadlines that may occur on and after August 10, 2023,³⁸ and provide those affected with up to 150 calendar days from the release date of this Order to submit the required filing:³⁹

- Requests for review or waiver of decisions by USAC, directed to USAC or the Commission.⁴⁰
- Filing FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form).⁴¹
- Filing FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice Form).⁴²

³⁶ As explained in the *Affordable Connectivity Program Order*, there are a few differences in the eligibility criteria between the Lifeline Program and the ACP. See *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450, 20-445, 37 FCC Rcd 484, 527, para. 86, & n. 248 (2022) (*Affordable Connectivity Program Order*). Accordingly, if a household enrolled in both programs does not pass Lifeline recertification, this would not automatically render that household ineligible for the ACP. See *id.*

³⁷ See *Affordable Connectivity Program Order*, 37 FCC Rcd at 527, para. 86 ("Where a household enrolled in both Lifeline and the Affordable Connectivity Program does not respond or fails recertification for Lifeline, the subscriber will still have an opportunity to demonstrate their continued eligibility for the Affordable Connectivity Program."); 47 CFR § 54.1809(d) (giving ACP subscribers a 60-day deadline to respond to recertification efforts).

³⁸ See *supra* note 13. E-Rate program participants located in the Affected Disaster Areas who may have already missed these deadlines due to damage or disruption caused by the Hawaii Wildfires may submit the required filings up to 150 calendar days from the release date of this Order.

³⁹ We note that USAC, the Administrator of the universal service support programs, including the E-Rate program, has already suspended many of its administrative deadlines for applicants in the Affected Disaster Areas pursuant to its natural disaster procedures.

⁴⁰ 47 CFR §§ 1.106, 54.720. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should include this waiver in their filing.

⁴¹ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 at 4; see also *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002).

⁴² 47 CFR § 54.514(a). Given the significant damage inflicted by the wildfires, consistent with precedent we find that extraordinary circumstances exist warranting a waiver of the invoice filing deadline rule. See *Hurricanes* (continued....)

17. *Service Implementation Deadline Extensions.* Additionally, we find that good cause exists to waive section 54.507(d)(4) of the Commission's rules, subject to the limitations herein, for applicants located in the Affected Disaster Areas. We find that the extensive damage to property, facilities, and resources resulting from the Hawaii Wildfires will make it impossible for some applicants in the Affected Disaster Areas to complete the installation of internal connections and other non-recurring services by the September 30, 2023 deadline for Funding Year (FY) 2022. Accordingly, we extend the FY 2022 implementation deadline for non-recurring services to September 30, 2024 for applicants in the Affected Disaster Areas, and we likewise extend the deadline for all other applicants that have non-recurring service funding requests with September 30, 2023 as the deadline in the Affected Disaster Areas.⁴³

18. *Service and Equipment Substitutions.* Consistent with precedent,⁴⁴ we will also provide increased flexibility for service and equipment substitutions in the Affected Disaster Areas. Section 54.504(d) of the Commission's rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality;⁴⁵ (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.⁴⁶ For applicants

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Harvey, Irma and Maria Order, 32 FCC Rcd at 7458, n.13) (waiving E-Rate invoice deadline for areas impacted by Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13407-08, at para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167, at *4, para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643 at *2, para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ian); *Petition of TeleGuam Holdings, LLC for Waiver and Certain Other Relief; Affordable Connectivity Program; Lifeline and Link Up Reform and Modernization; Schools and Libraries Universal Support Mechanism; Rural Health Care Universal Service Support Mechanism; Connect America Fund; Universal Service Contribution Methodology; Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 02-6, 95-116, 99-200, WC Docket Nos. 21-450, 11-42, 02-60, 10-90, 06-122, Order, DA 23-571, 2023 WL 4348349, at *5, para. 16 (rel. June 30, 2023) (*Typhoon Mawar Order*) (waiving E-Rate invoicing deadline for areas impacted by Typhoon Mawar); *see also Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd at 8965-66, paras. 238-40 (2014).

⁴³ 47 CFR § 54.507(d)(4); *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 22-976, 2022 WL 4396831, *2, para. 4 (WCB Sept. 19, 2022) (extending the service implementation deadline for certain FY 2020 and 2021 funding requests that had September 30, 2022 as the deadline pursuant to section 47 CFR § 54.507(d)(4)).

⁴⁴ *See, e.g., Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9543-44, para. 10 (providing increased flexibility for E-Rate program service substitutions in the wake of Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13409, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167 at *5-6, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643 at *5-6, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ian); *Typhoon Mawar Order*, 2023 WL 4348349, at *5, para. 18 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Typhoon Mawar).

⁴⁵ The Commission previously determined that an equipment or service substitution request does not have the same functionality if it "changes the type of service requested pursuant to the original funding request from one category to another (e.g., a change from telecommunications service to internal connections, or a change from Internet access to telecommunications service)." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26925, n.82 (2003).

⁴⁶ 47 CFR § 54.504(d)(1)(iv).

located in Affected Disaster Areas that need to replace services or product(s) that have been disrupted, destroyed, or rendered unusable by the Hawaii Wildfires, we waive this rule to exclude the requirement that the substituted service or product(s) must have the same functionality as the service or product that it is replacing.⁴⁷ This will allow applicants in the Affected Disaster Areas maximum flexibility to substitute services and product(s) based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa),⁴⁸ so that they may use already approved E-Rate funding to replace damaged or destroyed products(s) and restore services, subject to the limitations stated herein.⁴⁹ We believe this additional flexibility will allow applicants, given their specific understanding of their circumstances, to use E-Rate funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives section 54.504(d)(1)(i) of the Commission's rules while keeping the remaining aspects of our service and equipment substitution rule intact. Applicants must continue to ensure that a service and/or equipment substitution: (a) does not violate any contract provisions;⁵⁰ (b) does not violate state or local procurement laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470.⁵¹ Applicants must also request approval of service and/or equipment substitutions by submitting a service and/or equipment substitution request to USAC.

19. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records as a result of the destruction caused by the Hawaii Wildfires. We waive section 54.516(a) of our rules with respect to such destroyed records, which

⁴⁷ 47 CFR § 54.504(d)(1)(i). We remind applicants that they may only request service and equipment substitutions if the implementation deadline for the service or product to be replaced has not passed. *See, e.g.,* 47 CFR § 54.507(d)(1), (d)(4); *see also 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, 15550, 15558, paras. 37, 49 (2014) (*Second 2014 E-Rate Order*).

⁴⁸ In some cases, replacing one type of service with another may require applicants to switch service providers. The Commission's rules permit applicants to do so when: (a) it is allowed under an applicant's state and local procurement rules; (b) it is allowed under the terms of any contract between the applicant and its original service provider; (c) the applicant has notified its original service provider of its intent to change service providers; (d) there is a legitimate reason to change providers (e.g., the service provider is unable to perform the requested services); and (e) the newly selected service provider received the next highest point value in the original bid evaluation. *See Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket Nos. 02-6, et al., Sixth Report and Order, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (*Schools and Libraries Sixth Report and Order*) (citing *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45 and 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*), and stating that the new requirements are in addition to those outlined in the *Copan Order*).

⁴⁹ Beginning in Funding Year 2021, school districts and library systems are permitted to transfer equipment between schools within a district and libraries within a system without notifying USAC of the transfer. *See* 47 CFR § 54.513(d); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11238-39, para. 49 (2019). However, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years as required by the Commission's rules. 47 CFR § 54.513(d).

⁵⁰ The additional flexibility provided for applicants located in the Affected Disaster Areas seeking substitutions for services and products damaged by the Hawaii Wildfires is not intended to invalidate any contracts between applicants and service providers. Applicants are solely responsible for ensuring that requested equipment and service substitutions are permitted under their agreements with service providers.

⁵¹ 47 CFR § 54.504(d). In the event that an equipment or service substitution results in a change in the pre-discount price for the supported equipment or service, support is based on the lower of either the pre-discount price of the equipment or service for which support was originally requested or the pre-discount price of the new, substituted equipment or service. *See* 47 CFR § 54.504(d)(2).

requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.⁵² Applicants and service providers will not be penalized for failure to retain or produce records destroyed by the wildfires. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the wildfires. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission. We note that the record retention and production requirements under our rules continue to apply to all records that were not destroyed by the wildfires, including records relating to any relief granted by this Order.

20. We find that the significant property damage, power outages, and disruptions in services caused by the wildfires in the Affected Disaster Areas constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We find that a 150-day waiver period for the filing deadlines listed above and other relief granted by this Order are appropriate measures to accommodate the extraordinary circumstances caused by the Hawaii Wildfires, while continuing to protect program integrity. E-Rate applicants or service providers in the Affected Disaster Areas that are unable to comply with these program deadlines or procedures at the end of this period may request additional, narrowly-tailored relief from these or other requirements from the Bureau.

D. Emergency Connectivity Fund Program

21. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Emergency Connectivity Fund (ECF) program rules: (1) the 30-day deadline to file appeals and requests for waiver; (2) the deadline to file FCC Forms 472, and 474; (3) portions of the service and equipment substitution rule; and (4) document retention and production requirements for participating ECF program participants whose documents were destroyed by the Hawaii Wildfires.

22. *Emergency Connectivity Fund Program Deadlines.* For Emergency Connectivity Fund (ECF) program participants located in the Affected Disaster Areas, we first waive, on a temporary basis, the deadline to submit a request for review or waiver of decisions by USAC, directed to USAC or the Commission and provide these participants with up to 150 calendar days from the release date of this Order to submit their filing.⁵³ Section 54.1718(b) of the Commission's rules requires an affected party requesting review of a decision by USAC or waiver to submit such request within 30 days from the date of USAC's decision, which is shorter than the timeframe permitted under the E-Rate program rules.⁵⁴ Given this shortened timeframe and recognizing that ECF program participants may have difficulty submitting their requests while dealing with the impact of the Hawaii Wildfires, we find it is in the public interest to waive and extend this deadline by 150 days for program participants in the Affected Disaster Areas.⁵⁵ For the same reason, we also direct USAC to extend its administrative deadlines associated with information requests issued to affected program participants, including Program Integrity Assurance-related requests, and provide them with an additional 150 days from the release date of this Order to respond to such requests.⁵⁶

⁵² 47 CFR § 54.516(a).

⁵³ 47 CFR § 54.1718(b); 47 CFR § 1.106. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should indicate such basis in their filing.

⁵⁴ 47 CFR § 54.1718(b).

⁵⁵ We anticipate that some affected applicants will need more time to submit appeals of USAC's decisions than provided under our rules; and, therefore, we find a waiver of this deadline appropriate.

⁵⁶ See, e.g., *Hurricane Ida Order*, 36 FCC Rcd at 13413, para. 23 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167, (continued....)

23. We also waive, on a temporary basis, the deadline to submit requests for reimbursement and provide ECF program participants located in the Affected Disaster Areas with up to 150 days from the release date of this Order to submit their ECF FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and ECF FCC Form 474 (Service Provider Invoice Form).⁵⁷ Given the significant damage inflicted by the Hawaii Wildfires, we find good cause exists to waive the invoice filing deadline.⁵⁸ Furthermore, we recognize that there are ECF participants in the Affected Disaster Areas who may have difficulty compiling the necessary documentation and submitting requests ahead of their invoice filing deadline, the first of which falls on October 30, 2023 for many ECF participants.⁵⁹ We therefore find it is in the public interest to waive and extend this deadline by 150 days from the release date of this Order for ECF program participants in the Affected Disaster Areas.

24. *Service and Equipment Substitutions.* Additionally, in light of the destruction to equipment and services destroyed by the Hawaii Wildfires, we provide additional flexibility to ECF program applicants to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by the wildfires.⁶⁰ Section 54.1710(b) of the Commission's rules allows USAC to grant a request by an applicant to substitute equipment or service for another where (i) the equipment or service has the same functionality and (ii) the substitution does not violate any contract provisions or state, local, or Tribal procurement law.⁶¹ For applicants in the Affected Disaster Areas that need to replace equipment or services that have been disrupted, destroyed, or rendered unusable by the Hawaii Wildfires, we waive this rule to exclude the requirement that the substituted equipment or service must have the same functionality as the equipment or service that it is replacing.⁶² This will allow applicants in the Affected Disaster Areas the maximum flexibility using already approved ECF funding to substitute much needed equipment or services (including service

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at *6-7, para. 10 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643, at *7, para. 10 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Ian).

⁵⁷ 47 CFR § 54.1711(d).

⁵⁸ See *Request for a Waiver by T-Mobile USA, Inc., Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No 21-93, Order, DA 23-669, at para. 8 (WCB rel. Aug. 14, 2023) (*ECF Invoice Filing Waiver Order*) (finding good cause and providing a waiver of the ECF invoice filing deadline rule).

⁵⁹ See *ECF Invoice Filing Waiver Order*, DA 23-669, at para. 8 (extending the ECF invoice filing deadline to October 30, 2023 for certain ECF program participants).

⁶⁰ See, e.g., *Hurricane Ida Order*, 36 FCC Rcd 13414, para. 25 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167, at *7-8, para. 12 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643, at *7-8, para. 12 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Ian).

⁶¹ 47 CFR § 54.1710(b).

⁶² 47 CFR § 54.1710(b)(2)(i). While we waive the requirement that the substituted equipment or service have the same functionality as the equipment or service being replaced, we remind applicants that the substituted equipment or service must still be eligible for support under the ECF rules. Therefore, an applicant cannot request to replace a laptop computer destroyed in the wildfires with an ineligible smartphone. See *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8710 para. 32 (2021) (*Emergency Connectivity Fund Report and Order*). In addition, we remind applicants that if an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. 47 CFR § 54.1710(b)(3).

providers, where necessary) as quickly as possible, particularly where the availability of such items may be limited given the pandemic's impact on the global supply chain. The flexibility conferred by this measure effectively waives section 54.1710(b)(2)(i) of the Commission's rules for affected applicants while keeping the remaining aspects of the ECF service substitution rule intact, including the requirement that the service substitution request be in writing and that the substitution not violate any contract provisions or state, local, or Tribal procurement law.

25. *Documentation Retention and Production.* Recognizing that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by the Hawaii Wildfires, we next waive section 54.1715(b) of the Commission's rules, which requires ECF program participants to retain all records related to their participation in the program for at least 10 years after the last date of service or delivery of equipment.⁶³ As with our waiver of the E-Rate records retention rule, ECF applicants and service providers will not be penalized for failure to retain or produce records destroyed by the Hawaii Wildfires. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the wildfires. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party (e.g., consultant or service provider) upon request by USAC or the Commission. We note that the record retention and production requirements under our rules continue to apply to all records that were not destroyed by the wildfires, including records relating to any relief granted by this Order.

E. Rural Health Care Program

26. For health care providers and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Rural Health Care (RHC) Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the 14-day deadline to respond to USAC information requests; (3) the five-year documentation retention and production rules for participating health care providers and service providers whose documents were destroyed by the Hawaii Wildfires; (4) the invoice filing deadline; and (5) the September 30, 2023 deadline for Healthcare Connect Fund Program participants to file Annual Reports.

27. *Deadline for Appeals and Requests for Waiver.* We waive and extend the 60-day deadlines in section 54.720(b) of the Commission's rules for requests for review or waiver of decisions by USAC or directed to USAC or the Commission.⁶⁴ We find that waiving the deadlines for health care providers and service providers in the Affected Disaster Areas for filing appeals and waivers is an appropriate measure to accommodate the extraordinary circumstances caused by the Hawaii Wildfires. Any harm in providing a filing deadline extension is outweighed by the significant public interest benefits derived from giving petitioners, participants, and other service providers additional time to submit their filings. To reduce the burden on affected program participants, we direct USAC to automatically provide affected program participants with an additional 150 days to file appeals and waivers. This waiver will be in effect for all deadlines of appeals and waiver requests from August 10, 2023 through 150 calendar days from the release of this Order.

28. *Response Time for USAC Information Requests.* We waive the 14-day deadline for RHC Program participants in the Affected Disaster Areas to respond to information requests from USAC.⁶⁵ We find that waiving the 14-day response time for USAC information requests is an appropriate response to the Hawaii Wildfires. This waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by RHC Program participants, and will apply to all information requests with a deadline on or after August 10, 2023 regardless of the funding

⁶³ 47 CFR § 54.1715(b); *see also* 47 CFR § 54.720.

⁶⁴ 47 CFR § 54.720(a)-(b).

⁶⁵ *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 230, para. 1 (2015).

year for which those requests relate. We provide affected health care providers and service providers with up to 150 calendar days from the effective date of this Order to respond to information requests from USAC.

29. *Document Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by the Hawaii Wildfires. With respect to such destroyed records, we waive section 54.631(b) of the Commission's RHC Program rules, which requires health care providers and service providers to retain all documents specified by the rule for at least five years after the last day of the delivery of supported services in a given funding year.⁶⁶ Program participants will not be penalized for failure to retain records destroyed by the wildfires. Applicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants that rely on this waiver as a basis for not retaining or producing records upon request from USAC or the Commission will be required to certify that the records, and any copies of such records, were destroyed by the Hawaii Wildfires. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by the wildfires, including records relating to any relief granted by this Order.

30. *Invoice Filing Deadline.* We also waive section 54.627(a) to automatically grant a 120-day extension of the invoice filing deadline for all funding year 2022 funding requests from health care providers in the Affected Disaster Areas. Section 54.627(a) requires that RHC Program participants submit invoices to USAC within 120 days after the later of: (1) the service delivery deadline; or (2) the date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request.⁶⁷ RHC Program participants may request a one-time extension of the invoice filing deadline.⁶⁸ If the extension is timely requested, USAC is required to grant a 120-day extension.⁶⁹ We find that extending the invoice deadline is an appropriate measure to accommodate the extraordinary circumstances caused by the Hawaii Wildfires and that the significant public interest benefits derived from extending the deadline outweigh any possible harm from such relief. To reduce the burden on participants, we direct USAC to automatically provide participants in the areas affected by the Hawaii Wildfires with a 120-day extension to submit their invoices without it being requested.

31. *Health Care Connect Fund Program – Annual Reporting.* We also waive the September 30, 2023 deadline in section 54.618 of the Commission's rules for Healthcare Connect Fund Program participants located in the Affected Disaster Areas to file Annual Reports for funding year 2022.⁷⁰ We find that the property damage, personal injury, and disruptions in services caused by the Hawaii Wildfires warrant a waiver of the deadline for the annual reporting requirement. All affected Program participants will have up to 150 calendar days from the effective date of this Order to file Annual Reports for funding year 2022.

F. High Cost Program

32. *Waiver of Performance Measures Testing for Third and Fourth Quarter 2023.* Recipients of high-cost universal service support with broadband build-out obligations must test the speed

⁶⁶ 47 CFR § 54.631(b).

⁶⁷ 47 CFR § 54.627(a).

⁶⁸ 47 CFR § 54.627(b).

⁶⁹ *Id.*

⁷⁰ 47 CFR § 54.618.

and latency performance at the supported locations and submit the testing results.⁷¹ The purpose of the testing requirement is to ensure high-cost supported networks meet the required standards for the relevant support program. To capture any seasonal effects on a carrier's broadband performance, carriers must conduct one week of testing in each quarter of the calendar year—January through March (first quarter), April through June (second quarter), July through September (third quarter), and October through December (fourth quarter).⁷² Carriers in testing whose results show they are not meeting minimum requirements are subject to support withholding/reductions and additional reporting.⁷³

33. Hawaiian Telcom, Inc. (SAC 623100) (Hawaiian Telecom) is the one carrier receiving high-cost support in Hawaii. Hawaiian Telecom is subject to performance measures testing as a recipient of support under the Connect America Fund Phase II Auction (CAF II Auction) program, and its authorized census blocks include parts of the Affected Disaster Areas.⁷⁴

34. Given the substantial service disruptions and outages caused by the Hawaii Wildfires, the ability of Hawaiian Telecom to conduct performance testing is extremely difficult and burdensome, if not impossible. We previously said that we would generally consider requests “for waiver or extension [of performance testing] in cases where a major, disruptive event (e.g., a hurricane) negatively affects a provider's broadband performance.”⁷⁵ We find that acting *sua sponte*—absent any request—is prudent due the extreme nature of the wildfires, its impact, and recovery efforts, as this waiver relieves Hawaii Telecom from the additional burden of filing a petition.

35. Further, while the Bureau prefers that carriers reschedule testing within the quarter when possible,⁷⁶ again the extreme nature of the Hawaii Wildfires warrants waiving the requirements for the third and fourth quarter altogether rather than requiring Hawaiian Telecom to reschedule. Waiving the testing requirements for third and fourth quarter of 2023 is in the public interest as it allows Hawaiian Telecom to reapportion resources to better meet their customers' needs during storm recovery. Moreover, with this waiver, we are not relieving carriers from providing the required service levels to high-cost supported locations; rather, we are relieving them solely from the requirement to test performance for the third and fourth quarters of 2023. Hawaiian Telecom may be concerned about losing two quarters of testing data and how that will affect its compliance with testing obligations. Therefore, Hawaiian Telecom may still test its network and certify the results to be part of the compliance calculations. However, pursuant to this waiver, it is not required to do so.⁷⁷

⁷¹ The Commission adopted detailed performance measures requirements in 2018 and an order on reconsideration in 2019. See *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB 2018) (*First Performance Measures Order*), *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*). See also 47 CFR § 54.313(a)(6).

⁷² See *First Performance Measures Order*, 33 FCC Rcd at 6520, para. 29.

⁷³ See *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67, *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10133-38, paras. 65-75.

⁷⁴ Hawaiian Telcom (SAC 623100) is also authorized for support from the Rural Digital Opportunity Fund in parts of the Affected Disaster Areas, but that program is not yet subject to performance measures testing or pre-testing.

⁷⁵ See *First Performance Measures Order*, 33 FCC Rcd at 6521, para. 33.

⁷⁶ *Id.*

⁷⁷ We appreciate that Hawaiian Telcom is still assessing its network in the Affect Disaster Areas, and we will evaluate at a later time whether relief from the CAF II Auction 60% deployment milestone deadline of December 31, 2023 is warranted. See 47 CFR § 54.310, and *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 35 FCC Rcd 109, 112, para. 9 (WCB 2020). See also *supra* note 13.

G. Contributions

36. To provide further relief for affected companies, we waive additional rules and requirements for affected contributors to USF. We find that good cause exists to waive these rules and requirements, subject to the limitations herein, for all contributors serving the affected area. The extensive damage to property and infrastructure by the wildfires has caused significant disruption to operations in Hawaii. We find that these circumstances warrant a temporary waiver of the contributions rules and requirements described below. We have taken similar action under extreme circumstances in the past,⁷⁸ and find that granting this emergency relief will help to temporarily alleviate burdens on service providers in the Affected Disaster Areas.

37. *Form 499-Q Deadlines.* We extend the 45-day revision deadline for FCC Form 499-Q filings made on August 1, 2023, by contributors serving the Affected Disaster Areas. Extending this deadline will allow USAC to recalculate the contribution obligations for affected providers to immediately reflect the effect of the Hawaii Wildfires on contributor revenues rather than having to wait until next year's FCC Form 499-A true-up process. We direct USAC to accept revisions to these filings until November 1, 2023. For those contributors that seek to revise their August 2023 FCC Form 499-Qs after November 1, 2023, the Bureau will consider requests for an extension of the revision deadline on a case-by-case basis.

H. Protecting Program Integrity

38. We are committed to protecting the integrity of the Lifeline, Affordable Connectivity, E-Rate, Emergency Connectivity Fund, Rural Health Care, and High Cost programs (collectively, FCC programs). Although we grant the limited waivers described herein, program participants, service providers, and USF contributors remain otherwise subject to audits and investigations to determine compliance with FCC program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the FCC programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the FCC programs under our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

39. ACCORDINGLY, IT IS ORDERED, pursuant to the authority in sections 1-4, 251(b)(2), 251(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 251(b)(2), 251(e), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR §§ 1.106, 54.313(a)(6), 54.405(e)(3)-(4), 54.407(c)(2), 54.410(f), 54.504(d)(1)(i), 54.507(d)(4), 54.514(a), 54.516(a), 54.618, 54.627(a), 54.631(b), 54.720(b), 54.1710(b), 54.1711(d), 54.1715(b), 54.1718(b), 54.1806(f)(1), 54.1806(f)(5), 54.1808(c)(1)-(2), 54.1809(c), and 54.1809(d) of the Commission's rules ARE WAIVED to the extent provided herein.

⁷⁸ See, e.g., *Schools and Libraries Universal Service Support Mechanism, et al.*, Order, 32 FCC Rcd 7456 (2017) (waiving certain E-Rate, Rural Health Care, Lifeline, and contribution rules and deadlines to assist schools, libraries, healthcare providers, Lifeline Program participants, and contributors affected by Hurricanes Harvey, Irma, and Maria).

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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Internet: www.fcc.gov
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FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS AFFECTED BY TROPICAL STORM HILARY

The Public Safety and Homeland Security Bureau (PSHSB) encourages all entities involved with debris clearing operations and utility repairs related to the effects of Tropical Storm Hilary to take all steps necessary to avoid damaging critical communications facilities and infrastructure.

Tropical Storm Hilary may cause widespread damage and significant impacts to communications services and infrastructure in California. Tropical Storms and other natural disasters present numerous challenges for those working to restore essential phone and Internet services. For example, debris clearing operations to remove downed trees, replace damaged utility poles, and open roadways often result in significant, non-storm related damage to critical communications infrastructure. Such damage can disrupt communications that support the safety and life and property, including 911 calls and first responder communications.

PSHSB encourages those entities working to clear debris, repair utility lines, and restore services to ensure their activities do not damage critical communications. Crews clearing downed trees and damaged utility poles should exercise caution to not cut or damage telephone or television cables that may be entangled in the debris. Similarly, entities conducting debris and restoration efforts that require digging are reminded to coordinate with appropriate authorities to ensure buried utilities can be located to avoid damage. Teams on the ground should take proactive steps to preserve and maintain critical communications and take immediate action, if necessary, to mitigate the effects of any damage that may occur to facilities or infrastructure.

For assistance, please contact the FCC Operations Center at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.



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THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS ENROLLED USERS ABOUT THE AVAILABILITY OF PRIORITY SERVICES IN AREAS IMPACTED BY TROPICAL STORM HILARY

The Public Safety and Homeland Security Bureau (PSHSB) reminds enrolled users about the availability of priority services, which help support communications and continuity of operations. Current users should understand how to activate the priority treatment so they are prepared to use the services, if necessary, during emergency response activities related to Tropical Storm Hilary.

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency manages three programs that enable National Security and Emergency Preparedness (NSEP) personnel to effectively communicate when networks are damaged, degraded, or congested. These programs include:

- Government Emergency Telecommunications Service (GETS) for wireline voice communications;
- Wireless Priority Service (WPS) for wireless communications; and
- Telecommunications Service Priority (TSP) for prioritized restoration and provisioning of communications facilities.

PSHSB reminds current users of the following information and best practices, which will increase the effectiveness of the programs:

- Make regular practice/test calls for GETS and WPS.
- Preprogram *272 for key numbers in your phone's contact list.
- Download the GETS/WPS dialer application for smartphones.
- Do not use GETS or WPS to dial 911.
- Test WPS after all phone changes.
- Keep your GETS card with you at all times.
- You may experience silence after entering your destination number.
- Using WPS and GETS together may help in certain circumstances.

For other helpful information, please see CISA's [Helpful Tips for Users of WPS and GETS](#).

PSHSB also encourages other entities and organizations that are not currently enrolled, but that may qualify, to consider participating in the priority services programs. These programs are available to qualified personnel from both the public and private sectors that perform NSEP functions. Entities from the following categories may qualify to participate:

- All levels of government (federal, state, local, tribal, territorial);

- Non-governmental organizations; and
- Organizations within critical infrastructure sectors, including certain private sector entities.

For more information about the priority services programs, please visit:

<https://www.fcc.gov/general/public-safety-homeland-security-policy-areas-priority-services> and
<https://www.cisa.gov/priority-telecommunications-services>.



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FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO TROPICAL STORM HILARY

The Federal Communications Commission (FCC) is available to address emergency communications needs 24 hours a day, including throughout the weekend, especially relating to the effects of **Tropical Storm Hilary**.

The FCC reminds emergency communications providers, including broadcasters, cable service providers, wireless and wireline service providers, satellite service providers, emergency response managers and first responders, and others needing assistance to initiate, resume, or maintain communications operations to contact the FCC Operations Center for assistance at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.



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THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU, IN COORDINATION WITH MULTIPLE OTHER BUREAUS, ISSUES PROCEDURES FOR PROVIDING EMERGENCY COMMUNICATIONS IN AREAS IMPACTED BY TROPICAL STORM HILARY

The Public Safety and Homeland Security Bureau, in coordination with the Media Bureau, Office of International Affairs, Space Bureau, Wireless Telecommunications Bureau, and Wireline Competition Bureau announces procedures to help communications service providers initiate, resume, and maintain operations in response to Tropical Storm Hilary. Bureau-specific guidance is provided below. For additional information, applicants should contact the appropriate Bureau-specific staff identified below.

Those seeking special temporary authority (STA) are reminded of the need to conform to the requirements of section 1.2002 of our rules implementing the Anti-Drug Abuse Act of 1988.¹ Specifically, requests must include the following certification: “Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.” Presentations that directly relate to the emergency posed by Tropical Storm Hilary are exempt from the restrictions of the Commission’s *ex parte* rules, subject to the provisions of section 1.1204(a)(3) of those rules.²

- **Media Bureau Guidance**

- **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Tropical Storm Hilary and filed pursuant to section 73.1635 of the Commission’s rules³ may be submitted by informal letter or email or, if necessary, by telephone. Licensees of AM & FM radio stations and TV stations may file requests electronically through the Licensing Management System (LMS). All requests must provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:

- **Media Bureau Contact During Business Hours:**

- **Part 73 (Radio Broadcast Services) Subparts A-H; J (as applicable):**
 - For Television Services, Kevin Harding, 202-418-7077, Kevin.Harding@fcc.gov
 - For FM Radio Services, Dale Bickel, 202-418-2706, Dale.Bickel@fcc.gov
 - For AM Radio Services, Jerome Manarchuck, 202-418-7226, Jerome.Manarchuck@fcc.gov
- **Part 76 (Multichannel Video and Cable Television Service):**

¹ 47 CFR § 1.2002.

² 47 CFR § 1.1204(a)(3).

³ 47 CFR § 73.1365.

- Sean Mirzadegan, 202-418-7111, Sean.Mirzadegan@fcc.gov
- **Part 78 (Cable Television Relay Service):**
 - Jeffrey Neumann, 202-418-2046, Jeffrey.Neumann@fcc.gov
- **Media Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- Licensees are reminded that the Commission's rules address operations during periods of emergency for licensees authorized under each of the rule parts for Broadcast Television Services, Broadcast Radio Services, and Multichannel Video and Cable Services. These service-specific rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.⁴
- **Office of International Affairs Guidance**
 - **Special Temporary Authority (Submarine Cables, International 214s, and International High Frequency Broadcast Station):** Emergency requests for STA related to this event may be submitted by e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the ICFS at <http://licensing.fcc.gov/myibfs>. The Office will handle all STA requests as expeditiously as possible.
 - To ensure the Office has a complete record of the action, applicants who do not file through the ICFS should follow-up the initial request with an electronic version submitted through the ICFS as soon as possible. In this filing, operators shall note in the first description field on the electronic STA form that this is a Tropical Storm Hilary request and the date the initial request was granted.
 - **Office of International Affairs Contact During Business Hours:**
 - **Submarine Cables and International 214s:**
 - Stacey Wise-Ashton, 202-418-2214, Stacey.Ashton@fcc.gov
 - Gabrielle Kim, 202-418-0730, Gabrielle.Kim@fcc.gov
 - Karen Johnson, 202-418-7706, Karen.Johnson@fcc.gov
 - **International High Frequency Broadcast Station:**
 - James McLuckie, 202-418-2149, James.McLuckie@fcc.gov
 - Shawna Prebble, 202-418-0740, Shawna.Prebble@fcc.gov
 - **Office of International Affairs Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Public Safety and Homeland Security Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Tropical Storm Hilary and filed pursuant to section 1.931 of the Commission's rules may be submitted by email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or to receive an oral STA during regular business hours, licensees may contact the following personnel: After business hours, contact the FCC Operations Center, below.

⁴ 47 CFR §§ 73.1250, 73.1680, 73.3542.

- **Public Safety and Homeland Security Bureau Contact During Business Hours:**
 - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
 - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
 - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
- **Public Safety and Homeland Security Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Space Bureau Guidance**
 - **Special Temporary Authority (Satellite Earth and Space Stations):** Emergency requests for STA related to this event may be submitted by letter, e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the International Communications Filing System (ICFS) at <https://licensing.fcc.gov/myibfs>. All requests shall provide the technical parameters of the proposed operation and a point of contact. The Bureau will handle all STA requests on an expedited basis. Consistent with section 309(c)(2)(G) of the Communications Act, as amended, the Bureau may grant STA requests for up to 30 days.⁵
 - **Space Bureau Contact During Business Hours:**
 - **Satellite Space Stations and Earth Stations:**
 - Kathryn Medley, 202-418-1211, Kathryn.Medley@fcc.gov
 - Merissa Velez, 202-418-0751, Merissa.Velez@fcc.gov
 - Franco Hinojosa, 202-418-7274, Franco.Hinojosa@fcc.gov
 - **Space Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireline Competition Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for relief, including STA, prompted by the effects of Tropical Storm Hilary may be submitted by email or, if necessary, by telephone. Providers may file requests electronically through the Electronic Comment Filing System (ECFS) but should also provide copies of any submissions simultaneously via email to the appropriate FCC staff identified below. Requests shall include supporting details concerning the relief requested, including any technical parameters and contact information.
 - **Wireline Competition Bureau Contact During Business Hours:**
 - **Emergency Requests Pertaining to Discontinuance Under Section 214 of the Communications Act, or to Network Change Notification Requirements:**
 - Rodney McDonald, 202-418-7513, Rodney.McDonald@fcc.gov
 - **Emergency Requests Pertaining to Transfer of Control Under Section 214 of the Communications Act:**
 - Michele Berlove, 202-418-1477, Michele.Berlove@fcc.gov
 - **Emergency Requests Pertaining to Numbering Resources:**
 - Michelle Sclater, 202-418-0388, Michelle.Sclater@fcc.gov
 - **All Other Wireline Provider Requests:**

⁵ 47 USC § 309(c)(2)(G).

- FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireline Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireless Telecommunications Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Tropical Storm Hilary filed pursuant to section 1.931 of the Commission's rules may be submitted by informal letter or email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:
 - **Wireless Telecommunications Bureau Contact During Business Hours:**
 - **Parts 22, 24, and 27 (excluding the Broadband Radio Service and Educational Broadband Service):**
 - Keith Harper, 202-418-2759, Keith.Harper@fcc.gov
 - **Parts 27 (Broadband Radio Service and Educational Broadband Service only), 74, and 101 (excluding Public Safety):**
 - Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov
 - **Parts 80, 87, 90 (excluding Public Safety), 95, and 97:**
 - Joshua Smith, 717-338-2502 or 202-436-6222, Joshua.Smith@fcc.gov
 - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
 - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
 - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
 - **Wireless Telecommunications Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

Licensees are reminded that sections 22.307, 90.407, and 101.205 of the Commission's rules address operations during periods of emergency for licensees authorized under these rule parts. These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STA requests can call the FCC's Operations Center, which is open 24 hours a day, 7 days a week, at 202-418-1122 or by email at FCCOPS@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Questions and information requests may be directed to the Commission's main telephone numbers:

- Voice (toll-free): 1-888-225-5322 (1-888-CALL-FCC)
- American Sign Language Videophone (toll-free): 1-844-432-2275

-FCC-



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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DA 22-728
Released: August 20, 2023

THE PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES THE ACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR COMMUNICATIONS IMPACTED BY TROPICAL STORM HILARY IN CALIFORNIA

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

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

In DIRS, this activation will have the following name: TROPICAL STORM HILARY. Communications providers are reminded that for providers that participate in DIRS, the separate Network Outage Reporting System (NORS) obligations are suspended for the duration of the DIRS activation with respect to outages in the municipalities where DIRS has been activated. **Reports are requested at 10:00 a.m. (EDT) on Monday, August 21 and every day after that by 10:00 a.m. (EDT) until DIRS is deactivated.**

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

COUNTIES OF INTEREST FOR THIS ACTIVATION INCLUDE THE FOLLOWING COUNTIES IN CALIFORNIA:

California: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego.

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

For further information, please contact:

Michael Caiafa (540) 834-7401 (cell), (202) 418-1311, michael.caiafa@fcc.gov

Jay English (352) 640-4074 (cell), gerald.english@fcc.gov
David Ahn (571) 232-8487 (cell), (202) 418-0853, david.ahn@fcc.gov
FCC 24/7 Operations Center – (202) 418-1122

For more information on the FCC's response to Tropical Storm Hilary in California, please go to <https://www.fcc.gov/hilary>.

- FCC -

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

In the Matter of)	
)	
Government of the Virgin Islands	)	File No. 0009948269
)	

ORDER

Adopted: August 21, 2023

Released: August 21, 2023

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The Government of the Virgin Islands (GVI) seeks a waiver of certain technical limitations in the rules so that it can strengthen and expand its public safety communications system.¹ Specifically, GVI seeks a waiver of limitations (13) and (45) under Section 90.20(d) of the Federal Communications Commission's (Commission) rules.² GVI seeks a waiver of these limitations to permit the use of frequency 157.4500 MHz as a mobile inbound to a Mobile Relay fixed station using an effective radiated power (ERP) of 50 watts.³

II. BACKGROUND

2. In support of its waiver request, GVI submits that its contractor analyzed the available spectrum and determined that there is no other frequency immediately available that can satisfy the requested public safety use.⁴ GVI states that it requires spectrum in the 150–160 MHz band that is compatible with existing infrastructure and in order to remain interoperable between the various operations of the Virgin Islands Government.⁵ GVI states that frequencies in other bands would not satisfy the immediate public safety use and contends that the implementation of a fixed base frequency as “mobile only” is technically feasible without causing interference.⁶ Finally, GVI claims that its analysis has shown that there are no current license holders on this frequency within the Virgin Islands.⁷

3. On May 11, 2023, the Public Safety and Homeland Security Bureau (Bureau) issued a

¹ Government of Virgin Islands Application, File No. 0009948269 (dated Jul. 29, 2022) (Application). GVI originally filed the application on March 10, 2022 and attached a waiver request (Waiver Request) and a contour study (Contour Study). The Bureau returned it on July 8, 2022. *See* Return Letter, Reference Number 7053667 (dated Jul. 8, 2022) (Return Letter) (stating, among other issues, that the Application was returned for a statement from the frequency coordinator that there are no other VHF public safety channels available to be used for the proposed mobile operation and a list of other public safety channels considered by the frequency coordinator). GVI amended the application and resubmitted it on July 29, 2022 with a responsive attachment, “Response to Return.”

² 47 CFR § 90.20 (d)(13) (limiting the use of an affected frequency to one-way paging communications to mobile receivers and prohibiting transmissions on the frequency for the purpose of activating or controlling remote objects); 47 CFR § 90.20 (d)(45) (limiting the use of an affected frequency to 30 watts transmitter output power).

³ Waiver Request at 2-3 *citing* 47 CFR § 90.20 (d)(13) and (45).

⁴ Waiver Request at 4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Public Notice seeking comment on GVI's waiver request.⁸ The Bureau specifically sought comment on the requested waiver, and in particular, from any party who would be affected by GVI's proposed use of paging frequency 157.4500 MHz.⁹ The Bureau did not receive any comments on the waiver request.

III. DISCUSSION

4. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest;¹⁰ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹² As detailed below, we conclude GVI's request for waiver of Sections 90.20(d)(13) and (d)(45) may be granted under our waiver standard.¹³

5. The Commission allocated frequency 157.450 MHz for limited area, hospital one-way paging systems.¹⁴ The Commission made this frequency available exclusively for paging communications because paging transmissions were found to be disruptive to voice communications on regular two-way channels.¹⁵ The Commission envisioned medical paging operations in the Special Emergency Radio Service shifting to frequency 157.450 MHz if harmful interference occurred to voice operations on other VHF channels.¹⁶ To limit the possibility of interference to licensees operating on adjacent channels and to promote frequency reuse, the Commission limited paging operations on

⁸ See *Public Safety And Homeland Security Bureau Seeks Comment On Request Filed By The Government Of The Virgin Islands To Waive Technical Limitations In Section 90.20 Of The Commission's Rules*, Public Notice, DA 23-399, rel. May 11, 2023 (PSHSB).

⁹ *Id.*

¹⁰ 47 CFR § 1.925(b)(3)(i).

¹¹ 47 CFR § 1.925(b)(3)(ii).

¹² *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir.1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

¹³ We note that the Bureau has granted similar relief in the past. See *County of St. Croix*, Order, 34 FCC Rcd 2471, 2743, para. 14 (PSHSB 2019) ("granting St. Croix a waiver of Sections 90.20(d)(13) and 90.20(d)(45) to be in the public interest so St. Croix can add additional capacity to its simulcast network in order to meet the communication needs of the "Fire, Emergency Medical Service (EMS), Rescue and Law Enforcement agencies" which rely on its network for their first responder communications."); *State of Maine - MSCOMMNET Project*, Order, 28 FCC Rcd 15754, 15757, para. 11 (PSHSB 2013) ("Furthermore, we find it in the public interest for Maine to fill in coverage in an otherwise unserved coastal area and, "thereby, to facilitate interoperability with federal, state and local public safety officials using predominantly VHF communications systems."").

¹⁴ *Amendment of Parts 2 and 89 to Allocate 157.450 MHz to the Special Emergency Medical Radio Service for Medical Paging Systems in Hospitals*, Docket No. 19643, RM-1884, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 38 FCC 2d 147, 149 para. 6 (1972); *Amendment of Subpart P, Part 89 of the Commission's Rules (Eligibility of Comprehensive Health Services); Amendment of Parts 2 and 89 of the Commission's Rules to Allocate 157.450 MHz to the Special Emergency Radio Service for Medical Paging Systems in Hospitals; Amendment of Parts 2 and 89 of the Commission's Rules and Regulations Relating to Communications for Emergency Medical Services*, Docket 19576 RM-2017; Docket 19643; Docket 19880, Report and Order, 47 FCC 2d 676, 687 para. 36 (1974).

¹⁵ *Id.*

¹⁶ *Id.*

frequency 157.450 MHz to a maximum transmitter output power of 30 watts.¹⁷ The Commission believed this power level appropriate to accommodate the coverage needs of most hospital campuses.¹⁸

6. *Section 90.20(d)(13)*: In this instance, we find GVI has no reasonable alternative to deploying frequency 157.450 MHz for voice communications to strengthen and expand its public safety system. In reaching our conclusion, we find particularly persuasive the statement from GVI's contractor that there is no other frequency immediately available that can satisfy the requested public safety use, *i.e.*, spectrum in the 150–160 MHz band that is compatible with existing infrastructure and enables it to remain interoperable between the various operations of the Virgin Islands Government.¹⁹

7. Furthermore, staff performed a database search of licensees operating on frequency 157.450 MHz and found no other licensee operating on the channel within 180 kilometers of GVI's proposed locations.²⁰ As such, GVI's proposal to deploy frequency 157.450 MHz as a repeater output channel for voice communications will not impact any use of the frequency for paging operations. We also note that no party objected to GVI's applications or waiver request.

8. We find it unduly burdensome for GVI to either forego increasing the capacity of its network or for it to deploy a channel which is less than optimal from an interference or engineering perspective when Public Safety Pool frequency 157.450 MHz is available for use and capable of meeting its capacity needs. Therefore, we grant GVI's request for waiver of Section 90.20(d)(13) and allow it to use frequency 157.450 MHz for voice communications.

9. *Section 90.20(d)(45)*. With respect to its request to operate on 157.450 MHz with an output power greater than 30 watts, we find the underlying purpose of Section 90.20(d)(45) would not be served by its application to the present case. As noted above, the purpose of limiting licensees to 30 watts transmitter output power when operating on frequency 157.450 MHz is to reduce the possibility of paging operations causing interference to voice communications on adjacent channels and to promote reuse of the channel. We find the purpose of the restriction does not apply in this case.

10. First, GVI intends to use frequency 157.450 MHz for voice rather than paging communications. Therefore, we see little risk of interference to adjacent-channel users from GVI's proposal to operate at 100 watts transmitter output power on the channel for voice communications. Second, we believe GVI's operation at 100 watts output power will have little impact on the ability of other licensees to reuse frequency 157.450 MHz for paging operations since frequency 157.450 MHz continues to remain available for the majority of the Virgin Islands and Puerto Rico.

11. *Public Interest*. Finally, we find granting GVI a waiver of Sections 90.20(d)(13) and 90.20(d)(45) to be in the public interest so it can add a frequency which is compatible with GVI's existing infrastructure and will allow interoperability between the various operations of the Virgin Islands Government.²¹

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 1.925 and 90.20 of the Commission's rules, 47 CFR §§ 1.925, 90.20, that the request for waiver filed by the Government of

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Waiver Request at 4.

²⁰ Bureau staff performed a ULS search for licensees operating on frequency 157.450 MHz within 180 kilometers of the proposed location.

²¹ Waiver Request at 4.

the Virgin Islands filed July 29, 2002 in connection with application File No. 0009948269 IS GRANTED, and the application SHALL BE PROCESSED consistent with this Order and the Commission's rules.

13. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau



PUBLIC NOTICE

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

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

DA 23-730
Released: August 21, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REGION 21 (MICHIGAN) 700 MHZ REGIONAL PLAN UPDATE

WT Docket No. 02-378

Comments Due: September 20, 2023
Reply Comments Due: October 5, 2023

Introduction. By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) seeks comment on the Region 21 (Michigan)¹ – Regional Planning Committee’s (RPC’s) proposed modification to its 700 MHz Public Safety Plan (Plan) for General Use² spectrum in the narrowband segment of the 700 MHz band (769-775/799-805 MHz).³

Background. In 1998, the Commission established a structure to allow RPCs optimal flexibility to meet state and local needs, encourage innovative use of narrowband spectrum in the 700 MHz band, and accommodate new and as yet unanticipated developments in technology and equipment.⁴ Each of the fifty-five (55) RPCs is required to submit its plan for General Use spectrum.⁵ The Commission’s role in relation to the RPCs is limited to (1) defining the regional boundaries; (2) requiring fair and open procedures, *i.e.*, requiring notice, opportunity for comment, and reasonable consideration; (3) specifying the elements that all regional plans must include; and (4) reviewing and accepting proposed plans (or amendments to approved plans) or rejecting them with an explanation.⁶

The Region 21 700 MHz Plan Update. On July 11, 2023, the RPC submitted an amendment to the Region 21 – 700 MHz Plan.⁷ In its amendment, the RPC proposes to:

¹ The Region 21 (Michigan) 700 MHz regional planning area includes the entire state of Michigan.

² The General Use spectrum is administered by RPCs and is licensed for public safety services on a site-by-site basis in accordance with the relevant Commission-approved regional plan and frequency coordination.

³ See Letter from Keith M. Bradshaw, Chairman, Region 21 700 MHz Regional Planning Committee, to Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, WT Docket No. 02-378 (dated Dec. 07, 2021) (filed Jul. 11, 2023) (Cover Letter). See also Region 21 700 MHz Plan Update, WT Docket 02-378 (filed Jul. 11, 2023) (Plan Amendment).

⁴ See *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152 (1998) (*First Report and Order*); Second Memorandum Opinion and Order, 15 FCC Rcd 16844 (2000). See also 47 CFR § 90.527.

⁵ See 47 CFR § 90.527.

⁶ *First Report and Order*, 14 FCC Rcd at 195 para. 87.

⁷ See Cover Letter and Plan Amendment.

- Remove non-essential language under the heading “700 MHz Interoperability Channels,” and
- Add provisions for deploying fixed 700 MHz interoperability equipment in the region.⁸

Region 21’s RPC received concurrence letters for the proposed Plan Amendment from its four adjacent regions: Region 14 (Indiana), Region 33 (Ohio), Region 45 (Wisconsin), and Region 54 (Chicago-Metropolitan).⁹

We have reviewed the Region 21 Plan Amendment and find that it sufficiently complies with the applicable Commission rules and policies, and tentatively accept it.

Request for Comments on the Region 21 Plan Amendment. Prior to taking further action on the RPC’s proposal to amend its 700 MHz plan, by this *Public Notice*, we solicit comment on the Region 21 Plan Amendment. The Plan Amendment is available through ECFS at ecfs@fcc.gov under WT Docket No. 02-378.

Instructions for Filing Comments

Pursuant to Sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the Region 21 700 MHz Plan Amendment on or before **September 20, 2023**, and reply comments on or before **October 5, 2023**. All comments and reply comments should reference the subject Plan and **WT Docket No. 02-378**.

- **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 hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.¹⁰
- 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 St, NE, Washington, DC 20554.

⁸ Cover Letter at 1. *See also* Plan Amendment at 5.

⁹ *See* Letter from Douglas B. Cochrane, Region 14 Acting Chairman, to Region 21 RPC (Nov. 30, 2021); Letter from Robert M. Bill, Chairman Region 33, to Region 21 RPC (Apr. 23, 2021); Letter from Russell Schreiner, Chairman Region 45, to Region 21 RPC (July 21, 2021); Letter from Chris Kindelspire Chairman Region 54, to Mr. Bradshaw, Region 21 RPC (July 15, 2021); (collectively filed July 11, 2023).

¹⁰ In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission’s electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, DA 20-304 (rel. 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) or (202) 418-0432 (tty).

For further information regarding this matter, contact Brian Marengo, Electronics Engineer, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-0838 or Brian.Marengo@fcc.gov.

- FCC -



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-732

Released: DATE, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER FILED BY THE CITY OF QUINCY, MASSACHUSETTS TO OPERATE A PUBLIC SAFETY RADIO SYSTEM ON PART 22 SPECTRUM

File No. 0010397178

Comments Due: [30 Days after release]

Reply Comments Due: [45 Days after release]

The Public Safety and Homeland Security Bureau seeks comment on the above-captioned application and waiver request filed by the City of Quincy, Massachusetts (Quincy, or the City) on behalf of its Fire Department.¹ Quincy seeks waiver relief pursuant to Section 337(c) of the Communications Act of 1934, as amended (“the Act”), 47 U.S.C. § 337(c), to use, for public safety communications purposes, two frequencies interleaved between the allocations in part 22 and part 90 of the Commission’s rules.² In the alternative, the City seeks waiver relief pursuant to section 1.925 of the Commission’s rules,³ of sections 22.7, 22.501, 22.621, 22.623, 90.303, and 90.311 of the Commission’s rules.⁴

The City states that its Fire Department “currently operates on channels between 450 MHz and 483 MHz,” including call sign WQKM366 operating on frequencies in the 470-512 MHz Band (T-Band).⁵ The City states that “due to the extreme demand for radio frequencies in the greater Boston metropolitan /eastern Massachusetts area, all frequencies for which City of Quincy Fire Department is eligible to apply have been exhausted.”⁶ Quincy contends that “[i]n order to satisfy its growing need for radio capacity, City of Quincy Fire Department has no other choice but to look to the commercial radio

¹ See File No. 0010397178 (filed Jan. 30, 2023, amended Mar. 3, 2023), attached Revised Request for Waiver (Revised Waiver Request).

² See 47 U.S.C. § 337(c) (allowing the Commission to waive any requirement of the Act or its regulations implementing the Act (other than its regulations regarding harmful interference) to permit the use of unassigned frequencies for the provision of public safety services by an entity seeking to provide such services).

³ Revised Waiver Request; 47 CFR § 1.925.

⁴ 47 CFR §§ 22.7 (setting eligibility for any entity other than those precluded by 47 U.S.C. § 310, and stating that applications are granted only if the applicant is legally, financially, technically and otherwise qualified to render the proposed service), 22.501 (establishing the scope of rules in part 22, subpart E for licensing and operation of public mobile paging and radiotelephone stations), 22.621 (designating certain frequencies for point-to-multipoint transmitters that support transmitters that provide public mobile service), 22.623 (specifying system configuration requirements for paging control channels assigned pursuant to part 22), 90.303 (allocating certain TV channels for land mobile use in thirteen urbanized areas), 90.311 (designating certain frequency ranges for land mobile radio assignment).

⁵ Revised Waiver Request at 2; call sign WQKM366.

⁶ Revised Waiver Request at 1.

bands for additional channels.”⁷ Quincy’s frequency coordinator submitted a letter certifying that it “conducted a search of 453-470 MHz and 470-512 MHz (TV 14 and 16) spectrum and certifies that there are no public safety channels to be assigned that meet public safety coordination protocols or frequency limitations and will work at all sites for this system.”⁸

The requested frequencies 470.3000 MHz and 473.3000 MHz are considered interleaved because they are situated in between part 22 and part 90-designated spectrum bands, but they are not assignable to users under either part.⁹ Specifically, in the Boston area, in the TV Channel 14 band (470-476 MHz), section 22.621 permits point-to-multipoint use on channels up to the highest center frequencies 470.2875 MHz and 473.2875 MHz.¹⁰ Section 90.311 permits private land mobile use, which includes public safety, in the TV Channel 14 band on frequencies no lower than 470.30625 MHz and 473.30625 MHz.¹¹ These allocations eliminate licensing frequencies 470.3000 MHz and 473.3000 MHz for either part 22 or part 90 use.

Quincy states that “there has been a significant increase in new buildings in the city. The additional channels 470.3000/473.3000 MHz will give the Quincy Fire Department added channel capacity to handle emergencies in the new buildings, being used as a fireground channel, operations channel to coordinate evacuation of residents, or a rapid intervention team channel to deal with a firefighter ‘MAYDAY’.”¹² Quincy states that close to 50 bi-directional amplifiers (BDAs) are deployed throughout the city to satisfy Massachusetts State Building Code requirements.¹³ The City argues that it needs a T-Band channel that can be passed by the BDAs so property owners will not have to incur the additional cost of having to update such systems.

Section 337(c) of the Act states that the Commission shall grant an application by an entity seeking to provide public safety services to the extent necessary to permit the use of unassigned frequencies, if the Commission makes five specific findings: (1) no other spectrum allocated for public safety use is immediately available; (2) there will be no harmful interference to other spectrum users entitled to protection; (3) public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question; (4) the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue; and (5) the grant of the application is consistent with the public interest.¹⁴ “Public safety services” are defined by 47 U.S.C. § 337(f) as services the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by the governmental entities or by non-governmental entities authorized by the

⁷ *Id.*

⁸ File No. 0010397178, attached letter from Carol DiCaro, AFC Processor, AFC – APCO’s Spectrum Management Division, APCO International, Inc., to FCC (dated Jan. 4, 2023).

⁹ See *Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed by the County of Westchester, New York to Use Two Frequencies Interleaved Between the Part 22 and Part 90 Allocations for Public Safety Communications*, Public Notice, 24 FCC Rcd 3704, 3705 (PSHSB 2009).

¹⁰ 47 CFR § 22.921. The listed channels are “allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service.” *Id.*

¹¹ 47 CFR § 90.311.

¹² Revised Waiver Request at 2.

¹³ *Id.* citing Massachusetts State Building Code, 780 CMR, 2015 International building Code as Amended, Section 916.2.

¹⁴ 47 U.S.C. § 337(c)(1).

governmental entity whose primary mission is the provision of such services, and that are not made commercially available to the public by the provider.¹⁵

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 *Public Notice*. All comments and reply comments should reference the subject file number(s), waiver request, and the DA number indicated on this *Public Notice*.

Pleadings may be filed electronically through ULS, or by paper pursuant to the following instructions. Parties are strongly encouraged to file electronically using ULS.

- Electronic Filers: Pleadings may be filed electronically using the Internet by accessing ULS: <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system>. Each screen indicates the information to be provided or the action(s) to be performed to complete that screen. From the ULS website, to begin the process of filing a pleading click on "SUBMIT A PLEADING." The link takes the user to the *Pleadings Information* screen. Upon completing the *Pleadings Information* screen, click "CONTINUE" to go to the *File Numbers/Call Signs* screen. Upon providing the information required on that screen, complete steps three and four at the *Attach File* and *Confirmation* screens, respectively. For more information, detailed instructions can be found in the *Public Notice* announcing the implementation of electronic filing for pleadings.¹⁶
- 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 courier or by the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial deliveries (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.
- As of March 19, 2020, the FCC is no longer accepting hand-delivered or messenger delivered paper filings at FCC Headquarters due to the COVID-19 pandemic.¹⁷ Furthermore, after COVID-19 restrictions are lifted the new filing location for paper documents will be 9050 Junction Drive, Annapolis Junction, MD 20701.¹⁸
- 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.

¹⁵ 47 U.S.C. § 337(f).

¹⁶ *Wireless Telecommunications Bureau Enhances the Commission's Universal Licensing System to Implement Electronic Filing for Pleadings*, Public Notice, 21 FCC Rcd 424 (WTB 2006).

¹⁷ *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020).

¹⁸ *FCC Announces Closure of Filing Window at FCC Headquarters and Permanent Change in the Location and Hours for Receiving Hand-Carried Filings*, Public Notice (OMD July 7, 2020).

Because of the policy implications and potential impact of this case on persons not party to the application, it is in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a) and 1.1206 of the Commission's rules, 47 CFR §§ 1.1200(a) and 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed, but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's rules, 47 CFR § 1.1206(b).

The application, waiver request, and comments and reply comments can be accessed electronically via the Commission's Universal Licensing System, <https://www.fcc.gov/wireless/universal-licensing-system>.

For technical assistance in using ULS for viewing the application or filing an amendment to the application, contact the ULS Licensing Support Hotline at (877) 480-3201. The ULS Licensing Support Hotline is available Monday through Friday, from 8:00 A.M. to 6:00 P.M. Eastern Time. All calls to the ULS Licensing Support Hotline are recorded.

For further information regarding this Public Notice, please contact Thomas Eng, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-0019, or by email to thomas.eng@fcc.gov.

Copies of materials can be obtained from the FCC's Reference Information Center at (202) 418-0270.

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By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau.

-FCC-



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
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DA 23-733

Released: August 21, 2023

WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND TECHNOLOGY ANNOUNCE DEPLOYMENT OF A NEW FEDERAL PORTAL SYSTEM AND A REVISION TO THE LIST OF PROTECTED FACILITIES IN THE 3.5 GHZ BAND

GN Docket Nos. 17-258 and 15-319

With this Public Notice, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) of the Federal Communications Commission (Commission or FCC) announce: (1) replacement of the manual portal system used to protect certain federal facilities from Citizens Broadband Radio Service operations in the 3550-3700 MHz (3.5 GHz band); and (2) the addition of a new federal facility to the list of protected facilities operated by the Department of Defense (DoD).¹

As described in NTIA's August 14, 2023 letter to WTB and OET, DoD and the military services operate developmental and operational test ranges and facilities throughout the country, many of which host operations in the 3.5 GHz band.² In the 3.5 GHz band, these facilities are generally protected by portal-activated dynamic protection areas (P-DPAs) and federal operators must use a scheduling portal to schedule operations at these facilities with the certified Spectrum Access System (SAS) administrators.³

¹ The 3.5 GHz band KML files used by the SAS operators are available on NTIA's website: <https://ntia.doc.gov/fcc-filing/2015/ntia-letter-fcc-commercial-operations-3550-3650-mhz-band>.

² See Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA to Ronald T. Repasi, Acting Chief, OET, FCC and Joel Taubenblatt, Acting Chief, WTB, FCC (August 14, 2023) (August 2023 NTIA Letter), available at: <https://www.fcc.gov/ecfs/document/10814108365840/1>.

³ *Id.* at 2. SAS administrators were tested on their ability to protect designated federal facilities using a scheduling portal during the SAS testing and Initial Commercial Deployment processes. Each SAS administrator is required to support and utilize the scheduling portal as a condition of its certification. See *Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure and Deadline for Filing Spectrum Access System Initial Commercial Deployment Proposals*, Public Notice, 33 FCC Rcd 7390, para. 7 (WTB/OET 2018) (requiring SAS administrators to describe how they "implement notification-based DPA protection using a portal" during Initial Commercial Deployment (ICD).); *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce Five Spectrum Access System Administrators to Begin Initial Commercial Deployments in the 3.5 GHz Band*, GN Docket 15-319, Public Notice, 34 FCC Rcd 8106, para. 7 (WTB/OET 2019) (requiring SAS administrators to "demonstrate the ability to implement notification-based DPA protection using a DPA portal" during ICD); *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Four Spectrum Access Administrators for Full Scale Commercial Deployment in the 3.5 GHz Band and Emphasize Licensee Compliance Obligations in the 3650-3700 MHz Band Under Part 96*, GN Docket No. 15-319, Public Notice, 35 FCC Rcd 117, para. 5 (WTB/OET 2020) (certifying SAS administrators for full commercial deployment after successful completion of ICD). See also *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Order, 33 FCC Rcd 4987 (WTB/OET 2018) (allowing SASs to implement alternative protection methodology based on DPAs).

DoD has developed an automated system—the Telecommunications Advanced Research and Dynamic Spectrum Sharing System (TARDyS3)—to replace the manual scheduling portal currently used to activate the P-DPAs.⁴ The TARDyS3 is a DoD calendar-based tool that will support the expeditious and autonomous communication of scheduled spectrum use information for designated facilities in the 3.5 MHz band. The Commission has worked with DoD, NTIA, and the SAS administrators throughout the TARDyS3 development process to ensure that the portal is compatible with the rules governing the 3.5 GHz band and existing SAS software and configurations.

Consistent with NTIA’s August 14, 2023 letter, federal spectrum managers will begin using TARDyS3 to schedule operations at covered facilities in the near future.⁵ We direct all certified Spectrum Access Administrators to begin using the TARDyS3 portal—and discontinue use of the manual scheduling portal—to coordinate operations with these facilities once the portal is activated.

We also note that, as described in NTIA’s August 14, 2023 letter, the list of facilities to be protected by the coordination portal will include the U.S. Naval Air Station at Patuxent River, Maryland.⁶

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

Additional Information. For further information regarding this Public Notice, please contact Paul Powell, Associate Division Chief, Wireless Telecommunications Bureau, Mobility Division at paul.powell@fcc.gov or 202-418-1613.

By the Chief, Wireless Telecommunications Bureau and the Chief, Office of Engineering and Technology.

-FCC-

⁴ August 2023 NTIA Letter at 2.

⁵ We also note that WTB and OET recently waived section 96.63(n)(1) of the Commission’s rules to allow SAS administrators to utilize the TARDyS3 portal. See 47 CFR § 96.63(n)(1) (requiring that each SAS “[o]perates without any connectivity to any military or other sensitive federal database or system, except as otherwise required by this part.”); See *Promoting Investment in the 3550-3700 MHz Band*, GN Docket Nos. 17-258 and 15-319, Order, DA 23-734 (WTB/OET 2023).

⁶ See August 2023 NTIA Letter at 2-3.

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

In the Matter of)	
)	
Promoting Investment in the 3550-3700 MHz Band	)	GN Docket No. 17-258
)	
3.5 GHz SAS and ESC Applications	)	GN Docket No. 15-319
)	

ORDER

Adopted: August 21, 2023

Released: August 21, 2023

By the Chief, Wireless Telecommunications Bureau and the Chief, Office of Engineering and Technology:

1. By this order, the Wireless Telecommunications Bureau (WTB) and Office of Engineering and Technology (OET) of the Federal Communications Commission (Commission or FCC) waive section 96.63(n)(1)¹ of the Commission's rules for Spectrum Access System (SAS) administrators to utilize the Department of Defense (DoD) managed Telecommunications Advanced Research and Dynamic Spectrum Sharing System (TARDyS3) scheduling portal in the 3550-3700 MHz band (3.5 GHz band).

2. On August 14, 2023, NTIA submitted a letter to WTB and OET describing the TARDyS3 portal and asking the Commission to direct the SAS administrators to use the portal to protect designated DoD facilities in the band.² As set forth in the NTIA Letter, DoD and the military services operate developmental and operational test ranges and facilities throughout the country, many of which host operations in the 3.5 GHz band.³ In the 3.5 GHz band, these facilities are generally protected by portal-activated dynamic protection areas (P-DPAs) and federal operators must use a scheduling portal to schedule operations at these facilities with the certified SAS administrators.⁴ The TARDyS3 is a DoD managed calendar-based tool that will support the expeditious and autonomous communication of scheduled spectrum use information for designated facilities in the 3.5 GHz band that was developed to replace the manual scheduling portal currently used to activate the P-DPAs.⁵ By Public Notice today,

¹ 47 CFR § 96.63(n)(1).

² See Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA to Ronald T. Repasi, Acting Chief, OET, FCC and Joel Taubenblatt, Acting Chief, WTB, FCC in GN Docket Nos. 17-258 and 15-319 (August 14, 2023) (August 2023 NTIA Letter), *available at*: <https://www.fcc.gov/ecfs/document/10814108365840/1>.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.* SAS administrators were tested on their ability to protect designated federal facilities using a scheduling portal during the SAS testing and Initial Commercial Deployment processes. Each SAS administrator is required to support and utilize the scheduling portal as a condition of its certification. See *Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure and Deadline for Filing Spectrum Access System Initial Commercial Deployment Proposals*, GN Docket No. 15-319, Public Notice, 33 FCC Rcd 7390, para. 7

(continued....)

WTB and OET directed SAS administrators to begin using the TARDyS3 portal—in lieu of the manual scheduling portal—to protect certain federal facilities from Citizens Broadband Radio Service operations in the near future.⁶

3. Under section 96.63(n)(1) of the Commission’s rules, each SAS must “[o]perate[] without any connectivity to any military or other sensitive federal database or system, except as otherwise required by this part.”⁷ Since the TARDyS3 portal will be managed by DoD and will include information on DoD operations, SAS administrators would not be permitted to connect to the portal absent a waiver of section 96.63(n)(1).

4. Pursuant to section 1.3 of the Commission’s rules, the Commission can waive provisions of its rules “for good cause shown.”⁸ As NTIA notes, use of the TARDyS3 portal will improve the security, reliability, and resiliency of the scheduling portal utilized by the SAS administrators to protect designated facilities in the 3.5 GHz band.⁹ NTIA also requests that, if necessary, the Commission waive section 96.63(n)(1) to facilitate the implementation and use of TARDyS3 for the protection of P-DPAs.¹⁰ We find that permitting the use of the TARDyS3 portal will further the public interest by improving federal coordination in the 3.5 GHz band. These public interest benefits, coupled with NTIA’s support for the waiver, demonstrate that there is good cause to waive section 96.63(n)(1) of the Commission’s rules to allow SAS administrators to connect to the TARDyS3 portal.

5. 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, section 96.63(n)(1) of Commission’s Rules, 47 CFR § 96.63(n)(1), IS WAIVED as set forth above.

(Continued from previous page)

(WTB/OET 2018) (requiring SAS administrators to describe how they “implement notification-based DPA protection using a portal” during Initial Commercial Deployment (ICD).); *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce Five Spectrum Access System Administrators to Begin Initial Commercial Deployments in the 3.5 GHz Band*, GN Docket 15-319, Public Notice, 34 FCC Rcd 8106, para. 7 (WTB/OET 2019) (requiring SAS administrators to “demonstrate the ability to implement notification-based DPA protection using a DPA portal” during ICD); *Wireless Telecommunications Bureau and Office of Engineering and Technology Approve Four Spectrum Access Administrators for Full Scale Commercial Deployment in the 3.5 GHz Band and Emphasize Licensee Compliance Obligations in the 3650-3700 MHz Band Under Part 96*, GN Docket No. 15-319, Public Notice, 35 FCC Rcd 117, para. 5 (WTB/OET 2020) (certifying SAS administrators for full commercial deployment after successful completion of ICD). See also *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Order, 33 FCC Rcd 4987 (WTB/OET 2018) (allowing SASs to implement alternative protection methodology based on DPAs).

⁶ See *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce Deployment of a New Federal Portal System and Revision to the List of Protected Facilities in the 3.5 GHz Band*, GN Docket Nos. 17-258 and 15-319, Public Notice, DA 23-733 (WTB/OET 2023).

⁷ 47 CFR § 96.63(n)(1).

⁸ See 47 CFR § 1.3.

⁹ See August 2023 NTIA Letter at 2.

¹⁰ *Id.*

6. This action is taken under delegated authority pursuant to sections 0.241 and 0.331 of the Commission's rules, 47 CFR §§ 0.241, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief
Wireless Telecommunications Bureau

Ronald Repasi
Chief
Office of Engineering and Technology

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

In the Matter of)	
)	
EUREKA COUNTY TV DISTRICT	)	Facility ID Nos.: 19848, 19849, 19852,
	)	183840, 183842, 185337, 185347, 185624,
Licensee of Stations K33PI-D, Eureka, NV;	)	185625
K22NG-D, Eureka, NV; K21GJ-D, Eureka, NV;	)	NAL/Acct. No.: 202341420010
K29NK-D, Eureka, NV; K15LU-D, Eureka, NV;	)	FRN: 0007744964
K27NN-D, Eureka, NV; K31LO-D, Eureka, NV;	)	LMS File No. 201165
K36KN-D, Eureka, NV; K25PP-D, Eureka, NV)	

FORFEITURE ORDER

Adopted: August 21, 2023

Released: August 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 eight hundred and ninety one dollars (\$891) to Eureka County TV District (Licensee), licensee of K33PI-D, Eureka, Nevada; K22NG-D, Eureka, Nevada; K21GJ-D, Eureka, Nevada; K29NK-D, Eureka, Nevada; K15LU-D, Eureka, Nevada; K27NN-D, Eureka, Nevada; K31LO-D, Eureka, Nevada; K36KN-D, Eureka, Nevada; and K25PP-D, Eureka, Nevada (Stations). 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 Stations (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 Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.³ The application was not filed until September 29, 2022. The Licensee provided no explanation for its untimely filing of the Application.

3. On March 24, 2023, we issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of thirteen thousand five hundred dollars (\$13,500) to Licensee for its apparent violations of section 73.3539(a) of the Rules.⁴ The

¹ See 47 CFR § 73.3539; Application of Eureka County TV District for Renewal of License, LMS File No. 201165 (filed Sep. 29, 2022). K33PI-D, K22NG-D; K21GJ-D, K29NK-D, K15LU-D, K27NN-D, K31LO-D, K36KN-D, and K25PP-D are each digital television translators. In this case, as is permitted, the licensee filed for renewal of the of the licenses of the Stations in a single renewal application.

² *Id.* § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

⁴ *Eureka County TV District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-255 (Vid. Div. Mar. 24, 2023) (*NAL*).

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

4. On April 13, 2023, the Licensee provided a response requesting reduction or cancellation of the proposed forfeiture based on the Licensee's claimed inability to pay it, indicating that the late filed renewals were the result of staff turnover.⁶ The Licensee's response also noted that it served a sparsely populated rural area, covering "about 5,000 square miles while serving the approximately 2,000 residents."⁷ On April 19, 2023, the Licensee supplemented its response with documentation that included financial documents for fiscal year 2022, and forecasts for fiscal years 2023 and 2024.⁸ This amendment also notes that, as a special tax district under Nevada State law, the Licensee's only dedicated source of funds are annual assessments on local taxpayers.⁹ On June 26, 2023, at the request of Bureau staff, the Licensee supplemented their request for relief with financial audits that included, among other things, the Licensee's revenues for fiscal years 2020, 2021, and 2022 in order to demonstrate that imposition of the proposed forfeiture would be excessive.¹⁰

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),¹¹ section 1.80 of the Rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ 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.¹⁴

6. As noted in the NAL, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹⁵ Any claim of inability to pay must specifically identify the basis for the claim

⁵ *Id.* at para. 10.

⁶ Response to Notice of Apparent Liability for Forfeiture of Eureka County TV District (dated April 13, 2023) (Response).

⁷ Response at 4.

⁸ First Amendment to Response to Notice of Apparent Liability for Forfeiture for Eureka County TV District (dated April 19, 2023) (First Amendment).

⁹ First Amendment at 2.

¹⁰ Second Amendment to Response to Notice of Apparent Liability for Forfeiture for Eureka County TV District (dated June 26, 2023).

¹¹ 47 U.S.C. § 503(b).

¹² 47 CFR § 1.80.

¹³ *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).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ See NAL at 5, para. 14.

by reference to the financial documentation submitted.¹⁶ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission recognizes that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁷ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁸

7. Here, the Licensee provided financial documents to demonstrate that the proposed forfeiture of \$13,500 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,¹⁹ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.²⁰ Consistent with precedent and based on the financial documentation provided, the proposed forfeiture does not appear to be excessive and we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's history of compliance and the unique facts and circumstances presented, notably the fact that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to \$891 is appropriate for the violations involved in this case.²¹ This amounts to \$99 per station.

8. Accordingly, we have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We find that Licensee willfully²² violated section 73.3539(a) of the Rules.²³ However, for the reasons set forth above, we find that reducing the cumulative forfeiture to eight hundred and ninety one dollars (\$891) is warranted.

¹⁶ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), modified, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁷ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁸ *Id.*

¹⁹ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

²⁰ See e.g., *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period). *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

²¹ See *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (Paid May 18, 2023).

²² Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

²³ 47 CFR § 73.3539(a).

IV. ORDERING CLAUSES

9. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.283 and 1.80, that Eureka County TV District, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$891 for its apparent willful violation of section 73.3539 of the Commission's rules, 47 CFR § 73.3539(a).

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's CORES (the Commission's online payment system),²⁴ 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:²⁵

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. 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).²⁶ 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

²⁴ Payments made using the Commission's CORES system do not require the submission of an FCC Form 159.

²⁵ 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.

²⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

financial institution that the designated account has authorization to accept ACH transactions.

11. 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 20554.²⁷ 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.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Eureka County TV District, P.O. Box 633, Eureka, NV 89316. A copy shall also be sent to its counsel, Ted Beutel, Esq. by electronic mail to TBeutel@EurekaCountyNV.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁷ See 47 CFR § 1.1914.

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

In the Matter of)	
)	
EUREKA COUNTY TV DISTRICT	)	Facility ID Nos.: 183871, 183873, 185329,
	)	185344, 185345, 185346, 185349, 185350
Licensee of Stations K26JY-D, Duckwater, NV;	)	NAL/Acct. No.: 202341420011
K19IM-D, Duckwater, NV; K17NV-D, Eureka,	)	FRN: 0007744964
NV; K16IZ-D, Eureka, NV; K23LF-D, Eureka,	)	LMS File No. 201174
NV; K28LM-D, Eureka, NV; K35KM-D, Eureka,)	
NV; and K14OB-D, Eureka, NV)	

FORFEITURE ORDER

Adopted: August 21, 2023

Released: August 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 seven hundred and ninety two dollars (\$792) to Eureka County TV District (Licensee), licensee of K26JY-D, Duckwater, Nevada; K19IM-D, Duckwater, Nevada; K17NV-D, Eureka, Nevada; K16IZ-D, Eureka, Nevada; K23LF-D, Eureka, Nevada; K28LM-D, Eureka, Nevada; K35KM-D, Eureka, Nevada; and K14OB-D, Eureka, Nevada (Stations). 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 Stations (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 Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.³ The application was not filed until September 29, 2022. The Licensee provided no explanation for its untimely filing of the Application.

3. On March 27, 2023, we issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of twelve thousand dollars (\$12,000) to Licensee for its apparent violations of section 73.3539(a) of the Rules.⁴ The NAL gave the

¹ See 47 CFR § 73.3539; Application of Eureka County TV District for Renewal of License, LMS File No. 201174 (filed Sep. 29, 2022). K26JY-D, K19IM-D, K17NV-D, K16IZ-D, K23LF-D, K28LM-D, K35KM-D, K14OB-D, are each digital television translators. In this case, as is permitted, the licensee filed for renewal of the of the licenses of the Stations in a single renewal application.

² *Id.* § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

⁴ *Eureka County TV District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-256 (Vid. Div. Mar. 27, 2023) (NAL).

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

4. On April 13, 2023, the Licensee provided a response requesting reduction or cancellation of the proposed forfeiture based on Licensee's claimed inability to pay it, indicating that the late filed renewals were the result of staff turnover.⁶ The Licensee's response also noted that it served a sparsely populated rural area, covering "about 5,000 square miles while serving the approximately 2,000 residents."⁷ On April 19, 2023, the Licensee supplemented its response with documentation that included financial documents for fiscal year 2022, and forecasts for fiscal years 2023 and 2024.⁸ This amendment also notes that, as a special tax district under Nevada State law, the Licensee's only dedicated source of funds are annual assessments on local taxpayers.⁹ On June 26, 2023, at the request of Bureau staff, the Licensee supplemented their request for relief with financial audits that included, among other things, the Licensee's revenues for fiscal years 2020, 2021, and 2022 in order to demonstrate that imposition of the proposed forfeiture would be excessive.¹⁰

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),¹¹ section 1.80 of the Rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ 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.¹⁴

6. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹⁵ Any claim of inability to pay must specifically identify the basis for the claim

⁵ *Id.* at para. 10.

⁶ Response to Notice of Apparent Liability for Forfeiture of Eureka County TV District (dated April 13, 2023) (Response).

⁷ Response at 4.

⁸ First Amendment to Response to Notice of Apparent Liability for Forfeiture for Eureka County TV District (dated April 19, 2023) (First Amendment).

⁹ First Amendment at 2.

¹⁰ Second Amendment to Response to Notice of Apparent Liability for Forfeiture for Eureka County TV District (dated June 26, 2023).

¹¹ 47 U.S.C. § 503(b).

¹² 47 CFR § 1.80.

¹³ *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).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ See *NAL* at 5, para. 14.

by reference to the financial documentation submitted.¹⁶ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission recognizes that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁷ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁸

7. Here, the Licensee provided financial documents to demonstrate that the proposed forfeiture of \$12,000 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,¹⁹ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.²⁰ Consistent with precedent and based on the financial documentation provided, the proposed forfeiture does not appear to be excessive and we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's history of compliance and the unique facts and circumstances presented, notably the fact that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to \$792 is appropriate for the violations involved in this case.²¹ This amounts to \$99 per station.

8. Accordingly, we have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We find that Licensee willfully²² violated section 73.3539(a) of the Rules.²³ However, for the reasons set forth above, we find that reducing the cumulative forfeiture to seven hundred and ninety two dollars (\$792) is warranted.

¹⁶ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), modified, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁷ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁸ *Id.*

¹⁹ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

²⁰ See e.g., *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period). *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

²¹ See *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (Paid May 18, 2023).

²² Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

²³ 47 CFR § 73.3539(a).

IV. ORDERING CLAUSES

9. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.283 and 1.80, that Eureka County TV District, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$792 for its apparent willful violation of section 73.3539 of the Commission's rules, 47 CFR § 73.3539(a).

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's CORES (the Commission's online payment system),²⁴ 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:²⁵

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 270000001. 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).²⁶ 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

²⁴ Payments made using the Commission's CORES system do not require the submission of an FCC Form 159.

²⁵ 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.

²⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

financial institution that the designated account has authorization to accept ACH transactions.

11. 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 20554.²⁷ 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.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Eureka County TV District, P.O. Box 633, Eureka, NV 89316. A copy shall also be sent to its counsel, Ted Beutel, Esq. by electronic mail to TBeutel@EurekaCountyNV.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁷ See 47 CFR § 1.1914.

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

In the Matter of)	
)	
EUREKA COUNTY TV DISTRICT	)	Facility ID Nos.: 183874, 183875, 185445,
	)	185493, 185494, 185496, 185501
Licensee of Stations K14NU-D, Beowawe, NV;	)	NAL/Acct. No.: 202341420012
K21OS-D, Beowawe, NV; K18JG-D, Beowawe,	)	FRN: 0007744964
NV; K24JL-D, Beowawe, NV; K26KG-D,	)	LMS File No. 201182
Beowawe, NV; K28LH-D, Beowawe, NV; and)	
K30LB-D, Beowawe, NV)	

FORFEITURE ORDER

Adopted: August 21, 2023

Released: August 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 six hundred and ninety three dollars (\$693) to Eureka County TV District (Licensee), licensee of K14NU-D, Beowawe, Nevada; K21OS-D, Beowawe, Nevada; K18JG-D, Beowawe, Nevada; K24JL-D, Beowawe, Nevada; K26KG-D, Beowawe, Nevada; K28LH-D, Beowawe, Nevada; and K30LB-D, Beowawe, Nevada (Stations). 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 Stations (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 Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.³ The application was not filed until September 29, 2022. The Licensee provided no explanation for its untimely filing of the Application.

3. On March 31, 2023, we issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of ten thousand five hundred dollars (\$10,500) to Licensee for its apparent violations of section 73.3539(a) of the Rules.⁴ The *NAL*

¹ See 47 CFR § 73.3539; Application of Eureka County TV District for Renewal of License, LMS File No. 201182 (filed Sep. 29, 2022). K14NU-D, K21OS-D, K18JG-D, K24JL-D, K26KG-D, K28LH-D, K30LB-D are each digital television translators. In this case, as is permitted, the licensee filed for renewal of the of the licenses of the Stations in a single renewal application.

² *Id.* § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

⁴ *Eureka County TV District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-271 (Vid. Div. Mar. 31, 2023) (*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

4. On April 13, 2023, the Licensee provided a response requesting reduction or cancellation of the proposed forfeiture based on the Licensee's claimed inability to pay it, indicating that the late filed renewals were the result of staff turnover.⁶ The Licensee's response also noted that it served a sparsely populated rural area, covering "about 5,000 square miles while serving the approximately 2,000 residents."⁷ On April 19, 2023, the Licensee supplemented its response with documentation that included financial documents for fiscal year 2022, and forecasts for fiscal years 2023 and 2024.⁸ This amendment also notes that, as a special tax district under Nevada State law, the Licensee's only dedicated source of funds are annual assessments on local taxpayers.⁹ On June 26, 2023, at the request of Bureau staff, the Licensee supplemented their request for relief with financial audits that included, among other things, the Licensee's revenues for fiscal years 2020, 2021, and 2022 in order to demonstrate that imposition of the proposed forfeiture would be excessive.¹⁰

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),¹¹ section 1.80 of the Rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ 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.¹⁴

6. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹⁵ Any claim of inability to pay must specifically identify the basis for the claim

⁵ *Id.* at para. 10.

⁶ Response to Notice of Apparent Liability for Forfeiture of Eureka County TV District (dated April 13, 2023) (Response).

⁷ Response at 4.

⁸ First Amendment to Response to Notice of Apparent Liability for Forfeiture for Eureka County TV District (dated April 19, 2023) (First Amendment).

⁹ First Amendment at 2.

¹⁰ Second Amendment to Response to Notice of Apparent Liability for Forfeiture for Eureka County TV District (dated June 26, 2023).

¹¹ 47 U.S.C. § 503(b).

¹² 47 CFR § 1.80.

¹³ *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).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ See *NAL* at 5, para. 14.

by reference to the financial documentation submitted.¹⁶ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission recognizes that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁷ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁸

7. Here, the Licensee provided financial documents to demonstrate that the proposed forfeiture of \$10,500 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,¹⁹ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.²⁰ Consistent with precedent and based on the financial documentation provided, the proposed forfeiture does not appear to be excessive and we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's history of compliance and the unique facts and circumstances presented, notably the fact that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to \$693 is appropriate for the violations involved in this case.²¹ This amounts to \$99 per station.

8. Accordingly, we have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We find that Licensee willfully²² violated section 73.3539(a) of the Rules.²³ However, for the reasons set forth above, we find that reducing the cumulative forfeiture to six hundred and ninety three dollars (\$693) is warranted.

¹⁶ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), modified, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁷ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁸ *Id.*

¹⁹ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

²⁰ See e.g., *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period). *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

²¹ See *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (Paid May 18, 2023).

²² Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

²³ 47 CFR § 73.3539(a).

IV. ORDERING CLAUSES

9. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.283 and 1.80, that Eureka County TV District, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$693 for its apparent willful violation of section 73.3539 of the Commission's rules, 47 CFR § 73.3539(a).

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's CORES (the Commission's online payment system),²⁴ 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:²⁵

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- 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

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²⁵ 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.

²⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

financial institution that the designated account has authorization to accept ACH transactions.

11. 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 20554.²⁷ 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.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Eureka County TV District, P.O. Box 633, Eureka, NV 89316. A copy shall also be sent to its counsel, Ted Beutel, Esq. by electronic mail to TBeutel@EurekaCountyNV.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁷ See 47 CFR § 1.1914.



PUBLIC NOTICE

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

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

DA 23-738
August 22, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 37 (SOUTH CAROLINA) 700 MHZ AND 800 MHZ REGIONAL PLANNING
COMMITTEES TO HOLD MEETINGS

PR Docket No. 93-78 and WT Docket 02-378

The Region 37 (South Carolina)¹ Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Wednesday, October 11, 2023. Beginning at 9:00 a.m., the 800 MHz RPC will convene at the Sheraton Myrtle Beach, 2101 North Oak St., Myrtle Beach, SC 29577.

The agenda for the 800 MHz meeting includes:

- Call to Order – Linn Skipper
- Old Business
- New Business – Linn Skipper
- Adjourn

Immediately following the 800 MHz RPC meeting, the 700 MHz RPC will convene at the same location.

The agenda for the 700 MHz includes:

- Call to Order – Linn Skipper
- Old Business
- New Business – Linn Skipper
- Adjourn

These meetings are open to the public. All eligible public safety providers in Region 37 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in the planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 37 should plan to attend.

¹Region 37 (South Carolina) 700 MHz and 800 MHz regional planning area consists of the entire state of South Carolina.

For further information, please contact:

Linn Skipper
Chairman
Radio System Manager
City of Sumter Police Department
335 N. Lafayette Dr.
Sumter, SC 29154
Phone: 803-983-1041
Email: lskipper@sumtersc.gov

John Carter
Vice-Chair
Electronics/Communications Manager
Department of Public Safety Communications York County Government
149 West Black Street
P.O. Box 12430
Rock Hill SC, 29730
Phone: 803-909-7504
Mobile: 803-329-0911
Email: john.carter@yorkcountygov.com

- FCC -



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
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DA 23-739

Released: August 21, 2023

RECHARTERING OF THE PRECISION AGRICULTURE CONNECTIVITY TASK FORCE AND REQUEST FOR NOMINATIONS FOR MEMBERSHIP

GN Docket No. 19-329

The Federal Communications Commission (Commission or FCC) is seeking nominations for membership on the Task Force for Reviewing Connectivity and Technology Needs of Precision Agriculture in the United States (Task Force), a federal advisory committee that provides advice and recommendations to the Commission on accelerating the deployment of broadband Internet access service on unserved agriculture land to promote precision agriculture, including nominations for membership on one of its working groups.¹ The Task Force will perform duties and submit reports consistent with sections 12511(b)(3)(A) and (b)(5) of the Agriculture Improvement Act of 2018, Pub. L. 115-334, 132 Stat 4490 (2018 Farm Bill). Along with the statutory requirements, we intend that the work of the Task Force and its working groups will include consideration of how connectivity can improve sustainability in agricultural production.² Following consultation with the General Services Administration (GSA), the Commission anticipates renewing the charter of the Task Force with an expected starting date no later than December 2, 2023 and a termination date of January 1, 2025.³

Nominations for membership to the Task Force or its working groups should be submitted to the FCC no later than September 20, 2023. Procedures for submitting nominations are set forth below, and applications should be sent by email to PrecisionAgTF@fcc.gov.

MISSION

In consultation with the Secretary of Agriculture (Secretary), or a designee of the Secretary, and in collaboration with public and private stakeholders in the agriculture and technology fields, the Task Force will continue to:

- identify and measure current gaps in the availability of broadband Internet access service on agricultural land;

¹ The four Working Groups are: (1) Mapping and Analyzing Connectivity on Agricultural Lands; (2) Examining Current and Future Connectivity Demand for Precision Agriculture; (3) Encouraging Adoption of Precision Agriculture and Availability of High-Quality Jobs on Connected Farms; and (4) Accelerating Broadband Deployment on Unserved Agricultural Lands. These Working Groups may change at the discretion of the FCC Chairwoman.

² See U.S. Dept. of Agriculture, *Sustainable Agricultural Productivity Growth: What, Why and How* (visited Aug. 8, 2023), <https://www.usda.gov/oce/sustainability/spg-faqs>.

³ Pursuant to statute, the Task Force will terminate on January 1, 2025. 2018 Farm Bill, sec. 12511(b)(6).

- develop policy recommendations to promote the rapid, expanded deployment of broadband Internet access service on unserved agricultural land, with a goal of achieving reliable capabilities on 95 percent of agricultural land in the United States by 2025;
- promote effective policy and regulatory solutions that encourage the adoption of broadband Internet access service on farms and ranches and promote precision agriculture;
- recommend specific new rules or amendments to existing rules of the Commission that the Commission should issue to achieve the goals and purposes of the policy recommendations described in the second bullet in this list;
- recommend specific steps that the Commission should take to obtain reliable and standardized data measurements of the availability of broadband Internet access service as may be necessary to target funding support, from future programs of the Commission dedicated to the deployment of broadband Internet access service, to unserved agricultural land in need of broadband Internet access service; and
- recommend specific steps that the Commission should consider to ensure that the expertise of the Secretary and available farm data are reflected in future programs of the Commission dedicated to the infrastructure deployment of broadband Internet access service and to direct available funding to unserved agricultural land where needed.⁴

In addition, the Task Force will continue to annually submit to the Chairwoman of the Commission a report, which shall be made public, that details:

- the status of fixed and mobile broadband Internet access service coverage of agricultural land;
- the projected future connectivity needs of agricultural operations, farmers, and ranchers; and
- the steps being taken to accurately measure the availability of broadband Internet access service on agricultural land and the limitations of current, as of the date of the report, measurement processes.⁵

BACKGROUND

The Task Force is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act (FACA).⁶ As permitted by FACA, the Task Force is authorized to facilitate its work through informal subcommittees or other subgroups of the Task Force typically known as “working groups,” which shall report their activities and recommendations to the Task Force as a whole.

Consistent with Executive Order 14035 (June 25, 2021) and other governing law, the Commission values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its federal advisory committees. The Commission’s federal advisory committees strive for a membership that reflects the diversity of the American people. For the Task Force, we strongly encourage applications for membership from diverse or historically underrepresented groups, including Socially Disadvantaged Farmers and Ranchers, as that term is defined by the U.S. Department of Agriculture.⁷

⁴ *Id.*, sec. 12511(b)(3)(A).

⁵ *Id.*, sec. 12511(b)(5).

⁶ 5 U.S.C. App. 2.

⁷ USDA Economic Research Service, *Socially Disadvantaged, Beginning, Limited Resource, and Female Farmers and Ranchers* (visited Aug. 8, 2023), <https://www.ers.usda.gov/topics/farm-economy/socially-disadvantaged-beginning-limited-resource-and-female-farmers-and-ranchers/> (“The USDA defines socially disadvantaged farmers (continued....)”).

All members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission and shall promptly report to the Designated Federal Officer (DFO) any changes in representation during their tenure on the federal advisory committee.

Please note this *Public Notice* is not intended to be the exclusive method by which the Commission will solicit nominations to identify qualified candidates; however, all candidates for membership on the Task Force will be subject to the same evaluation criteria.

WHO MAY APPLY FOR MEMBERSHIP

The Commission seeks applications from:

- agricultural producers representing diverse geographic regions and farm sizes, including owners and operators of farms of less than 100 acres;
- agricultural producers representing tribal agriculture;
- Internet service providers, including regional or rural fixed and mobile broadband Internet access service providers and telecommunications infrastructure providers;
- representatives from the electric cooperative industry;
- representatives from the satellite industry;
- representatives from precision agriculture equipment manufacturers, including drone manufacturers, manufacturers of autonomous agricultural machinery, and manufacturers of farming robotics technologies;
- representatives from State and local governments; and
- representatives with relevant expertise in broadband network data collection, geospatial analysis, and coverage mapping.⁸

Voting members of the Task Force shall be selected by the Chairwoman of the Commission, in consultation with the Secretary and appropriate Commission staff. The Task Force shall be composed of not more than 15 voting members. The Secretary, or a designee of the Secretary, serves as an ex-officio, nonvoting member of the Task Force.

Voting members will be selected to balance the expertise and viewpoints that are necessary to address effectively the issues to be considered by the Task Force, consistent with the requirements under the statute establishing the Task Force, and will serve as representatives from one of the working groups specified above.

OBLIGATIONS OF MEMBERS AND TASK FORCE MEETINGS

Voting members and working group members will serve at the discretion of the Chairwoman of the Commission. All members must be willing to commit to the final term of service from the date of the recharter of the Task Force until its termination, and voting members should be willing and able to attend at least three (3) one- or two-day plenary Task Force meetings during the Task Force's term. Voting

(Continued from previous page) _____

and ranchers (SDFRs) as those belonging to groups that have been subject to racial or ethnic prejudice. SDFRs include farmers who are Black or African American, American Indian or Alaska Native, Hispanic or Latino, and Asian or Pacific Islander. For some but not all USDA programs, the SDFR category also includes women.”).

⁸ 2018 Farm Bill, sec. 12511(b)(4)(A).

members will be expected to participate in deliberations of at least one (1) working group. The time commitment for participation in any working group may be substantial.

Meetings of the full Task Force will be open to the public, and timely notice of each meeting shall be published in the Federal Register and further publicized through other appropriate vehicles. All such meetings will be held either at the Commission's headquarters in Washington, D.C. or virtually and will be fully accessible to individuals with disabilities. However, working group meetings may be conducted informally, using suitable technology to facilitate the meetings, subject to oversight by the DFO of the Task Force.

APPLICATION PROCEDURES AND DEADLINES FOR ORGANIZATIONAL NOMINATIONS

All nominations should be received by the Commission as soon as possible, but no later than September 20, 2023. All nominations, including the requisite statements listed below, should be submitted by email to PrecisionAgTF@fcc.gov.

No specific nomination form is required; however, each nomination for service on the Task Force or one of its working groups must include the following information:

- Name, title, and organization of the nominee; Nominee's mailing address, e-mail address, and telephone number;
- A description of the organization's business, including the business sector or other interests that are relevant to the business of the Task Force, and a statement of the benefit of having the organization represented on the Task Force or a working group;
- A statement summarizing the nominee's qualifications and reasons why the nominee should be appointed to the Task Force or a working group, including a brief narrative detailing the nominee's involvement in issues relevant to the Task Force as well as a current resume of the nominee;
- A statement by the organization indicating a willingness to have its representative serve on the Task Force or working group for its full term, attend at least three Task Force meetings if chosen for membership on the Task Force, and participate in at least one working group; and
- An acknowledgement that neither the organization nor its representative will receive reimbursement of travel expenses or honoraria from the Task Force.

An organizational applicant nominating a representative to serve on its behalf on the Task Force or a working group must submit a written confirmation by an authorized person (e.g., organization or company official) that such organization or company wants the nominee to represent it. The nominating official must possess the executive authority or hold a sufficiently high-level position with the organization to select a representative whose actions will be legally binding on the organizational applicant. For example, this confirmation may be in the following format: "I am [insert official's name], the [insert official's title] at the [insert name of organization - e.g., company, government entity, trade association, *etc.*], with responsibilities for [concise description of position]. My organization would like [insert proposed member's name], who is currently [an employee of/consultant/attorney to the company] to serve as our representative on the Commission's Task Force for Reviewing Connectivity and Technology Need of Precision Agriculture in the United States."

For nominees seeking to represent an entity that is a party to an FCC contract or subcontract or providing services for the benefit of the FCC under contract or subcontract, or in the case of any applicant or nominee who is individually a party to such a contract or providing services for the benefit of the FCC under such a contract, the nomination must include the following:

- A general description of the contract/agreement;

- A description of the product/services that the applicant provides pursuant to the contract/agreement;
- A list of all parties to the contract/agreement;
- The name of the Commission contracting officer (if known); and,
- A certification made by the applicant or nominee that the applicant or nominee has provided written notice to the contracting officer and the FCC Manager, Contracts and Purchasing Center, that the applicant or representative nominee, as applicable, has applied for membership on the Commission's Task Force.

In addition, organizational nominees are required to disclose whether they represent clients before the FCC or represent clients in matters that may come before the Task Force, other than representing the organizational applicant that has nominated the proposed representative for service on the Task Force. Each nominee shall provide with the application all details of any such representation.

APPLICATION PROCEDURES FOR INDIVIDUALS TO SERVE AS SGE MEMBERS

As appropriate, members may also be appointed for their individual expertise as "Special Government Employees" (SGEs). Applicants possessing expertise or perspectives of interest to the Task Force who have requested to serve in an individual capacity as an SGE shall be eligible only if they are not federally registered lobbyists. SGEs are subject to a variety of restrictions under the conflict-of-interest statutes, 18 U.S.C. § 203 et seq., and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. SGEs must file confidential employee financial disclosure reports prior to beginning their service and annually thereafter. SGEs will also be subject to ethics restrictions in section 4(b) of the Communications Act, 47 U.S.C. § 154(b), and in the Commission's rules, 47 CFR Part 19 and 5 CFR Parts 3901 and 3902.

Nominations should be submitted to the Commission as soon as possible, but no later than September 20, 2023. All nominations, including the requisite statements listed below, should be submitted by e-mail to PrecisionAgTF@fcc.gov.

Individuals seeking to serve as SGE members of the Task Force or one of its working groups should include the following application information:

- Name and title of the applicant; current mailing address, email address, and telephone number;
- A statement summarizing the applicant's qualifications and reasons why the applicant should be appointed to the Task Force or a working group. That statement shall include the individual's specific knowledge or expertise that is relevant to the work of the Task Force, including a statement that the applicant is not a registered lobbyist (as noted above, financial and other additional disclosures may also be required);
- A statement that the applicant does not have a contractual or other financial agreement (including as a subcontractor) with the Task Force;
- A statement indicating a willingness to serve on the Task Force or a working group for its full term, a commitment to attend at least three meetings per year if chosen for the Task Force, and a commitment to participate in at least one working group;
- An acknowledgement that the individual will not be entitled to receive reimbursement of travel expenses or payment of honoraria or other compensation from the Commission;
- A current resume;
- A statement that the applicant does not have clients with matters before the FCC or with matters which may come before the Task Force.

ACCESSIBLE FORMATS AND FURTHER INFORMATION

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

Additional information about the Task Force is available here, <https://www.fcc.gov/task-force-reviewing-connectivity-and-technology-needs-precision-agriculture-united-states>, or please contact Christi Shewman, Designated Federal Officer, at (202) 418-0646, or Christi.Shewman@fcc.gov; Emily Caditz, Deputy Designated Federal Officer, at (202) 418-2268, or Emily.Caditz@fcc.gov; Thomas Hastings, Deputy Designated Federal Officer, at (202) 418-1343, or Thomas.Hastings@fcc.gov.

- FCC -

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

In the Matter of)	
)	
Update to Publication for Television Broadcast	)	MB Docket No. 22-239
Station DMA Determinations for Cable and)	
Satellite Carriage)	

ORDER

Adopted: August 21, 2023

Released: August 21, 2023

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Order, we conform section 76.66(e) of the Commission's rules to the requirements of the Communications Act, correcting errors that were inadvertently introduced in the prior Report and Order in this docket.

II. BACKGROUND

2. In November of 2022, the Commission adopted the *Nielsen Update Order*, which revised Commission rules to use the Nielsen Company's Local TV Station Information Report as the successor publication to the annual Station Index Directory and United States Television Household Estimates in determining a television station's designated market area for satellite and cable carriage under the Commission's regulations.¹ Pursuant to that change, section 76.66(e)(3) of the Commission's rules was revised, and the time periods mentioned in that rule were brought up to date.² These updates were intended to reflect the upcoming statutorily-established carriage election cycle periods,³ but contained errors.

III. DISCUSSION

3. In this Order, we revise section 76.66(e)(3) of the Commission's rules in order to conform to the requirements of the Communications Act. Specifically, we correct the references to the upcoming carriage election cycles in the first and second sentences to confirm that the next cycle runs from 2024-2026 (not 2024-2027), and the following cycle runs from 2027-2029 (not 2028-2030).

4. We find that notice and comment procedures are unnecessary under the "good cause" exception of the Administrative Procedure Act (APA) because correcting the references in section 76.66(e)(3) entails no exercise of our administrative discretion.⁴ The dates of each carriage cycle are long-established as a matter of law, and the reference to these dates in section 76.66 is merely as an aid to

¹ *Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage*, Report and Order, FCC 22-89, MB Docket No. 22-239 (rel. Nov. 18, 2022).

² *Id.* at Appendix B, Final Rules, para. 3.

³ 47 USC 325(b)(3)(B) ("The regulations required by subparagraph (A) shall require that television stations, within one year after October 5, 1992, and every three years thereafter, make an election between the right to grant retransmission consent under this subsection and the right to signal carriage under section 534 of this title.").

⁴ 5 U.S.C. § 553(b)(3)(B) (notice and comment is not necessary "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

understanding. The rule change does not establish additional regulatory obligations or burdens on regulated entities. Moreover, the public interest would not be served by seeking notice and comment on the corrections because the dates reflected in the rule are plainly wrong and contrary to the dates set by statute. Seeking comment on whether these errors should be corrected or not would be a waste of Commission resources and any further delay in making these corrections could create confusion among regulatees. Consequently, we find notice and comment procedures are unnecessary for this action.

IV. PROCEDURAL MATTERS

5. *Paperwork Reduction Act Analysis.* This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).⁵ In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.⁶

6. *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 Bureau will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

7. *Regulatory Flexibility Act.* Because these rule changes are being adopted without notice and comment, the Regulatory Flexibility Act⁷ does not apply.

V. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 303, 325, 335, 338, 339, 340, 403, and 614 of the Communications Act, 47 U.S.C §§ 151, 152, 154(i), 154(j), 303, 325, 335, 338, 339, 340, 403, and 534 this Order **IS ADOPTED**.

9. **IT IS FURTHER ORDERED** that Part 76 of the Commission’s Rules **IS AMENDED** as set forth in Appendix A and such rule amendments will become effective 30 days after publication in the Federal Register.

10. **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 Report and Order to Congress and to the Government Accountability Office.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵ The Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

⁶ The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. 3506(c)(4).

⁷ 5 U.S.C. § 601 *et seq.* *See id.* § 601(2).

APPENDIX A

FINAL RULES

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.66 is amended by revising paragraph (e)(3) as follows:

§ 76.66 Satellite broadcast signal carriage.

(e) ***

(3) A satellite carrier shall use the October 2021 Nielsen Local TV Station Information for the retransmission consent-mandatory carriage election cycle commencing on January 1, 2024 and ending on December 31, ~~2026~~2027. The October 2024 Nielsen Local TV Station Information Report shall be used for the retransmission consent-mandatory carriage election cycle commencing January 1, ~~2027~~2028, and ending December 31, ~~2029~~2030, and so forth using the publications for the October two years prior to each triennial election pursuant to this section. Provided, however, that a county deleted from a market by Nielsen need not be subtracted from a market in which a satellite carrier provides local-into-local service, if that county is assigned to that market in the 1999–2000 Nielsen Station Index Directory or any subsequent issue of that publication, or the Local TV Station Information Report commencing with October 2021, and every three years thereafter (i.e., October 2024, October 2027, etc.). A satellite carrier may determine which local market in the State of Alaska will be deemed to be the relevant local market in connection with each subscriber in an area in the State of Alaska that is outside of a designated market, as described in paragraph (e)(2) of this section.



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 23-741

Released: August 22, 2023

COMMENT AND REPLY COMMENT DATES SET FOR FM DIGITAL POWER NPRM

MB Docket No. 22-405

Comment Date: September 21, 2023
Reply Comment Date: October 6, 2023

On July 31, 2023, the Commission adopted an Order and Notice of Proposed Rulemaking to update its rules to give FM and Low Power FM (LPFM) applicants more flexibility to increase digital power levels.¹ The Commission sought comment on specific rule revisions updating the methodology for a digital FM or LPFM applicant to calculate the maximum permissible digital power level, and to allow asymmetric power operation on the digital sidebands. The *NPRM* set deadlines for filing comments and reply comments at 30 and 45 days, respectively, after publication of the *NPRM* in the Federal Register.²

By this *Public Notice*, the Media Bureau announces that the *NPRM* was published in the Federal Register on August 22, 2023.³ Comments must be submitted no later than September 21, 2023. Reply Comments must be submitted no later than October 6, 2023. Commenters should follow the filing instructions provided in paragraph 35 of the *NPRM*.⁴ The *NPRM* is also available on the Commission's website.⁵

For additional information on this proceeding, contact Thomas S. Nessinger, Thomas.Nessinger@fcc.gov, or Albert Shuldiner, Albert.Shuldiner@fcc.gov, of the Media Bureau, Audio Division, (202) 418-2700. Press inquiries should be directed to Janice Wise, (202) 418-8165.

By the Chief, Media Bureau

--FCC--

¹ *Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems*, MB Docket No. 22-405, Order and Notice of Proposed Rulemaking, FCC 23-61 (rel. Aug. 1, 2023) (*NPRM*).

² See *id.* at 1.

³ *Modifying Rules for FM Terrestrial Digital Audio Broadcasting Systems*, 88 Fed. Reg. 57033 (Aug. 22, 2023).

⁴ *NPRM* at 16, para. 35.

⁵ See <https://docs.fcc.gov/public/attachments/FCC-23-61A1.pdf>.



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 23-742

Released: August 22, 2023

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
AVAILABILITY OF 911 RELIABILITY CERTIFICATION SYSTEM
FOR ANNUAL RELIABILITY CERTIFICATIONS**

PS Docket Nos. 13-75, 11-60

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) announces that the Federal Communications Commission's (Commission's) 911 Reliability Certification System is now open for filing annual reliability certifications, which are due on **October 16, 2023**.¹ Covered 911 service providers shall file certifications using the Commission's online portal at <https://apps2.fcc.gov/rcs911/>.²

The Commission's rules require covered 911 service providers to take reasonable measures to provide reliable 911 service with respect to: (i) 911 circuit diversity; (ii) central office backup power; and (iii) diverse network monitoring.³ Covered 911 service providers must certify as to their compliance with each of these three requirements or to their implementation of reasonable alternative measures.⁴

Covered 911 service providers may register new users on the login page at <https://apps2.fcc.gov/rcs911/>. As with the Commission's Network Outage Reporting System (NORS), there are two types of users for the 911 Reliability Certification System: inputters and coordinators. Inputters only have access to information that they submit, while coordinators have access to all information submitted by their companies. Users responsible for limited portions of a company's certification (e.g., particular service areas or topics such as circuit diversity, backup power, or network monitoring) should register as inputters, while users responsible for overseeing each company's

¹ See *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Report and Order, 28 FCC Rcd 17476, 17497, 17534, paras. 65, 163 (2013) (*911 Reliability Certification Order*).

² See 47 CFR § 9.19(a)(4) (defining covered 911 service providers as entities that "[p]rovide[] 911, E911, or NG911 capabilities such as call routing, automatic location information (ALI), automatic number identification (ANI), or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority," or that "[o]perate[] one or more central offices that directly serve a PSAP").

³ 47 CFR § 9.19(c); see also *Public Safety and Homeland Security Bureau Announces Effective Dates of 911 Reliability Certification and PSAP Outage Notification Requirements*, Public Notice, 29 FCC Rcd 13900, 13901 (2014).

⁴ See 47 CFR § 9.19. The Commission has clarified that, under section 9.19 (formerly section 12.4) of its rules, covered 911 service providers may implement and certify an alternative measure for any of the specific certification elements, as long as they "provide an explanation of how such alternative measures are reasonably sufficient to mitigate the risk of failure," which "should include an explanation of how the alternative will mitigate such risk at least to a comparable extent as the measures specified in our rules." *Improving 911 Reliability; Reliability and Continuity of Communications Networks, Including Broadband Technologies*, Order on Reconsideration, 30 FCC Rcd 8650, 8651, para. 2 (2015).

certification as a whole should send a request to 911ReliabilityCertification@fcc.gov to receive coordinator status. For security purposes, these requests are handled on an individual basis.

Companies that serve numerous Public Safety Answering Points (PSAPs) or service areas may choose to enter their responses in an Excel spreadsheet, which is available for download on the main menu page of the 911 Reliability Certification System.⁵ Once users enter all certification information into the 911 Reliability Certification System, the system provides a link to upload a signed attestation from a company's certifying official that such information is true and correct.⁶

More detailed instructions on how to complete the annual reliability certifications are available as Frequently Asked Questions (FAQs) at https://apps2.fcc.gov/rcs911/911RCS_FAQ.html, and in a User Manual posted on the main menu of the 911 Reliability Certification System.

For further information about the 911 Reliability Certification System and/or the filing process, please contact 911ReliabilityCertification@fcc.gov. For further information about the 911 reliability rules, please contact Scott Cinnamon at (202) 418-2319 or Scott.Cinnamon@fcc.gov.

-FCC-

⁵ Please note that only users registered as coordinators will have access to the Excel upload and download capability.

⁶ See 47 CFR § 9.19(a)(2)-(3) (defining certification as “[a]n attestation by a certifying official, under penalty of perjury, that a covered 911 service provider: (i) Has satisfied the obligations of paragraph (c) of this section. . . . [t]he term ‘certification’ shall include both an annual reliability certification under paragraph (c) of this section and an initial reliability certification under paragraph (d)(1) of this section;” and defining Certifying official as “[a] corporate officer . . . with supervisory and budgetary authority over network operations in all relevant service areas” and explaining attestation requirements).



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 23-743

Released: August 22, 2023

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

WC Docket No(s). 23-273

Comments Due: September 6, 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 **September 22, 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

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.").

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **September 6, 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
WC Docket No. 23-273, Comp. Pol. File No. 1856
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-273%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-273%22)))
Affected Service(s) – copper-based T-1 and Ethernet-Over-DSL services
Service Area(s) – Arizona, California, Delaware, Kansas, Louisiana, Maryland, New Mexico, Tennessee and Virginia
Authorized Date(s) – on or after September 22, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
Internet: <https://www.fcc.gov>
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DA 23-744

Released: August 22, 2023

RURAL DIGITAL OPPORTUNITY FUND POST-AUTHORIZATION DEFAULTS ANNOUNCED

AU Docket No. 20-34
WC Docket No. 19-126
WC Docket No. 10-90

By this Public Notice, the Wireline Competition Bureau (WCB) announces that Cuba City Telephone Exchange Co. (Cuba City) and Cal-Ore Communications, Inc. (Cal-Ore) have notified the Commission of their decisions to withdraw from the Rural Digital Opportunity Fund (RDOF) support program.¹ Cuba City and Cal-Ore's letters constitute notification to the Commission that these carriers are defaulting on their obligations to meet their service milestones.² At WCB's direction, the Universal Service Administrative Company (USAC) suspended future support payments for these support recipients, and we now direct USAC to recover RDOF support from Cuba City and Cal-Ore pursuant to the Commission's rules.³

On December 7, 2020, LICT Corporation (LICT) was announced as a RDOF winning bidder.⁴ LICT assigned its winning bids to its wholly-owned subsidiaries, Cuba City and Cal-Ore.⁵ Cuba City and Cal-Ore subsequently filed long-form applications seeking to become authorized to receive RDOF auction support for their winning bids.⁶ Cuba City was authorized in December 2021 to receive a total of \$540,329 in support over a 10-year term to offer voice and broadband service to 302 locations in Wisconsin, and Cal-Ore was authorized in February 2022 to receive a total of \$1,063,513.10 in support over a 10-year term to offer voice and broadband service to 235 locations in California.⁷

¹ Letter from Mark Harvey, President, Cuba City Telephone Exchange Co., to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34 et al. (filed Aug. 15, 2023) (Cuba City Withdrawal Letter); Letter from Dan Morrison, Cal-Ore Communications, Inc., to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-34 et al. (filed Aug. 15, 2023) (Cal-Ore Withdrawal Letter). Cuba City's Study Area Code is 330872 and Cal-Ore's Study Area Code is 549039.

² 47 CFR §§ 54.320(d), 54.802(c), 54.806(c). Cuba City remains an Alternative Connect America Cost Model support recipient. *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 (WCB 2019).

³ *Id.* §§ 54.804(c)(4)(i), 54.806(c).

⁴ *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced*; FCC Form 683 Due January 29, 2021, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888 (WCB/OEA 2020).

⁵ *417 Long-Form Applicants in the Rural Digital Opportunity Fund Phase I Auction (Auction 904)*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 4140 (WCB/OEA 2021).

⁶ *Id.*

⁷ *Rural Digital Opportunity Fund Support Authorized for 2,008 Winning Bids*; AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 17198, Attach. A (WCB/OEA 2021) (*Cuba City Authorization Public Notice*); *Rural Digital* (continued....)

Cuba City and Cal-Ore filed letters in the relevant dockets notifying the Commission of their decisions to withdraw from the RDOF support program in August 2023.⁸ Accordingly, we consider Cuba City and Cal-Ore to have defaulted on their RDOF service milestones. Each will receive no further RDOF auction support payments,⁹ and we hereby instruct USAC to recover funds consistent with the Commission's rules.¹⁰ While Cuba City and Cal-Ore will no longer receive RDOF support, they remain subject to recordkeeping rules for the high-cost program.¹¹ Cuba City and Cal-Ore also remain subject to all Eligible Telecommunications Carrier (ETC) obligations unless and until they follow the relevant procedures to relinquish their designations.¹² Additionally, Cuba City and Cal-Ore cannot discontinue voice service without Commission approval.¹³

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(Continued from previous page)

Opportunity Fund Support Authorized for 2,576 Winning Bids, AU Docket No. 20-34 et al., Public Notice, 37 FCC Red 1617, Attach. A (WCB/OEA 2022) (*Cal-Ore Authorization Public Notice*).

⁸ Cuba City Withdrawal Letter; Cal-Ore Withdrawal Letter.

⁹ See 47 CFR § 54.804(c)(4) ("Authorization to receive Rural Digital Opportunity Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted."). See also *Cuba City Authorization Public Notice*, 36 FCC Red at 17198-208; *Cal-Ore Authorization Public Notice*, 37 FCC Red at 1617-25 (providing a non-comprehensive summary of the RDOF requirements). After each support recipient notified WCB of its intent to withdraw from the RDOF support program, WCB immediately instructed USAC to suspend the support recipient's RDOF support payments. 47 CFR §§ 54.320(c), 54.806(b).

¹⁰ 47 CFR §§ 54.804(c)(4), 54.320(d)(2), 54.806(c). Cuba City and Cal-Ore's decisions to withdraw from the RDOF support program and not pursue further support constitute notification that they will not meet the final service milestone and that they will not come into compliance after a 12-month grace period or at any point during the support term. If a support recipient does not repay the required support amount within six months of receiving an invoice from USAC, the Bureau will authorize USAC to draw on the support recipient's letter of credit. *Id.* § 54.804(c)(4)(i).

¹¹ *Id.* § 54.320(b) ("All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding. All such documents shall be made available upon request to the Commission and any of its Bureaus or Offices, the Administrator, and their respective auditors.").

¹² 47 U.S.C. § 214(e)(4). Cuba City was designated as an ETC by the Public Service Commission of Wisconsin. *Application of Cuba City Telephone Exchange Company, Inc. to Expand its Eligible Telecommunications Carrier Service Area*, Docket No. 1460-TI-102, Order, PSC REF# 413122, Public Service Commission of Wisconsin (June 3, 2021). Cal-Ore was designated as an ETC by the California Public Utilities Commission. *Grants the Request of Five Carriers that Filed for Eligible Telecommunications Carrier Designation Pursuant to the Federal Communications Commission's Rural Digital Opportunity Fund Program*, Resolution T-17735, California Public Utilities Commission (June 3, 2021). Both carriers should follow the relevant state commission's rules to the extent they seek relinquishment.

¹³ 47 U.S.C. § 214(a); 47 CFR § 63.71.

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

In the Matter of)	
)	
Review of International Section 214	)	IB Docket No. 23-119
Authorizations to Assess Evolving National)	
Security, Law Enforcement, Foreign Policy,)	
and Trade Policy Risks;)	
)	
Amendment of the Schedule of Application	)	MD Docket No. 23-134
Fees Set Forth in Sections 1.1102 through)	
1.1109 of the Commission's Rules)	

ORDER

Adopted: August 22, 2023

Released: August 22, 2023

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

I. INTRODUCTION

1. On April 20, 2023, the Federal Communications Commission (Commission) adopted the *Evolving Risks Order and NPRM* to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission's rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended (Act).¹ In the Order, the Commission adopted a one-time collection of foreign ownership information (One-Time Information Collection) from international section 214 authorization holders (Authorization Holders).² In the NPRM, the Commission sought comment on proposed rules and possible alternative approaches, including alternatives for small entities, that will further the Commission's goal of ensuring that the Commission continually accounts for evolving public interest considerations associated with international section 214 authorizations following an initial grant of the authority.³ The comments on the NPRM are due by August 31, 2023 and reply comments by October 2, 2023.⁴

2. In this Order, we deny a Motion for Extension of Time (Motion) filed by INCOMPAS and Morgan, Lewis & Bockius, LLP (Morgan Lewis) seeking an extension of the deadlines to file comments and reply comments on the *Evolving Risks NPRM*. Second, we exempt qualifying Authorization Holders from disclosing certain details of their reportable foreign ownership in the One-

¹ *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119, MD Docket No. 23-134, Order and Notice of Proposed Rulemaking, FCC 23-28, 2023 WL 3152050 (Apr. 20, 2023) (*Evolving Risks Order and NPRM*).

² *Id.* at *1, para. 1.

³ *See id.* at *12, para. 24.

⁴ Federal Communications Commission, *Review of International Authorizations To Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees*, 88 Fed. Reg. 50486 (Aug. 1, 2023) (FCC Review of International Authorizations).

Time Information Collection. Finally, in anticipation of the One-Time Information Collection, we remind all Authorization Holders that they must have an FCC Registration Number (FRN) in order to file their responses.⁵

II. DENIAL OF MOTION FOR EXTENSION OF TIME

3. On August 7, 2023, INCOMPAS and Morgan Lewis, on behalf of its clients, filed a Motion for Extension of Time (Motion) requesting a 30-day extension of the comment and reply comment deadlines of the *Evolving Risks NPRM*, which, if granted, would move the comment date from August 31, 2023 to September 30, 2023, and the reply comment date from October 2, 2023 to November 1, 2023.⁶

4. In support of their Motion, INCOMPAS and Morgan Lewis state that “the questions posed by the Commission’s [*Evolving Risks NPRM*] involve complex economic, operational, and policy issues and will require [them] to closely consult with [their] respective members and clients.”⁷ INCOMPAS and Morgan Lewis further state that the comment due date “falls at the end of August,” a time when key staff of their members and clients “will not be available for consultation due to summer holidays.”⁸ They state that they are engaged in “a number of other proceedings . . . that also have similar due dates.”⁹ Additionally, they assert that additional time would enable parties to develop feedback on the proposals and provide the Commission “a more robust record with meaningful comment from key stakeholders.”¹⁰

5. We deny the Motion filed by INCOMPAS and Morgan Lewis. As set forth in section 1.46(a) of the Commission’s rules, “[i]t is the policy of the Commission that extensions of time shall not be routinely granted.”¹¹ We find nothing sufficiently unique or unusual in this instance that would warrant granting the extensions of the comment and reply comment deadlines. Moreover, the Commission made the *Evolving Risks NPRM* publicly available on April 25, 2023, and then published Federal Register notice providing 30 days thereafter for initial comments and an additional 30 days for reply comments, giving interested parties ample time to prepare their comments in advance of the deadlines.¹²

III. ONE-TIME INFORMATION COLLECTION

6. The *Evolving Risks Order* requires all Authorization Holders to respond to a One-Time Information Collection to update the Commission’s records regarding their foreign ownership.¹³ In the

⁵ *Evolving Risks Order and NPRM* at *11, para. 22.

⁶ Motion for Extension of Time of INCOMPAS and Morgan, Lewis & Bockius, LLP, IB Docket No. 23-119, MD Docket No. 23-134, at 1-2 (filed Aug. 7, 2023), <https://www.fcc.gov/ecfs/document/10807516728823/1> (Motion); see FCC Review of International Authorizations, 88 Fed. Reg. 50486.

⁷ Motion at 2.

⁸ *Id.*

⁹ *Id.* at 2-3 (providing that “[i]n the case of INCOMPAS, [they] are a small staff and are in the middle of several proceedings at the FCC, including 12 GHz, robocalls, MVPD pricing, and [they] are working on comments that are due to the Senate’s USF working group on August 25. Morgan Lewis represents numerous clients directly and indirectly in other ongoing FCC proceedings and transaction reviews, with varying deadlines”) (internal citations omitted).

¹⁰ *Id.* at 3.

¹¹ 47 CFR § 1.46.

¹² FCC Review of International Authorizations, 88 Fed. Reg. 50486.

¹³ *Evolving Risks Order and NPRM* at *9, para. 16.

Order, the Commission directed each Authorization Holder to identify its 10% or greater direct or indirect foreign interest holders that hold such equity and/or voting interests, or a controlling interest, in the Authorization Holder (Reportable Foreign Interest Holders) as of thirty (30) days prior to the filing deadline,¹⁴ and to certify as to the accuracy of the information provided.¹⁵ The Commission directed the Office of International Affairs (OIA) to conduct the information collection¹⁶ and directed OIA to take into account information recently provided to the Commission on the record that has not materially changed.¹⁷

7. Pursuant to the Commission's directive to take into account recently-provided information that has not changed, OIA adopts an exemption (Exemption) for Authorization Holders whose applications were granted within three years prior to the deadline of the One-Time Information Collection. The Exemption will reduce the burden for qualifying Authorization Holders while still allowing the Commission to collect necessary information from the One-Time Information Collection. Under this Exemption, qualifying Authorization Holders are exempt from answering questions in the One-Time Information Collection regarding the identities, specific equity and voting interests, and description of controlling interests, of their Reportable Foreign Interest Holders. Instead, Authorization Holders that qualify for the Exemption will be required to identify, on an aggregated basis, all of the citizenship(s) or place(s) of organization of their Reportable Foreign Interest Holders. Specifically, to qualify for the Exemption:

- (1) The Authorization Holder must have filed an application for an initial International Section 214 Authorization, modification, or *substantial* (not a *pro forma* filing) assignment or transfer of control of the authorization that was reviewed by the Executive Branch agencies and was granted by the Commission on or after [date 3 years before date of filing deadline, 2020]; and
- (2) There are no Reportable Foreign Interest Holders of the Authorization Holder other than those disclosed in the application (including any amendment), and there are no changes to the Reportable Foreign Interest Holders disclosed in the application (including any amendment) as of [date 30 days prior to filing deadline, 2023].¹⁸

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

IV. ONE-TIME INFORMATION COLLECTION - REQUIREMENT FOR AN FRN

9. In anticipation of the One-Time Information Collection, we remind all Authorization Holders that they must have an FRN to file their responses.¹⁹ OIA will conduct the One-Time Information Collection, including the creation of the forms, submit the information collection for Office of Management and Budget (OMB) review and, following OMB review, publish notice of the effective

¹⁴ *Id.* at *10, para. 18 & nn.73-74.

¹⁵ *Id.* at *10, para. 18.

¹⁶ *Id.* at *11, para. 21.

¹⁷ *Id.* (citing Letter from Angie Kronenberg, President, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 23-119, at 1-2 (filed April 14, 2023) (INCOMPAS *Ex Parte*)).

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

¹⁹ *Id.* at *11, para. 22.

date of the information collection requirement and the filing deadline in the Federal Register.²⁰ The filing deadline shall be no fewer than thirty (30) days following the effective date.²¹ We note that OIA will also issue a separate Public Notice announcing the deadline and will provide instructions for filing this information with the Commission.²²

10. It is important for all Authorization Holders to ensure they have or obtain an FRN. An FRN is the 10-digit number assigned to all individuals and entities that transact business with the Commission,²³ and it must be provided any time an Authorization Holder submits an application in ICFS.²⁴ As the Commission stated in the *Evolving Risks Order*, many international section 214 authorizations were granted to entities prior to the Commission requiring an FRN in 2001.²⁵ Such entities will need to obtain an FRN prior to filing their response to the information collection.²⁶

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to sections 0.19, 0.204, 0.351, and 1.46 of the Commission's rules, 47 CFR §§ 0.19, 0.204, 0.351, 1.46, that the Motion for Extension of Time is DENIED.

12. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 214, 218, 219, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 214, 218, 219, and 403, and sections 0.19, 0.204, and 0.351 of the Commission's rules, 47 CFR §§ 0.19, 0.204, 0.351, that the Exemption from responding to certain portions of the One-Time Information Collection, as described herein, is ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Denise Coca
Chief
Telecommunications and Analysis Division
Office of International Affairs

²⁰ *Id.* at *11, para. 21. On June 6, 2023, OMB granted approval of the new information collection adopted in the *Evolving Risks Order*. *Reporting On Foreign Ownership of International Section 214 Authorization Holders*, Notice of Office of Management and Budget Action, OMB Control No. 3060-1308 (June 6, 2023), https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202305-3060-001#; see FCC Review of International Authorizations, 88 Fed. Reg. 50486.

²¹ *Evolving Risks Order and NPRM* at *11, para. 21.

²² *Id.*

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

²⁴ *Evolving Risks Order and NPRM* at *11, para. 22.

²⁵ *Id.*

²⁶ *Id.* An authorization holder may obtain an FRN through the Commission’s CORES webpage. FCC, *Commission Registration System (CORES)*, <https://apps.fcc.gov/cores/userLogin.do> (last visited Aug. 22, 2023).



PUBLIC NOTICE

Federal Communications Commission
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Washington, DC 20554

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Internet: www.fcc.gov
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DA 23-746
August 22, 2023

The Office of International Affairs Denies Request to Extend the *Evolving Risks NPRM*'s Comment Cycle;

Exempts Qualifying International Section 214 Authorization Holders from Disclosing Certain Details of Reportable Foreign Ownership in the One-Time Information Collection; and

Reminds International Section 214 Authorization Holders of the FCC Registration Number (FRN) Requirement

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

By the Chief, Telecommunications and Analysis Division, Office of International Affairs

On April 20, 2023, the Federal Communications Commission (Commission) adopted the *Evolving Risks Order and NPRM* to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission's rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended (Act).¹ In the Order, the Commission adopted a one-time collection of foreign ownership information (One-Time Information Collection) from international section 214 authorization holders (Authorization Holders).² In the NPRM, the Commission sought comment on proposed rules and possible alternative approaches, including alternatives for small entities, that will further the Commission's goal of ensuring that the Commission continually accounts for evolving public interest considerations associated with international section 214 authorizations following an initial grant of the authority.³ The comments on the NPRM are due by August 31, 2023 and reply comments by October 2, 2023.⁴

Today, the Office of International Affairs released an Order⁵ that:

¹ *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119, MD Docket No. 23-134, Order and Notice of Proposed Rulemaking, FCC 23-28, 2023 WL 3152050 (Apr. 20, 2023) (*Evolving Risks Order and NPRM*).

² *Id.* at *1, para. 1.

³ *See id.* at *12, para. 24.

⁴ Federal Communications Commission, *Review of International Authorizations To Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees*, 88 Fed. Reg. 50486 (Aug. 1, 2023) (FCC Review of International Authorizations).

⁵ *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Sections* (continued....)

- Denied a Motion for Extension of Time filed by INCOMPAS and Morgan, Lewis & Bockius, LLP seeking an extension of the deadlines to file comments and reply comments on the *Evolving Risks NPRM*;⁶
- Exempts qualified Authorization Holders from disclosing certain details of their reportable foreign ownership in the One-Time Information Collection;⁷ and
- In anticipation of the One-Time Information Collection, reminds all Authorization Holders that they must have an FCC Registration Number (FRN) in order to file their responses.⁸

For additional information, contact Svantje Swider, Attorney Advisor, Telecommunications and Analysis Division, Office of International Affairs, at Svantje.Swider@fcc.gov or (202) 418-0772.

1.1102 through 1.1109 of the Commission's Rules, IB Docket No. 23-119, MD Docket No. 23-134, Order, DA 23-745 (OIA Apr. 22, 2023) (Order).

⁶ Motion for Extension of Time of INCOMPAS and Morgan, Lewis & Bockius, LLP, IB Docket No. 23-119, MD Docket No. 23-134, at 1-2 (filed Aug. 7, 2023), <https://www.fcc.gov/ecfs/document/10807516728823/1>; see FCC Review of International Authorizations, 88 Fed. Reg. 50486.

⁷ See Order, Section III.

⁸ *Evolving Risks Order and NPRM* at *11, para. 22. An authorization holder may obtain an FRN through the Commission's CORES webpage. FCC, *Commission Registration System (CORES)*, <https://apps.fcc.gov/core/userLogin.do> (last visited Aug. 22, 2023).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
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Internet: www.fcc.gov
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DA 22-747
Released: August 22, 2023

THE FCC'S PUBLIC SAFETY & HOMELAND SECURITY BUREAU ANNOUNCES DEACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR TROPICAL STORM HILARY

The Federal Communications Commission (FCC) has deactivated its Disaster Information Reporting System (DIRS) for Tropical Storm Hilary,¹ in coordination with the Department of Homeland Security Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency. Communications providers do not need to provide any additional reporting in DIRS in connection with this event. The FCC will, however, continue to monitor the status of communications services and work with providers and government partners as needed to support remaining restoration efforts.

Effective today, no further reports to DIRS are requested in response to Tropical Storm Hilary. Also, effective today, Network Outage Reporting System reporting obligations under Part 4 of the Commission's rules,² which were suspended for providers reporting in DIRS while DIRS was activated, are now again in effect for new network outages for the area covered by DIRS reporting for Tropical Storm Hilary.

If there are major changes, whether improvements or setbacks, to the status of communications in the affected area, the FCC asks communications providers to supply that information directly to FCC personnel at the contact information below as events occur. The FCC continues to be available to address emergency communications needs related to Tropical Storm Hilary 24 hours per day, seven days per week through our 24-hour Operations Center, which can be reached on (202) 418-1122 or FCCOPS@fcc.gov. This combination of measures will provide the Commission with the necessary situational awareness as service restoration continues.

The FCC appreciates the cooperation of all the communications providers that voluntarily submitted data into the DIRS in the aftermath of Tropical Storm Hilary. In disaster situations, information on the operational status of communications services provides critical situational awareness and supports effective emergency response and restoration efforts. The FCC published its final daily communications status report for Tropical Storm Hilary today, August 22, 2023.

For further information, please contact:

Michael Caiafa (202) 418-1311, (540) 834-7401 (cell), michael.caiafa@fcc.gov
David Ahn (571) 232-8487 (cell), (202) 418-0853, david.ahn@fcc.gov
FCC 24/7 Operations Center – 202-418-1122, fccoperationcenter@fcc.gov

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¹ DIRS is a voluntary, web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, can use to report communications infrastructure status and situational awareness information during times of crisis.

² 47 C.F.R. Part 4.

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

In the Matter of)	
)	
Major Market Broadcasting of New York Inc.	)	ICFS File No. SES-REG-20180606-01285
)	
Request for Waiver of Section 25.138(c)	)	IB Docket No. 20-205
of the Commission's Rules)	
)	
for Receive-Only Earth Station	)	Call Sign: E180704

MEMORANDUM OPINION AND ORDER

Adopted: August 25, 2023

Released: August 25, 2023

By the Chief, Satellite Policy and Programs Division, Space Bureau:

I. INTRODUCTION

1. With this Order, we deny the request of Major Market Broadcasting of New York Inc. (MMBNY) to waive our rules and allow its fixed-satellite service, receive-only earth station, Call Sign E180704, to remain eligible as an “incumbent earth station” in the 3.7-4.2 GHz frequency band, despite not being operational.¹ For the reasons stated herein, we find that MMBNY has failed to provide sufficient information to determine that this waiver of our rules is in the public interest. Because it is not operational, MMBNY’s authorization for E180704 has automatically terminated by operation of rule and E180704 is removed from the incumbent earth station list.²

II. BACKGROUND

2. MMBNY’s request is made within the broader framework of the Commission’s efforts to reform the use of the 3.7-4.2 GHz frequency band, also known as the “C-Band,” by repacking existing satellite operations and making a significant amount of spectrum available for flexible use throughout the contiguous United States.³ In the *3.7 GHz Report and Order*, the Commission adopted rules to transition

¹ Major Market Broadcasting of New York Inc., *Request for Waiver*, ICFS File No. SES-REG-20180606-01285, filed Oct. 21, 2021 in IB Docket No. 20-205 (Waiver Request). The 3.7-4.2 GHz frequency band was historically the space-to-Earth portion of the “conventional C-band” used for the fixed-satellite service. 47 CFR § 25.103. The fixed-satellite service is “[a] radiocommunication service between earth stations at given positions, when one or more satellites are used; the given position may be a specified fixed point or any fixed point within specified areas.” *Id.* An “incumbent earth station” is defined as an earth station that is entitled to interference protection pursuant to section 25.138(c) of the Commission’s rules. 47 CFR § 27.1411(b).

² The “incumbent earth station list” is a list of those fixed-satellite service earth stations originally in the 3.7-4.2 GHz band within the contiguous United States that the Bureau found satisfy the criteria to be classified as incumbent earth stations for purposes of the C-band transition. *See, e.g., International Bureau Releases Updated List of Incumbent Earth Stations in the 3.7-4.2 GHz Band in the Contiguous United States*, Public Notice, DA 23-176 (rel. Mar. 3, 2023).

³ *See generally Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020) (*3.7 GHz Report and Order*).

existing satellite services out of the lower portion of the 3.7-4.2 GHz band and into the upper 200 megahertz of the band (*i.e.*, 4.0-4.2 GHz).⁴ This action made a significant amount of spectrum—280 megahertz or more than half of the band—available for flexible use throughout the contiguous United States.⁵ The *3.7 GHz Report and Order* also established that new flexible use licensees would reimburse the reasonable relocation costs of eligible fixed-satellite service space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees to transition out of the band.⁶

3. As part of this process, the Commission adopted section 25.138 of the rules.⁷ Section 25.138 provides that new, modified, or renewed earth station licenses and registrations⁸ are no longer accepted in the 3.7-4.0 GHz portion of the C-band in the continental United States (CONUS).⁹ It also provides that existing fixed earth stations operating in 3.7-4.0 GHz within CONUS will be protected from interference from new flexible use licensees, or are eligible for transition into the upper 4.0-4.2 GHz portion of the C-band, provided that certain requirements are met.¹⁰ Among these requirements are that the earth stations were: (1) operational as of April 19, 2018, and continue to be operational, and (2) licensed or registered (or had a pending application for license or registration) in the ICFS database on November 7, 2018.¹¹ Failure to meet these requirements results in the loss of the ability to renew the earth station license or registration, as well as the loss of the ability to modify the license or registration to maintain operations in the 4.0-4.2 GHz band.¹²

4. MMBNY states that it acquired earth station E180704 as part of its acquisition of a low-power television station, W41DO-D, in New York, on June 30, 2021.¹³ MMBNY states that, due to a dispute between the station's tower owner and the building owner, it was forced to cease operations of W41DO-D and earth station E180704 on August 30, 2021.¹⁴ As a result of this dispute, MMBNY states that it is unable to resume operations with either W41DO-D or E180704 until the dispute between the

⁴ *3.7 GHz Report and Order*, 35 FCC Rcd at 2345, para. 4.

⁵ *Id.*

⁶ *Id.*

⁷ 47 CFR § 25.138.

⁸ Receive-only earth stations in the fixed-satellite service may be registered with the Commission in order to protect them from interference from terrestrial microwave stations. See 47 CFR § 25.115(b)(1).

⁹ 47 CFR § 25.138(a).

¹⁰ 47 CFR § 25.138(c). The protection from interference applies to both fixed and temporary fixed earth stations.

¹¹ 47 CFR § 25.138(c)(1)-(2). In addition, the earth station licensee or registrant must have timely certified the accuracy of the information on file with the Commission by May 28, 2019. 47 CFR § 25.138(c)(3). The International Bureau Filing System (IBFS) was renamed as the International Communications Filing System (ICFS) as a result of the reorganization of the International Bureau into the Space Bureau and the Office of International Affairs. See *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, Order, MD Docket No. 23-12, FCC 23-1 (rel. Jan. 9, 2023).

¹² 47 CFR § 25.138(d).

¹³ Waiver Request at 1-2. MMBNY states that, due to an oversight, the E180704 license was not assigned simultaneously with W41DO-D's license to MMBNY, but instead a separate application to assign E180704 to MMBNY was filed on October 15, 2021. *Id.* at 2. This assignment application, ICFS File No. SES-ASG-20211019-01735, was granted, effective Nov. 16, 2021. See *Satellite Communications Services Information re: Actions Taken*, Public Notice, Report No. SES-02417 (Sat. Div. IB rel. Nov. 17, 2021).

¹⁴ Waiver Request at 2.

tower and building owners has been resolved.¹⁵

5. E180704 was listed as an “inactive” earth station in the International Bureau’s July 23, 2021 incumbent earth station Public Notice, which required, among other things, that E180704’s operator must submit verification no later than October 21, 2021, that the station is operational and eligible for reimbursement of C-band relocation costs.¹⁶ The Public Notice stressed that “failure to submit a filing to the [International Bureau] by [October 21, 2021] affirming the continued operation of the earth station antennas reported to the Bureau as inactive and the intent to participate in the C-band transition will result in a Bureau announcement that those authorizations identified as inactive... have automatically terminated by operation of rule, and that those authorizations will be terminated in IBFS and removed from the incumbent earth station list.”¹⁷

6. MMBNY filed its Waiver Request on October 21, 2021, the day of the deadline for verification established by the Public Notice. In the Waiver Request, MMBNY does not verify that E180704 is operational, but instead confirms that MMBNY has been unable to operate since August 30, 2021.¹⁸ MMBNY states, however, that once the dispute between the tower and building owner is resolved, it intends to resume operations with both W41DO-D and E180704 “promptly.”¹⁹ Accordingly, MMBNY asks for a grant of waiver of section 25.138 to allow it to continue licensed operations and to remain eligible for reimbursement of C-band relocation costs.²⁰ Since filing its Waiver Request, MMBNY has not provided any updated information in the record on the status of W41DO-D or E180704, or on the status of the underlying disputes that allegedly make MMBNY unable to operate E180704.²¹

III. DISCUSSION

7. The Commission may grant a waiver for good cause shown.²² A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.²³ In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁴ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.²⁵

8. We find that MMBNY has failed to provide sufficient information to determine that

¹⁵ *Id.*

¹⁶ See *International Bureau Identifies Inactive C-Band Incumbent Earth Station Antennas*, Public Notice, DA 21-893 (rel. July 23, 2021) (Public Notice).

¹⁷ *Id.* at 1. Section 25.161(c) of the Commission’s rules states that an earth station authorization “shall be automatically terminated ... without further notice ... upon [t]he removal or modification of the facilities which renders the station not operational for more than 90 days.” 47 CFR § 25.161(c).

¹⁸ Waiver Request at 4. In addition, MMBNY reports that it has reason to believe that E180704 was non-operational between September 1, 2018 and February 20, 2020, prior to the assignment of the station to MMBNY. *Id.* at 4 n.16.

¹⁹ Waiver Request at 2.

²⁰ *Id.* at 5.

²¹ Between the filing of the Waiver Request and release of this Order, Space Bureau staff made repeated inquiries to MMBNY both through its management and through its counsel about the status of E180704 and invited MMBNY to update the record of its filing to reflect any new information that would support the Waiver Request. MMBNY has not done so.

²² 47 CFR § 1.3.

²³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁵ *Northeast Cellular*, 897 F.2d at 1166.

waiver of section 25.138 is consistent with the public interest. MMBNY premises its request for a waiver of section 25.138 on the alleged temporary status of its inability to operate E180704 and the argument that this non-operational status is a result of circumstances beyond MMBNY's control.²⁶ The record, as it stands, supports neither premise. It has been almost two years since MMBNY filed its waiver request, and, despite repeated FCC inquiries, it has filed no information since then, indicating for instance that E180704 has resumed operations or that any operations are forthcoming. As such, we cannot conclude that the non-operational status of E180704 is temporary in nature.²⁷ In addition, we are unable to conclude that the non-operational status of E180704 has been wholly outside of MMBNY's control. MMBNY has not disclosed whether the commercial dispute between the tower and building owner is still ongoing, or any steps or actions that it has taken, or could have taken, to bring E180704 into operation. For these reasons, we cannot find that "good cause" or "particular facts" have been shown to support grant of a waiver of section 25.138.

9. In addition, a balancing of the public interest in upholding the general rule against the interest in deviation from the rule does not support a grant of a waiver in this instance. The purpose of section 25.138 is to identify the universe of operational earth stations in the C-band that are eligible for financial support to install filters or to transition to the 4.0-4.2 GHz portion of the band in order to make the 3.7-4.0 GHz portion of the C-band available for flexible use spectrum while also preserving existing earth station operations. Here, there are no existing operations to preserve. Although E180704 was operational as of April 19, 2018, it has not been operational for most of the time since then, and there is no indication of when – or even if – it might be operational again. Furthermore, the Commission has previously found that there is a "significant public interest in providing a stable, comprehensive list of incumbent earth stations that meet the criteria [of section 25.138]."²⁸ We find that granting a waiver of section 25.138 for an indefinite amount of time, as requested by MMBNY, would be inconsistent with the Commission's goal of a stable and comprehensive list of incumbent earth stations. Such an indefinite waiver is particularly unjustified because accelerated relocation of incumbent satellite services in the C-band is complete.²⁹

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. § 154(i) and (j), and section 1.3 of the Commission's rules, 47 CFR § 1.3, the request for waiver of MMBNY IS DENIED.

11. IT IS FURTHER ORDERED that MMBNY's authorization for E180704 has automatically terminated by operation of rule and is removed from the incumbent earth station list, pursuant to sections 25.138 and 25.161(c) of the Commission's rules, 47 CFR §§ 25.138 and 25.161.

²⁶ Waiver Request at 4.

²⁷ We note that the non-operational status appears to have lasted well beyond the 90 days contemplated in the Commission's rules. *See supra* note 17.

²⁸ *3.7 GHz Report and Order*, 35 FCC Red at 2393, para. 121.

²⁹ As of August 12, 2023, all five of the incumbent space station operators in the C-band have certified completion of accelerated relocation for both Phase I and Phase II of the transition, and those certifications have been validated. *See* 47 CFR § 27.1412(g).

12. IT IS FURTHER ORDERED that this Memorandum Opinion and Order SHALL BE EFFECTIVE upon release, in accordance with section 1.102 of the Commission's rules, 47 CFR § 1.102. This action is taken pursuant to the authority delegated by sections 0.51 and 0.261 of the Commission's rules, 47 CFR §§ 0.51, 0.261.

FEDERAL COMMUNICATIONS COMMISSION

Merissa L. Velez
Chief, Satellite Programs and Policy Division
Space Bureau

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

In the Matter of)	
)	
Amendment of Section 73.622(j), Table of TV	)	MB Docket No. 23-286
Allotments, Television Broadcast Stations	)	RM-11960
(Winnemucca, Nevada))	
)	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 23, 2023

Released: August 23, 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 June 15, 2023 and amended on August 8, 2023, by Gray Television Licensee, LLC (Petitioner or Gray), the permittee of unbuilt station KWNV(DT), channel 7, Winnemucca, Nevada (KWNV or Station).¹ The Petitioner requests the substitution of channel 16 for channel 7 at Winnemucca, Nevada in the Table of TV Allotments.

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that its proposed channel substitution will serve the public interest because it allows Gray to build out this new station to avoid well-documented issues with indoor digital VHF reception since the 2009 digital transition.² Petitioner states that the Commission has recognized the deleterious effects manmade noise has on the reception of VHF signals, finding that “the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances, nearby electrical devices tend[] to emit noise in this band that can cause interference, and reception of VHF signals requires physically larger antennas ... relative to UHF channels.”³ Additionally, the Commission has observed the “large variability in the performance (especially intrinsic gain) of indoor antennas available to consumers, with most antennas receiving fairly well at UHF and the substantial majority not so well to very poor at high-VHF.”⁴ We note that Gray does not propose a change in transmitter location. It is currently authorized to operate on channel 7 with an effective radiated power (ERP) of one kilowatt (kW) at an average height above average terrain (HAAT) of 649 meters, and proposes a slight increase for its proposed channel 16

¹ Petition for Rulemaking of Gray Television Licensee, LLC on file at LMS File No. 0000216796 (Petition). The Petitioner amended its Petition to include a portion of the filing which it inadvertently omitted.

² Petition at 1-2 and Engineering Statement at 1. Gray was granted a construction permit for this station on September 13, 2022 (LMS File No. 0000195678).

³ Petition 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, para. 42, 44 (2010)(*Channel Sharing NPRM*). The Petitioner also states that its experience in other markets is that many viewers experience significant difficulty in receiving VHF television signals. Engineering Statement at 1.

⁴ *Channel Sharing NPRM* at para. 44.

facility.⁵

III. DISCUSSION

3. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel 16 can be substituted for channel 7 at Winnemucca, Nevada, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's Rules (rules),⁶ at coordinates 41° 00' 31.0" N and 117° 46' 13.0" W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.⁷

4. We propose to substitute channel 16 for channel 7 for KWNV with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>
Winnemucca, Nevada	16	20	651

5. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,⁸ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Winnemucca, Nevada	7	16

IV. PROCEDURAL MATTERS

6. *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.⁹ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.¹⁰

7. *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.¹¹
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹²

⁵ Petition, Engineering Statement at 1-2.

⁶ 47 CFR § 73.625(a).

⁷ 47 CFR §§ 73.616, 73.623.

⁸ 47 CFR § 73.622(j).

⁹ 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).

¹⁰ 47 CFR § 1.420(j).

¹¹ 47 CFR § 1.420(d).

¹² 47 CFR § 1.420(g)(2).

8. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,¹³ 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).¹⁴

- **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-19.¹⁵
 - 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.

9. *Service.* Pursuant to section 1.420 of the rules,¹⁶ 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.¹⁷ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Joan Stewart, Esq.
Wiley Rein LLP
2050 M Street, NW
Washington, D.C. 20036

10. *Ex Parte Notices—Restricted.* The proceeding this Notice initiates shall be treated as a

¹³ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹⁶ 47 CFR § 1.420.

¹⁷ See 47 CFR §1.420(a), (b) and (c).

“restricted” proceeding in accordance with the Commission’s *ex parte* rules.¹⁸ 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.¹⁹ 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.²⁰ 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.²¹ 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.

11. *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.

12. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²² do not apply to a rulemaking proceeding to amend the Table of TV Allotments, section 73.622(j) of the rules.²³ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁴ 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 2002.²⁵

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

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

¹⁸ 47 CFR §§ 1.1200 *et seq.*

¹⁹ 47 CFR § 1.1208.

²⁰ 47 CFR § 1.1204(a)(10).

²¹ 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).

²² 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).

²³ 47 CFR § 73.622(j).

²⁴ See 44 U.S.C. §§ 3501-3520.

²⁵ See 44 U.S.C. § 3506(c)(4).

V. ORDERING CLAUSES

15. **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**.

16. **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. 23-286 and RM-11960 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

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

In the Matter of)	
)	
Amendment of Section 73.622(j), Table of	)	MB Docket No. 23-287
Allotments, Television Broadcast Stations	)	RM-11961
(Idaho Falls, Idaho))	
)	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 23, 2023**Released: August 23, 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 June 15, 2023, by NPG of Idaho, Inc. (Petitioner), the licensee of KIFI-TV, channel 8, Idaho Falls, Idaho (KIFI-TV or Station).¹ The Petitioner requests the substitution of channel 18 for channel 8 at Idaho Falls, Idaho, in the Table of TV Allotments.

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner states that its proposed channel substitution will serve the public interest by resolving reception issues currently experienced by a meaningful cross-section of viewers in KIFI-TV's service area, thereby expanding the availability of reliable, free over-the-air network television service within the market.² According to the Petitioner, KIFI-TV has received "numerous complaints" about reception of its channel 8 facility since the end of the DTV transition in 2009, a common difficulty shared by other stations with VHF channel assignments in the Idaho Falls market.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 of these channels [that] allow undesired signals and noise to be receivable at relatively farther distances" and that nearby electrical devices tend to emit noise that can cause interference in this band and reception of VHF signal require physically larger antennas relative to UHF channel antennas.⁴ Moreover, when compared to the Station's current channel 8 facility, the proposed channel 18 facility will create a predicted service loss of only 327 persons using the Commission's *TVStudy* software tool, a

¹ Petition for Rulemaking of NPG of Idaho, Inc. on file at LMS File No. 0000216788 (Petition).

² Petition at 1. The Petitioner states that KIFI-TV is the primary ABC and CBS network affiliate and the only station on a VHF channel in the Idaho Falls market. *Id.* at 3.

³ *Id.* at 2. The Petitioner cites to other recent proceedings where the Bureau has substituted a UHF channel for a VHF channel based on similar reception complaints. *Id.* at n.5.

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).

number which the Petitioner asserts is *de minimis*.⁵ The Petitioner also points out that this loss prediction fails to account for the longtime and ongoing service challenges many KIFI-TV viewers experience due to channel 8's inferior propagation characteristics, which it expects will be remedied by switching to a UHF channel.⁶

III. DISCUSSION

3. We believe that the Petitioner's channel substitution proposal warrants consideration. Channel 18 can be substituted for channel 8 at Idaho Falls, Idaho, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the Commission's Rules (rules),⁷ at coordinates 43° 30' 04.0" N and 112° 39' 46.0" W. In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.⁸ Although the proposal would result in a loss of service to a limited number of viewers, that loss of service is considered *de minimis* by the Commission.⁹

4. We propose to substitute channel 18 for channel 8 for KIFI-TV with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>
Idaho Falls, Idaho	18	500	444

5. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹⁰ for the community listed below, to read as follows:

<u>City and State</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Idaho Falls, Idaho	8, 20, 36	18, 20, 36

IV. PROCEDURAL MATTERS

6. *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.¹¹ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.¹²

7. *Cut-off Protection.* The following procedures will govern the consideration of the filings

⁵ Petition at 4 and n.4, citing *WSET, Inc.*, Memorandum Opinion and Order, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*) and other recent channel substitution proceedings where the Bureau has found similar losses to be *de minimis*, and Technical Exhibit at 3-4 and Figure 1.

⁶ Petition at 4.

⁷ 47 CFR § 73.625(a).

⁸ 47 CFR §§ 73.616, 73.623.

⁹ See *supra* note 5.

¹⁰ 47 CFR § 73.622(j).

¹¹ 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).

¹² 47 CFR § 1.420(j).

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.¹³
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁴

8. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,¹⁵ 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).¹⁶

- **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-19.¹⁷
 - 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.

9. *Service.* Pursuant to section 1.420 of the rules,¹⁸ 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

¹³ 47 CFR §1.420(d).

¹⁴ 47 CFR § 1.420(g)(2).

¹⁵ 47 CFR §§ 1.415, 1.419, and 1.420.

¹⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹⁸ 47 CFR § 1.420.

directed. A certificate of service shall accompany such comments and reply comments.¹⁹ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

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

10. *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.²⁰ 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.²¹ 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.²² 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.²³ 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.

11. *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.

12. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁴ do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the rules.²⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁶ 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

¹⁹ See 47 CFR §1.420(a), (b) and (c).

²⁰ 47 CFR §§ 1.1200 *et seq.*

²¹ 47 CFR § 1.1208.

²² 47 CFR § 1.1204(a)(10).

²³ 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).

²⁴ 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).

²⁵ 47 CFR § 73.622(j).

²⁶ See 44 U.S.C. §§ 3501-3520.

of 2002.²⁷

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

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

V. ORDERING CLAUSES

15. **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**.

16. **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. 23-287 and RM-11961 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. § 3506(c)(4).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-751

Released: August 23, 2023

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON JOTRON REQUEST FOR PART 95 PLB WAIVER

WT Docket No. 23-292

Comments Due: September 6, 2023
Reply Comments Due: September 13, 2023

By this *Public Notice*, the Wireless Telecommunications Bureau (Bureau) seeks comment on a request filed by Jotron AS (Jotron) for waiver to permit the equipment authorization and use of a Personal Locator Beacon (PLB) that incorporates a functionality that is in compliance with a recently published Radio Technical Commission for Maritime Services (RTCM) standard for PLBs, but does not comply with the PLB standard currently incorporated by reference in the Commission's part 95 rules.¹

A PLB is a small portable transmitter that is intended to provide individuals in remote areas with a means to alert others of an emergency situation and to aid search and rescue personnel to locate those in distress.² PLBs must conform with the version of RTCM Standard 11010 that is incorporated by reference in the Commission's rules.³ On June 1, 2022, however, RTCM published a revised edition of that standard.⁴

Jotron observes that the new RTCM standard "specifies the minimum requirements for the functional and technical performance of ... PLBs operating in the 406.0 to 406.1 MHz band through polar-orbiting, medium earth orbiting and geostationary satellite systems."⁵ It says that its referenced PLB, the Tron SA 20, complies with this new standard but does not comply with the PLB standard currently incorporated by reference in part 95 because the latter makes no provision for Return Link

¹ See Waiver Tron SA20 PLB (filed Feb. 13, 2023) (Waiver Request). As discussed *infra*, the Waiver Request can be accessed in the Commission's Electronic Comment Filing System (ECFS) under **Docket No. 23-292**.

² 47 CFR § 95.2903.

³ RTCM 11010.2, "406 MHz Satellite Personal Locator Beacons (PLBs)," including Amendments 1 and 2, dated June 8, 2012; see 47 CFR § 95.2989(b)(1).

⁴ RTCM 11010.4 Standard for 406 MHz Satellite Personal Locator Beacons (PLBs), June 1, 2022. On August 20, 2018, RTCM filed a petition for rulemaking proposing the incorporation by reference of a revised RTCM PLB standard that it had published earlier that year. Radio Technical Commission for Maritime Services Petition for rulemaking to amend part 95 of the Commission's rules to provide for a new standard on Personal Locator Beacons, RM-11813 (filed Aug. 20, 2018), <https://www.fcc.gov/ecfs/filing/1081900919860>. The petition was placed on *Public Notice*, August 23, 2018 (Report No. 3100, RM-11813). Comments to the *Public Notice* support the petition.

⁵ Waiver Request at 1.

Service (RLS) functionality.⁶ Jotron therefore requests waiver relief.⁷

We seek comment on the Jotron Waiver Request.

Procedural Matters

To develop a complete record on the issues presented by this request, this 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). Jotron filed its Waiver Request electronically as a non-docketed proceeding in the Commission’s Electronic Comment Filing System. We have opened a new docket, **WT Docket 23-292**, to facilitate consideration of this request and have placed the Waiver Request in this docket. Parties should file all comments and reply comments in **WT Docket 23-292**.

Filing Requirements. Parties may file comments, identified by **WT Docket No. 23-292**, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington 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-19.⁸

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the

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

⁷ We clarify that the waiver relief under consideration would simply permit the Tron S20 PLB to be authorized upon a determination of compliance with RTCM 11010.4 rather than RTCM 11010.2. It would not relieve Jotron of the requirements to secure certifications from independent test facilities, including Cospas/Sarsat-recognized test facilities, demonstrating such compliance before filing an application for Commission certification. See, e.g., 47 CFR § 95.2987(a)(1).

⁸ 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>.

Consumer & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Additional Information. For further information regarding this Public Notice, please contact Jeff Tobias at jeff.tobias@fcc.gov or (202) 418-1617.

-FCC-



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-752

Released: August 23, 2023

**COMMISSION ANNOUNCES PERMIT-BUT-DISCLOSE EX PARTE STATUS AND
ESTABLISHES MB DOCKET NO. 23-293 FOR APPLICATION FOR RENEWAL OF LICENSE
OF WTXF-TV, PHILADELPHIA, PENNSYLVANIA**

MB Docket No. 23-293

On April 3, 2023, Fox Television Stations, LLC (FTS) filed an application to renew the license of station WTXF-TV, Philadelphia, Pennsylvania (Facility ID No. 51568) (WTXF-TV).¹ On July 3, 2023, the Media and Democracy Project (MAD); Milo Vassallo; John McGinty; Peter Lems; Chenjerai Kumanyika; and Bill Hartman (collectively, Petitioners) filed a petition to deny the Application.² Other parties have also filed informal objections to the Application.³ On August 2, 2023, FTS filed an Opposition to the Petition,⁴ and on August 22, 2023, the Petitioners filed a Reply.⁵ In addition, on July 18, 2023, MAD filed a request asking that the Commission change the *ex parte* status of the WTXF-TV Application proceeding from restricted to permit-but-disclose.⁶ On July 19, 2023, FTS filed an opposition to that request.⁷

Applications for renewal of broadcast licenses are subject, unless otherwise provided, to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's rules.⁸ Pursuant to section 1.1200(a) of the Commission's rules, however, the Commission

¹ Application for Renewal of License of WTXF-TV, LMS File No. 0000213362 (filed Apr. 3, 2023) (the Application). The ultimate parent entity of FTS is Fox Corporation.

² The Media and Democracy Project, Milo Vassallo, John McGinty, Peter Lems, Chenjerai Kumanyika, and Bill Hartman, Petition to Deny, LMS File No. 0000213362 (filed Jul. 3, 2023) (the Petition). Petitioners also request that the Commission conduct an evidentiary hearing into the issues raised in the Petition.

³ See Letter from Sue Wilson, Media Action Center, to Chairwoman Jessica Rosenworcel, FCC, LMS File No. 0000213362 (filed Jul. 13, 2023); Letter from Ervin S. Duggan and William Kristol to Marlene H. Dortch, FCC, LMS File No. 0000213362 (filed Jul. 31, 2023); Letter from Francis Lipiecki to Marlene H. Dortch, FCC, LMS File No. 0000213362 (filed Aug. 10, 2023); Letter from Alfred C. Sikes to Marlene H. Dortch, FCC, LMS File No. 0000213362 (filed Aug. 20, 2023); Letter from Jamie Kellner to Marlene H. Dortch, FCC, LMS File No. 0000213362 (filed Aug. 22, 2023); Letter from Ervin S. Duggan and William Kristol to Marlene H. Dortch, FCC, LMS File No. 0000213362 (filed Aug. 22, 2023).

⁴ Opposition of Fox Television Stations, LLC, LMS File No. 0000213362 (filed Aug. 2, 2023).

⁵ Reply of The Media and Democracy Project, Milo Vassallo, John McGinty, Peter Lems, Chenjerai Kumanyika, and Bill Hartman, LMS File No. 0000213362 (filed Aug. 22, 2023).

⁶ Letter from Arthur V. Belendiuk, Counsel for MAD, to Holly Saurer, FCC, LMS File No. 0000213362 (filed Jul. 18, 2023).

⁷ Letter from Joseph M. Di Scipio and Ann West Bobeck, FTS, to Marlene H. Dortch, FCC, LMS File No. 0000213362 (filed Jul. 19, 2023).

⁸ 47 C.F.R. §1.1208.

may adopt modified *ex parte* procedures in particular proceedings if the public interest so requires.⁹ We have concluded that classifying this proceeding as permit-but-disclose would, in this case, permit broader public participation and thereby serve the public interest.¹⁰ Accordingly, by this Public Notice, and pursuant to Section 1.1200(a) of the Commission's rules we announce that the *ex parte* procedures applicable to permit-but-disclose proceedings will govern our consideration of the Application.¹¹

Permit-but-disclose *ex parte* procedures permit parties to make *ex parte* presentations to the Commissioners and Commission staff and require that these presentations be disclosed in the record of the relevant proceeding. 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. 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 data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

Copies of any written presentation and summaries of any oral presentation must be filed electronically using the FCC's Electronic Comment Filing System (ECFS). All filings concerning matters referenced in this Public Notice should refer to MB Docket No. 23-293. Paper filings may be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to FCC, 9050 Junction Drive, P.O. Box 179, Annapolis Junction, Maryland 20701. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 45 L Street, NE, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All filings must be made in accordance with Section 1.1206(b)(1) of the Commission's rules. 47 C.F.R. §1.1206(b)(1). In addition one copy of each *ex parte* written presentation and memoranda should be emailed to Barbara Kreisman (Barbara.Kreisman@fcc.gov), Brendan Holland (Brendan.Holland@fcc.gov), and Jeremy Miller (Jeremy.Miller@fcc.gov).

Individuals can access copies of the Application and related documents online through the Electronic Comment Filing System (ECFS) at www.fcc.gov/ecfs. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to: fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at: (202) 418-0530 (voice), (844) 432-2275 (videophone), or (202) 418-0432 (TTY). For further information, contact Barbara Kreisman at (202) 418-1605. For press inquiries, contact Janice Wise at Janice.Wise@fcc.gov or (202) 418-8165.

– FCC –

⁹ 47 C.F.R. §1.1200(a).

¹⁰ See *Commission Announces Permit-But-Disclose Ex Parte Status for Renewal Applications filed by Fox Television Stations, Inc.*, Public Notice, 22 FCC Rcd 11379 (2007).

¹¹ See 47 C.F.R. §1.1206.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Internet: <https://www.fcc.gov>
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DA 23-753

Released: August 24, 2023

WIRELINE COMPETITION BUREAU SEEKS NOMINATIONS FOR SIX BOARD MEMBER POSITIONS ON THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY BOARD OF DIRECTORS

CC Docket Nos. 96-45, 97-21

Nominations Due By: October 24, 2023

Pursuant to section 54.703(c) of the Federal Communications Commission's rules, the Wireline Competition Bureau (Bureau) seeks nominations for the following Board member positions on the Board of Directors of the Universal Service Administrative Company (USAC) listed below for a three-year term.¹

- Representative for incumbent local exchange carriers (non-Bell Operating Companies) with \$40 million or less in annual revenues (position currently held by Geoffrey A. Feiss, General Manager, Montana Telecommunications Association)
- Representative for competitive local exchange carriers (position currently held by Joseph Gillan, Consultant, Gillan Associates)
- Representative for low-income consumers (position currently held by Ellis Jacobs, Senior Attorney, Advocates for Basic Legal Equality, Inc.)
- Representative for interexchange carriers with annual operating revenues of \$3 billion or less (position currently held by Michael Skrivan, former Vice President, Regulatory, Consolidated Communications)
- Representative for schools that are eligible to receive discounts pursuant to section 54.501 of the Commission's rules (position currently held by Joan H. Wade, Ed.D., Executive Director, Association of Educational Service Agencies)
- Representative for rural health care providers that are eligible to receive supported services pursuant to section 54.601 (position currently held by Katharine Hsu Wibberly, Ph.D., Director, Mid-Atlantic Telehealth Resource Center)

We are persuaded that having Board members with substantive areas of expertise relevant to running a large and complex organization with such skills as accounting, finance, auditing, procurement, data management and information technology will improve the management, administration and oversight of USAC. If members of the relevant industry or non-industry group fail to reach consensus on a candidate to serve on the Board, or fail to submit a nomination for the particular Board member seat, the

¹ 47 CFR § 54.703(c).

Chair of the Federal Communications Commission will select an individual from that industry or non-industry group to serve on the Board as outlined in section 54.703(c)(1).²

The Commission recently adopted rules to add a Tribal representative to the USAC Board of Directors.³ The Bureau will seek nominations in a separate Public Notice for the new Tribal USAC Board position upon the effective date of the rules, which will be thirty (30) days after the publication of the *E-Rate Tribal Report and Order* in the Federal Register.

Pursuant to section 54.703(c)(2) of the Commission's rules, each nomination must be captioned: **"In the Matter of: Nomination for Universal Service Administrative Company Board of Directors, CC Docket Nos. 97-21 and 96-45."**⁴ Nominations may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, 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-19.⁵

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

In addition to the electronic or paper filing, copies of each nomination should be submitted to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, via email Charles.Tyler@fcc.gov. Each nomination should specify the position on the Board of Directors for which such nomination is submitted and should be accompanied by the nominee's professional and biographical information, such as a résumé or professional biography. **All nominations must be filed with the Office of the Secretary by October 24, 2023.**

For further information, please contact Hayley Steffen (hayley.steffen@fcc.gov) of the Wireline Competition Bureau, Office of the Bureau Chief, (202) 418-1586.

- FCC -

² 47 CFR § 54.703(c)(1).

³ See *Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6 et al., FCC 23-56, at *17, para. 34 (rel. July 21, 2023) (*E-Rate Tribal Report and Order*).

⁴ 47 CFR § 54.703(c)(2).

⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Red 2788 (Mar. 19, 2020).



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 23-754

Released: August 25, 2023

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
COMMENT AND REPLY COMMENT DATES FOR THE NOTICE OF PROPOSED
RULEMAKING ON CYBERSECURITY LABELING FOR INTERNET OF THINGS**

PS Docket No. 23-239

Comments Due: September 25, 2023

Reply Comments Due: October 10, 2023

On August 10, 2023, the Federal Communications Commission released a *Notice of Proposed Rulemaking (Notice)* seeking comment on a voluntary cybersecurity labeling program that would provide easily understood, accessible information to consumers on the relative security of an Internet of Things (IoT) device or product, and assure consumers that manufacturers of devices bearing the Commission's IoT cybersecurity label adhere to widely accepted cybersecurity standards.¹

The *Notice* set deadlines for filing comments and reply comments at 30 and 45 days, respectively, after publication of a summary of the *Notice* in the Federal Register.² On August 25, 2023, the Office of the Federal Register published a summary of the *Notice*, including the associated comment and reply comment dates.³ Accordingly, comments must be filed on or before September 25, 2023, and reply comments must be filed on or before October 10, 2023. The *Notice* contains the comment filing instructions.⁴

For further information regarding the *Notice*, please contact Erika Olsen, Acting Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-2868, or by email to erika.olsen@fcc.gov; or James Zigouris, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-0697, or by email to james.zigouris@fcc.gov.

--FCC--

¹ *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Notice of Proposed Rulemaking, FCC 23-65, (Aug. 10, 2023), <https://www.fcc.gov/document/fcc-proposes-cybersecurity-labeling-program-smart-devices> (*Notice*).

² *Notice* at 1.

³ See 88 Fed. Reg. 58211 (Aug. 25, 2023).

⁴ *Notice* at 27, para. 70.



PUBLIC NOTICE

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

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
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DA 23-755
August 25, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 12 (IDAHO) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES
TO HOLD MEETINGS

PR Docket No. 93-149 and WT Docket No. 02-378

The Region 12 (Idaho) Regional Planning Committees (RPCs) will hold a joint 700 MHz and 800 MHz meeting on Wednesday, September 20, 2023, 9:00 a.m., at the Ada County Dispatch Center, 945 E. Pine Ave., Meridian, ID 83642. Please note: The Idaho State Radio Users Group (ISRUG) meeting will immediately follow.

The agenda for the 700 MHz and 800 MHz RPC meeting includes:

- New Spectrum Requests
- License Modifications
- Review Region 12's Repacked 800 MHz Allocations Election of Board Members
- Review Proposed Changes to 800 Band Plan

The Region 12 joint 700 MHz and 800 MHz RPC meeting is open to the public. It is essential that public safety agencies in all areas of government, including state, municipality, county, Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's rules, 47 CFR § 90.523, be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to participate and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 12 should plan to participate. For further information, please contact:

Karl Rudolf
Idaho 700 MHz Public Safety Radio Network Administrator
Idaho Region 12 RPC Chairman
945 E. Pine Ave.
Meridian, Idaho 83642
(208) 577-3618 / (208) 859-8972
krudorf@adacounty.id.gov

- FCC -



PUBLIC NOTICE

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DA 23-756

Released: August 31, 2023

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

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

Dismissing Waiver Because FCC Form 471 Applications Filed Timely³

St. Lucy School, CA, Application No. 221010052, Request for Waiver, CC Docket No. 02-6
(filed Mar. 20, 2023)

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

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

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

St. Mary's School for the Deaf, NY, Application Nos. 231011415, 231027422, Request for Waiver, CC Docket No. 02-6 (filed May 22, 2023)

Dismissed on Reconsideration – Untimely⁴

Baltimore City Schools Charter Consortium, MD, Application No. 231039247, Petition for Reconsideration, CC Docket No. 02-6 (filed July 31, 2023)

Dismiss to Allow Appeal to be Filed with USAC⁵

Meritworks Partners, LLC (KIPP Indianapolis, Inc.), IN, Application No. 201033721, Request for Review, CC Docket No. 02-6 (filed Apr. 20, 2023)

Dismissed for Failure to Comply with the Commission's Basic Filing Requirements⁶

Rosary High School, IL, Application Nos. 201020211, 231039736, CC Docket No. 02-6 (filed Aug. 4, 2022)

Saint Matthew School, PA, No Application Number Given, CC Docket No. 02-6 (filed Mar. 28, 2023)

Winnacunnet Coop School District, NH, Application No. 201040811, Request for Review, CC Docket No. 02-6 (filed Feb. 7, 2022)

⁴ See, e.g., *Petitions for Reconsideration by Rockwood School District and Yakutat School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 13004, 13004, para. 2 (WCB 2011) (dismissing petitions for reconsideration because they were filed more than 30 days after the date of the Bureau's decisions).

⁵ 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).

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

⁶ 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).

Dismissed on Reconsideration⁷

Antioch District Library, IL, Application No. 231039569, Petition for Reconsideration, CC Docket No. 02-6 (filed July 5, 2023)

Berwyn Public Library, IL, Application No. 231038603, Petition for Reconsideration, CC Docket No. 02-6 (filed Aug. 1, 2023)

Brooklyn Emerging Leaders Academy Charter School, NY, Application No. 201026972, Petition for Reconsideration, CC Docket No. 02-6 (filed Apr. 15, 2022)

⁷ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allan Shivers Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Order on Reconsideration, 29 FCC Rcd 10356, 10357, para. 2 (WCB 2014) (*Allan Shivers Library Order*) (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding).

On reconsideration, Cedarville Public School District raises a new argument that a waiver of the FCC Form 471 filing window is consistent with Bureau precedent. The Petitioner now cites to Bureau precedent to argue that its waiver request should not have been rejected because of circumstances beyond the school district's control and notes that another petitioner, Chumash Library Learning Center, was granted a waiver under similar circumstances in the April 2023 Public Notice. 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, 02-60, 18-213 Public Notice, DA 23-557, 2023 (WCB Apr. 28, 2023). Our rules state that a petition for reconsideration will be entertained only if the petition relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed at the Commission. Because the Petitioner did not make this argument when it first filed the waiver request with the Commission on May 25, 2023, we dismiss the petition because it relies on an argument that was not raised previously. See 47 CFR § 1.106(b)(2), (c)(2) (stating that a petition for reconsideration will be entertained only if the petition relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed at the Commission, unless it is required in the public interest). As an alternative and independent basis for rejecting this petition, we also deny the petition on the merits. Cedarville Public School District cites to the *Abbotsford School District Order* to argue that its waiver request should have been granted, consistent with precedent. *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012) (*Abbotsford School District Order*) (waiving the application deadline where applicants filed their applications beyond 14 days of the filing window deadline because of delays beyond their control). The *Abbotsford School District Order* waives the rule in instances where E-Rate participants filed their FCC Form 471 applications within a "reasonable period of the filing window's close." *Id.* In this instance, Cedarville Public School District filed its FCC Form 471 application 56 days after the window closed, which is not within a reasonable period of the filing window's close. On the other hand, Chumash Library Learning Center filed its FCC Form 471 application on April 13, 2023, which was 16 days after the window closed, which is a reasonable period of the filing window's close. For these reasons, we dismiss this Petition for Reconsideration.

On reconsideration, Guthrie Center Community School District raises a new argument that the illness of the school district's E-Rate coordinator's wife contributed to the late FCC Form 471 filing. Our rules state that a petition for reconsideration will be entertained only if the petition relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed at the Commission. Because the Petitioner did not make this argument when it first filed the waiver request with the Commission on May 25, 2023, we dismiss the petition because it relies on an argument that was not raised previously. See 47 CFR § 1.106(b)(2), (c)(2) (stating that a petition for reconsideration will be entertained only if the petition relies on facts or arguments that have changed or were unknown to the petitioner when it previously filed at the Commission, unless it is required in the public interest). As an alternative and independent basis for rejecting this petition, we also deny the petition on the merits. While we are sympathetic to the argument raised by Guthrie Center Community School District, the Commission has not waived the FCC Form 471 application filing deadline based on the argument that an E-rate staff person's spouse or other family member was suffering from an illness around the time of the deadline. For these reasons, we dismiss this Petition for Reconsideration.

Broward Junior Academy, FL, Application No. 231039392, Petition for Reconsideration, CC Docket No. 02-6 (filed June 26, 2023)

Cedarville Public School District, AR, Application No. 231039553, Petition for Reconsideration, CC Docket No. 02-6 (filed July 21, 2023)

Culbertson Public Library, NE, Application No. 231027838, Petition for Reconsideration, CC Docket No. 02-6 (filed July 7, 2023)

Gesher Jewish Day School, VA, Application No. 231039381, Petition for Reconsideration, CC Docket No. 02-6 (filed Aug. 15, 2023)

Griffin Technology Academies, CA, Application No. 231039163, Petition for Reconsideration, CC Docket No. 02-6 (filed June 23, 2023)

Guthrie Center Community School District, IA, Application No. 231039238, Petition for Reconsideration, CC Docket No. 02-6 (filed July 26, 2023)

Promise Academy, TN, Application No. 231039071, Petition for Reconsideration, CC Docket No. 02-6 (filed June 29, 2023)

St. Joseph County Public Library, IN, Application No. 211022997, Petition for Reconsideration, CC Docket No. 02-6 (filed Jan. 31, 2023)

Wecom (Topock Elementary School District 12 and Painted Desert Demonstration), AZ, Application Nos. 191009258, 191012365, Petition for Reconsideration, CC Docket No. 02-6 (filed July 26, 2023)

Granted⁸

Discount Calculation⁹

Cornerstone Academy, CA, Application No. 868731, Request for Waiver, CC Docket No. 02-6 (filed Nov. 14, 2012)

⁸ We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also waive sections 54.507(d) and 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. *See* 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); 47 CFR § 54.514(a) (codifying the invoice filing deadline).

⁹ *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, 10709, para. 13-14 (WCB 2006) (*Academia Claret Order*) (allowing the submission of discount calculation information when the applicant was previously unable to fully comply with the document request within USAC's permitted time period).

Consistent with precedent, we also waive the appeal filing deadline for Denver Christian Schools. *See, e.g., Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, 11019, para. 2 (WCB 2011) (*ABC Unified School District Order*) (granting waivers of the deadline for filing appeals and waiver requests because the filers submitted their appeals/requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision).

Denver Christian Schools, CO, Application No. 221005651, Request for Waiver, CC Docket No. 02-6 (filed June 6, 2023)

*Discount Calculation—Remand for USAC Determination*¹⁰

Las Vegas West School District, NM, Application No. 576721, Request for Review, CC Docket No. 02-6 (filed Dec. 10, 2010)

*Granting Additional Time to Respond to USAC with Information*¹¹

Dodgeland School District, WI, Application No. 171014866, Request for Waiver, CC Docket No. 02-6 (filed Feb. 28, 2020)

*Granting Additional Time to Respond to USAC with Information During Invoicing*¹²

Lafayette County School District, MO, Application No. 996523, Request for Waiver, CC Docket No. 02-6 (filed Jun. 22, 2017)

*Late-Filed FCC Form 471 Applications – Due to Serious Illness*¹³

Moscow Public Schools, KS, Application No. 231039265, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

St. John Evangelical Lutheran School, WI, Application No. 231038803, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)

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

¹⁰ During an audit, it was determined that Las Vegas West School District incorrectly applied an alternative discount calculation method. Because of the miscalculation, the school district's discount was reduced from 90% to 80%, making it ineligible for FY 2007 Priority Two funding because the funding cap only funded entities at the 81% level and above. In its appeal with the Commission, Las Vegas West School District argues that, in 2003, the New Mexico Public Education Department changed its calculation method. Based on this argument, the petitioner submitted evidence that the school district should receive an E-Rate Program discount at the 90% level. We make no determination based on this new evidence but remand this appeal to USAC for further review. *See, e.g., Academia Claret Order*, 21 FCC Rcd at 10708, para. 12 (remanding discount calculation appeals back to USAC for review and issue an award or denial based on a complete review and analysis). *See also supra* note 8.

¹¹ *See, e.g., Requests for Review of the Decision of the Universal Service Administrator by Alpaugh Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035 (2007) (*Alpaugh Unified School Order*); *Requests for Review of Decisions of the Universal Service Administrator by Ben Gamla Palm Beach et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 1876 (WCB 2014) (*Ben Gamla Palm Beach Order*) (granting applicants' requests for review where they were denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame).

¹² *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).

¹³ *See, e.g., Academy of Math and Science Order*, 25 FCC Rcd at 9259-60, paras. 8-9; *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15474, 15477-78, para. 6 (2008) (*Acorn Public Library Order*) (finding special circumstances exist to justify granting a waiver request where, for example, the E-Rate staff person in a small school district filed an E-Rate application 30 days late or less because of an unexpected serious illness).

Academir Preparatory Of Championsgate, FL, Application No. 231038996, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

Crispus Attucks Charter School, PA, Application No. 231039099, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

Digital Pioneers Academy, DC, Application No. 231038831, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Redbank Valley Public Library, PA, Application No. 231038588, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2023)

The Charlton School, NY, Application No. 231039109, Request for Waiver, CC Docket No. 02-6 (filed Apr. 11, 2023)

*Ministerial and/or Clerical Errors*¹⁵

Asher Public Schools, OK, Application No. 231030081, Request for Waiver, CC Docket No. 02-6 (filed Aug. 3, 2023, supplemented Aug. 11, 2023)

Bais Chaya Mushka, CA, Application Nos. 171041150, 181006195, Request for Review and/or Waiver, CC Docket No. 02-6 (filed May 22, 2023)

Central Dewitt Community School District, IA, Application No. 231031348, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 4, 2023)

Delaware Opportunities, Inc, NY, Application No. 231005365, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 2, 2023)

Erie 1 BOCES, NY, Application No. 221016405, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Apr. 3, 2023, supplemented Aug. 18, 2023)

Keansburg School District #123005, NJ, Application No. 231029606, Request for Review and/or Waiver, CC Docket No. 02-6 (filed July 14, 2023, supplemented Aug. 15, 2023)

Maplewood Academy, MN, Application No. 231013360, Request for Review and/or Waiver, CC Docket No. 02-6 (filed June 30, 2023, supplemented Aug. 15, 2023)

Sallisaw Independent School District 1, Application No. 221021269, Request for Review and/or Waiver, CC Docket No. 02-6 (filed July 21, 2023, supplemented July 27, 2023)

Union City Area School District, PA, Application No. 181028973, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 29, 2018, supplemented Aug. 11, 2023)

Wood County School District, WV, Application No. 221018748, Request for Review and/or

(Continued from previous page)

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

¹⁵ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools*, CC Docket No. 02-6, Order, 25 FCC Rcd at 17319, 17319-20, nn. 5, 7, 15, 16, 17, 19, 20 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant entered the wrong FCC Form 470 number, category of service, price, discount rate, or date or omitted entities or services from source documents onto its FCC Form 471, and permitting correction when applicant made a typographical error or mischaracterized a contract as month-to-month service).

Waiver, CC Docket No. 02-6 (filed July 7, 2023)

*Ministerial and/or Clerical Errors – Invoicing*¹⁶

Peak Methods, Inc. (Heavener Public Schools), OK, Application No. 161054729, Request for Waiver, CC Docket No. 02-6 (filed Aug. 20, 2018)

*Ministerial and/or Clerical Errors – FRN Omitted from FCC Form 471 Application*¹⁷

Avalon Independent School District, TX, Application No. 231021007, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2023)

Waco-McLennan Public Library, TX, Application No. 181021022, Request for Waiver, CC Docket No. 02-6 (filed Oct. 12, 2018)

*Services Delivered After Contract Expiration Date*¹⁸

Southwest Educational Development Center, UT, Application No. 211017360, Request for Review and/or Waiver, CC Docket No. 02-6 (filed June 26, 2023)

*Waiver of Appeal Filing Deadline*¹⁹

Maplebrook School, NY, Application No. 231001926, Request for Waiver, CC Docket No. 02-6 (filed July 24, 2023)

YMCA of the East Bay, CA, Application No. 211024339, Request for Waiver, CC Docket No. 02-6 (filed May 20, 2022)

¹⁶ See *Accomack County Public School Order*, DA 23-48, at paras. 7-9 (granting waivers where the E-Rate invoice filers entered the wrong service start date, application number, funding request number, customer bill date or inadvertently requested an invoice filing deadline extension for the wrong funding request number). We also waive section 54.720 of the Commission's rules because the petitioner filed its waiver request within 60 days of discovering or receiving notice of the ministerial or clerical error. See *id.* at para. 12.

¹⁷ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521, n.19 (WCB 2008) (*Archer Public Library Order*) (permitting applicant to add a request omitted from its FCC Form 471, but included on its source list). Avalon Independent School District attempted to add an FRN one day after the FY 2023 window closed. We direct USAC to add this funding request to Avalon Independent School District timely-filed FY 2023 FCC Form 471 application. Waco-McLennan Public Library did not realize this funding request was omitted until the FY 2018 application filing window had closed. We direct USAC to add this funding request to one of the petitioner's timely-filed FY 2018 FCC Form 471 applications.

¹⁸ See *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-487170, et al., CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5316-17, 5319-20, paras. 2, 9 (2006) (*Bishop Perry Order*) (finding that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Act - ensuring access to discounted telecommunications and information services to schools and libraries - and, therefore, does not serve the public interest). See also, e.g., *Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District Barberton, Ohio, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 23 FCC Rcd 15526, 15530-31, paras. 8-9 (WCB 2008) (*Barberton City Order*).

¹⁹ See, e.g., *ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (granting waivers of appeal filing deadline when the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision). We make no finding on the underlying issues in these appeals and remand these applications back to USAC to make a determination on the merits. See *supra* note 8.

*Waiver of Special Construction Service Delivery Deadline*²⁰

Arlington Independent School District, TX, Application No. 211040524, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2023)

Denied*Discount Rate*²¹

Midwest City Del City School District, OK, Application Nos. 578369, 562205, 559836, Request for Review, CC Docket No. 02-6 (filed Apr. 2, 2011)

NATIVE Vocational School District, AZ, Application No. 871949, Request for Review, CC Docket No. 02-6 (filed Nov. 30, 2015)

Yeshiva RLKTI Primary, NY, Application No. 726269, Request for Review, CC Docket No. 02-6 (filed Jan. 3, 2012)

*Failure to File FCC Form 470 for Current Funding Year*²²

Hammond Public Library, IN, Application No. 563276, Request for Review, CC Docket No. 02-6 (filed Nov. 30, 2012)

*Late-Filed FCC Form 471 Applications*²³

Academia Menonita Betania, PR, Application No. 231039256, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Aspira, Inc. of Pennsylvania, PA, Application No. 231039591, Request for Waiver, CC Docket No. 02-6 (filed July 28, 2023)

²⁰ See, e.g., *Requests for Waiver of the Decisions of the Universal Service Administrator by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10051, para. 8 (WCB 2018) (*Grants/Cibola Order*) (waiving the special construction service delivery deadline because the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures).

We find that Arlington Independent School District 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. Arlington Independent School District asked for an extension until July 30, 2023 to complete the project. Accordingly, we waive the special construction service delivery deadline and direct USAC to provide the applicant this additional time to complete its special construction project. 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 8.

²¹ See *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Enterprise City Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 2372 (WCB 2012) (finding that the applicants did not provide sufficient documentation to support their requested discount rate).

²² See, e.g., *Review of the Decision of the Universal Service Administrator by Aberdeen School District; School and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8763, para. 10 (2007) (*Aberdeen School District Order*) (denying appeal where applicant failed to file a new FCC Form 470 and solicit bids in the year for which it sought services, thereby circumventing the competitive bidding process).

²³ 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).

Bishop Ward High School, KS, Application No. 231039707, Request for Waiver, CC Docket No. 02-6 (filed July 31, 2023)

Caesar E. Chavez Consortium, OH, Application No. 231039660, Request for Waiver, CC Docket No. 02-6 (filed July 13, 2023, duplicate July 27, 2023)

Champion Christian School District, PA, Application No. 231039649, Request for Waiver, CC Docket No. 02-6 (filed June 27, 2023)

Charleston Collegiate School, SC, Application No. 231039536, Request for Waiver, CC Docket No. 02-6 (filed July 18, 2023)

City Church of Orlando, Inc., FL, Application No. 231027665, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2023)

Crown Pointe Academy, CO, Application No. 231039686, Request for Waiver, CC Docket No. 02-6 (filed July 14, 2023)

Dixon School of the Arts and Sciences, FL, Application No. 231039692, Request for Waiver, CC Docket No. 02-6 (filed July 20, 2023)

Eagle Elementary of Akron, OH, Application No. 231039575, Request for Waiver, CC Docket No. 02-6 (filed July 13, 2023)

Esko Public School District #0099, MN, Application No. 231039525, Request for Waiver, CC Docket No. 02-6 (filed July 26, 2023)

Garfield County Library, NE, Application No. 231039631, Request for Waiver, CC Docket No. 02-6 (filed July 20, 2023)

Good Shepherd Catholic Academy, NY, Application No. 231039332, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2023)

Gulf Beaches Public Library, FL, Application No. 231039671, Request for Waiver, CC Docket No. 02-6 (filed July 7, 2023)

High Achievement Christian School, PR, Application No. 231039690, Request for Waiver, CC Docket No. 02-6 (filed July 19, 2023)

Holy Redeemer Catholic School and Parish, OR, Application Nos. 231039509, 231039498, Request for Waiver, CC Docket No. 02-6 (filed June 26, 2023)

Holy Rosary School, WA, Application No. 231039658, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2023)

Islamic Academy of Alabama, AL, Application No. 231039241, Request for Waiver, CC Docket No. 02-6 (filed Apr. 12, 2023)²⁴

Kountze Independent School District, TX, Application No. 231039694, Request for Waiver, CC Docket No. 02-6 (filed July 20, 2023)

²⁴ In its waiver request, Islamic Academy of Alabama also seeks a waiver for Application No. 231038915. The Bureau already granted a waiver for this application. *See Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 21-93, Public Notice, DA 23-433, at 18 (WCB May 31, 2023)

Kountze Independent School District, TX, Application No. 231039693, Request for Waiver, CC Docket No. 02-6 (filed July 20, 2023)

La Lumiere School, Inc., IN, Application No. 231039717, Request for Waiver, CC Docket No. 02-6 (filed July 31, 2023)

Leetonia Exempted Village School District, OH, Application Nos. 231039373, 231039380, Request for Waiver, CC Docket No. 02-6 (filed July 10, 2023)

Letts Public Library, IA, Application No. 231039263, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Lorain Public Library, OH, Application No. 231039668, Request for Waiver, CC Docket No. 02-6 (filed July 27, 2023)

Mobile Public Library, AL, Application No. 231039670, Request for Waiver, CC Docket No. 02-6 (filed July 7, 2023)

Mt. View-Birch Tree School District R3, MO, Application No. 231039355, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2023)

North Country Library System, NY, Application No. 221040906, Request for Waiver, CC Docket No. 02-6 (filed Dec. 9, 2022)

Pawnee School District R E 12, CO, Application No. 231039431, Request for Waiver, CC Docket No. 02-6 (filed July 5, 2023)

Prairie-Hills School District 144, IL, No Application Filed, Request for Waiver, WC Docket No. 21-93 (filed Mar. 9, 2023)

Pulaski County School District, GA, Application No. 231039711, Request for Waiver, CC Docket No. 02-6 (filed July 27, 2023)

Regional Safe School – Carlinville, IL, Application No. 231039266, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Riceville Community School District, IA, Application No. 231039646, Request for Waiver, CC Docket No. 02-6 (filed June 28, 2023)

Rosedale Christian Academy, MD, Application No. 231039678, Request for Waiver, CC Docket No. 02-6 (filed July 11, 2023)

Sargent School District RE-33J, CO, Application Nos. 231039608, 231039607, Request for Waiver, CC Docket No. 02-6 (filed July 25, 2023)

School District of Oconee County, SC, Application Nos. 231039684, 231039683, Request for Waiver, CC Docket No. 02-6 (filed July 13, 2023)

School of Dreams Academy, NM, Application No. 231039579, Request for Waiver, CC Docket No. 02-6 (filed June 30, 2023)

Seneca Township High School District 160, IL, Application No. 231033426, Request for Waiver, CC Docket No. 02-6 (filed June 26, 2023)

Spurger Independent School District, TX, Application No. 231033222, Request for Waiver, CC Docket No. 02-6 (filed July 29, 2023)

St. Mary's Catholic School, MN, Application No. 231039254, Request for Waiver, CC Docket No. 02-6 (filed Apr. 13, 2023)

Warren Glen Academy, NJ, Application No. 231039732, Request for Waiver, CC Docket No. 02-6 (filed Aug. 3, 2023)

Warsaw C U School District 316, IL, Application No. 231039719, Request for Waiver, CC Docket No. 02-6 (filed July 28, 2023)

Winfield Mt. Union Community School District, IA, Application No. 231009207, Request for Waiver, CC Docket No. 02-6 (filed Feb. 6, 2023)²⁵

Yakima Valley Libraries, WA, Application Nos. 231039636, 231039422, Request for Waiver, CC Docket No. 02-6 (filed July 6, 2023)

*Late-Filed Invoice or Invoice Deadline Extension*²⁶

Ascent Classical Academy DougCo Consortium, CO, Application No. 211039802, Request for Waiver, CC Docket No. 02-6 (filed July 20, 2023)

ASPIRA, Inc. of Pennsylvania, PA, Application No. 211020129, Request for Waiver, CC Docket No. 02-6 (filed May 5, 2023)

ASPIRA, Inc. of Pennsylvania, PA, Application No. 211020129, Request for Waiver, CC Docket No. 02-6 (filed June 9, 2023)

ASU Preparatory Academy, AZ, Application No. 211034970, Request for Waiver, CC Docket No. 02-6 (filed Aug. 7, 2023)

Auglaize County Public District Library, OH, Application No. 201019812, Request for Waiver, CC Docket No. 02-6 (filed Feb. 28, 2022)

Edge Information Technologies (Marion Public Library), IN, Application No. 211014878, Request for Waiver, CC Docket No. 02-6 (filed Aug. 15, 2023)

Kindle Farm School, VT, Application No. 211037323, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2023)

Krum Independent School District, TX, Application No. 191006525, Request for Waiver, CC Docket No. 02-6 (filed July 1, 2021)

Synergetics, Inc. (West Bolivar Consolidated School District), MS, Application No. 191034303, Request for Waiver, CC Docket No. 02-6 (filed Aug. 10, 2023)

*Ministerial and/or Clerical Errors*²⁷

²⁵ Winfield Mt. Union Community School District did not file an application at all for FY 2022 and is attempting to use an FY 2023 E-Rate application for services already delivered in FY 2022.

²⁶ 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).

Bridges Academy, CA, Application No. 231028821, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Jan. 24, 2023)

*Relying on FCC Form 470 That Did Not Seek Bids on Types of E-rate Services Later Requested*²⁸

Barren County School District, KY, Application No. 231034263, Request for Waiver, CC Docket No. 02-6 (filed June 22, 2023)

*Service Substitution*²⁹

Hebrew Academy of Special Children, NY, Application No. 221025390, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2023)

*Untimely Filed Appeals or Waiver Requests*³⁰

Centro Tecnológico Iglesia de Dios Pentocostal, PR, Application Nos. 211017083, 211017079, Request for Waiver, CC Docket No. 02-6 (filed Mar. 22, 2022)

Chabad of Southern Nevada, NV, Application No. 191002944, Request for Waiver, CC Docket No. 02-6 (filed Nov. 22, 2022)

Golden Plains Unified School District, CA, Application No. 171000922, Request for Waiver, CC Docket No. 02-6 (filed Sept. 26, 2018)

Keller Independent School District, TX, Application No. 191041828, Request for Waiver, CC Docket No. 02-6 (filed Aug. 1, 2023)

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²⁷ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Assabet Valley Regional Vocational District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 1924, 1925, para. 1 (WCB 2012) (*Assabet Valley Order*) (finding that the petitioners did not demonstrate good cause to justify waivers of the Commission's rules permitting changes to the applicants' E-Rate applications after the filing window deadline).

²⁸ See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Albert Lea Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 4533 (WCB 2009); *Petition for Reconsideration by Chicago Public Schools; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 9289 (WCB 2014) (denying appeals of applicants that filed FCC Forms 470 that did not include the types of services for which the applicants later requested E-rate funding).

²⁹ *Requests for Waiver Of Sections 54.504(C), 54.504(F), 54.507(C), and 54.507(G) of the Commission's Rules, State Of Louisiana Department Of Education Baton Rouge, La, Recovery School District New Orleans, La, New Orleans Public Schools New Orleans, La, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 F.C.C.R. 1653, 1662, para. 17 (2010) (denying a service substitution request where the request does not meet the first prong of the criteria specified in our rules for granting such a request, and specifically finding that equipment that provides switching functions and the services necessary to maintain the switches provide two separate functionalities).

³⁰ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 5688, para. 6 (WCB 2010) (*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).

Ocean Tides School, RI, Application No. 231038580, Request for Waiver, CC Docket No. 02-6 (filed July 7, 2023)

San Joaquin Valley Library System, CA, Application No. 211036849, Request for Waiver, CC Docket No. 02-6 (filed July 23, 2023)

*Urban/Rural Classification*³¹

Sweetwater County School District 01, WY, Application No. 181033784, Request for Waiver, CC Docket No. 02-6 (filed Oct. 9, 2018)

Rural Health Care Program

WC Docket No. 02-60

Granted

*Waiver of the Invoice Filing Deadline*³²

Community Health Center Association of Mississippi, MS, Request for Waiver, WC Docket No. 02-60, Funding Request No. 19663721 (filed May 10, 2023)

*Waiver of the Service Provider Identification Number Change Deadline*³³

Southern Hills Counseling Center, Inc. - Paoli, IN, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21988251 (filed June 6, 2023)

*Competitive Bidding – Waiver of 28 Day Waiting Period*³⁴

³¹ We deny Sweetwater County School District 01's request to declare that it is located in a non-urban location. An individual school or library will be designated as "urban" if located in an "Urbanized Area" or an "Urban Cluster" with a population equal to or greater than 25,000, as determined by the most recent rural-urban classification by the U.S. Census Bureau (Census Bureau). *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15592, para. 136 (2014) (*Second 2014 E-Rate Order*); 47 C.F.R. § 54.505(b)(3)(i)-(ii). The Census Bureau's 2010 rural-urban classification was used for Funding Year 2018 which classifies Rock Springs, WY, as urban. *See also* https://www2.census.gov/geo/docs/reference/ua/ua_list_all.xls.

³² *See In re Rural Health Care Mechanism*, CC Docket No. 02-60, Order, 35 FCC Rcd 1986, 1988-89, para. 9 (WCB 2020) (granting waiver of the invoice filing deadline in light of "technical issues" that prevented filers from meeting it); *Abbotsford School District Order*, 27 FCC Rcd at 15300, para. 2 (waiving invoice filing deadline due to delays beyond the control of the entities requesting a waiver). 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 date of this Public Notice or the issuance of a Funding Commitment Letter, to file invoices with USAC.

³³ *See Requests for Review of Decisions of the Universal Service Administrator by Bay Shore Union Free School District, et al., Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15537, 15543, para. 11 (WCB 2008) (waiving the service provider identification number (SPIN) change deadline when applicants were unaware of the need for a SPIN change until after the deadline). *See also* 47 CFR 54.624(a)(4)(B) ("An applicant must file their request for a site or service change to the Administrator no later than the service delivery deadline as defined in § 54.626."). We direct USAC to coordinate with the applicants on filing SPIN change requests and make no finding as to the merits of the request. We also dismiss the request for a waiver of the invoice deadline as moot because, if a SPIN change is granted, USAC will set a new invoice deadline of 120 days from the date of the revised funding commitment letter approving the SPIN change. *See* 47 CFR § 54.627(a)(2).

³⁴ *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, WC Docket No. 02-60, Public Notice, DA 22-1008, 2022 WL 5241209 at *6 & n. 26 (WCB, Sept. 30, 2022) (granting request for review where service agreement provided a basis for a competitive bidding exemption despite the lack of (continued....))

Hawaii Telehealth Consortium., HI, Appeal, WC Docket No. 02-60, Funding Request No. 21144311 (filed Nov. 18, 2022)

*Competitive Bidding – Master Service Agreement Competitive Bidding Exemption*³⁵

Eastern Kansas Health Network, Inc., KS, Petition for Waiver, WC Docket No. 02-60, Funding Request No. 17263751 (filed May 11, 2022)

Denied

*Denial of Waiver Request of the Invoice Filing Deadline*³⁶

Magna 5, LLC (Various Health Care Providers), NY, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 21943421, 21944181, 21944231, 21952061, 21952091, 21952101, 21952141, 21952311, 21952331, 21952361 (filed May 8, 2023)

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an applicable evergreen contract bidding exemption). Hawaii Telehealth Consortium (HTC) received Health Care Fund (HCF) Program support for funding year 2020 based on a three-year service agreement that USAC designated as evergreen. When seeking HCF Program support for funding year 2021, HTC indicated that it qualified for the evergreen contract bidding exemption, citing the same service agreement. However, HTC indicated a different contract ID on its network cost worksheet (NCW) than the ID associated with the evergreen agreement. USAC denied the funding request because HTC failed to provide confirmation that the NCW contract ID is an extension of the evergreen agreement. Our review of the record, however, indicates that the evergreen contract qualifies for the master service agreement competitive bidding exemption because it was developed and negotiated in response to an request for proposal that by its terms specifically solicited proposals that included a mechanism for adding additional sites to the master service agreement, as required by our rules. *See* 47 CFR § 54.622(i)(2). We therefore grant HTC's appeal and remand the funding request to USAC for further action.

³⁵ *See, e.g., Aberdeen School District Order*, 22 FCC Rcd at 8762-63, para.9 (2007) (granting waivers of violations of the 28-day rule in the E-Rate Program when the applicants missed the deadline by only one to three days, thereby allowing their requests for services to be competitively bid for a meaningful period of time); *see also Request for Waiver by Elite Program Specialists, LLC*, WC Docket No. 02-60, Order, DA 22-554, para. 7 (2022). Eastern Kansas Health Network (EKHN) submitted a FCC Form 461 to initiate competitive bidding for funding year 2017 support on April 24, 2017. USAC posted the Form 461 on April 27, 2017, and designated May 26, 2017, as the Allowable Contract Selection Date (ACSD). EKHN received only one bid, and "in error" entered into a service agreement with the responding vendor on May 25, 2017. As the agreement was entered into only one day before the ACSD, we find that EKHN conducted a meaningful competitive bidding process and grant its appeal.

³⁶ *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) (denying a request for waiver of the invoice filing deadline when the petitioner missed the deadline due to personnel issues).

Emergency Connectivity Fund Program**WC Docket No. 21-93****Dismissed on Reconsideration**³⁷

Hoosic Valley Central School District, NY, Application No. ECF202114830, Petition for Reconsideration, WC Docket No. 21-93 (filed July 28, 2023)

Granted³⁸*Early Delivery*³⁹

Ascend Leadership Academy, NC, Application No. ECF202202340, Request for Waiver, WC Docket No. 21-93 (filed Aug. 21, 2023)

*Granting Additional Time to Respond to USAC's Request for Information*⁴⁰

Reece School, NY, Application No. ECF202106657, Request for Waiver, WC Docket No. 21-93 (filed July 13, 2023)

*Late-Filed ECF FCC Form 471 Applications – Filed Within 14 Days of the Close of the Window*⁴¹

Blue Ridge Opportunity Commission, NC, Application No. ECF202209791, Request for Waiver, WC Docket No. 21-93 (filed June 8, 2022)

Capital Area Community Action Agency, FL, Application No. ECF202209803, Request for Waiver, WC Docket No. 21-93 (filed June 15, 2022)

³⁷ See, e.g., *Allan Shivers Library Order*, 29 FCC Rcd at 10357, para. 2 (dismissing petitions for reconsideration that fail to identify any material error, omission, or reason warranting reconsideration, and rely on arguments that have been fully considered and rejected by the Bureau within the same proceeding). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, 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. See *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8740, 8746, paras. 90, 107 (2021) (*Emergency Connectivity Fund Report and Order*).

³⁸ See *supra* note 8.

³⁹ 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, 37 FCC Rcd 7445, 7459 n.25 (WCB 2022) (granting requests for waivers for equipment delivered before the start of the approved funding year).

⁴⁰ See, e.g., *Alpaugh Unified School District Order*, 22 FCC Rcd at 6035 *Ben Gamla Palm Beach Order*, 29 FCC Rcd at 1876 (granting applicants' requests for review where they were denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules. See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8746, paras. 90, 107.

⁴¹ See, e.g., *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8 (finding special circumstances existed to justify granting waiver requests where, for example, petitioners filed their FCC Forms 471 within 14 days of the application filing window deadline). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Programs, including the E-Rate Program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund Program, we now rely on E-Rate program precedent to resolve petitions for waiver of the Emergency Connectivity Fund Program application filing deadline. See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740, 8746, paras. 90, 107.

Carden Academy of Maui, HI, Application Nos. ECF202209787, ECF202209788, Request for Waiver, WC Docket No. 21-93 (filed May 22, 2022)

Cesar Chavez Public Charter School, DC, Application No. ECF202209780, Request for Waiver, WC Docket No. 21-93 (filed May 31, 2022)

Colegio San Jose Lares, PR, Application No. ECF202209732, Request for Waiver, WC Docket No. 21-93 (filed May 16, 2022)

EPIC Charter (Excellence Performance Innovation Citizenship), CA, Application No. ECF202209755, Request for Waiver, WC Docket No. 21-93 (filed May 17, 2022)

Greg Mathis Charter High School, SC, Application No. ECF202209754, Request for Waiver, WC Docket No. 21-93 (filed May 16, 2022)

Growing Up Green Charter School, NY, Application No. ECF202209737, Request for Waiver, WC Docket No. 21-93 (filed May 17, 2022)

Growing Up Green Charter School II, NY, Application No. ECF202209738, Request for Waiver, WC Docket No. 21-93 (filed May 17, 2022)

Hebrew Academy/Margate, FL, Application No. ECF202209739, Request for Waiver, WC Docket No. 21-93 (filed May 16, 2022)

Hibbing Independent School District 701, MN, Application No. ECF202209807, Request for Waiver, WC Docket No. 21-93 (filed May 26, 2022)

Houston Quran Academy MAS Katy Center, TX, Application Nos. ECF202209777, ECF202209778, Request for Waiver, WC Docket No. 21-93 (filed June 16, 2022)

John Rex Charter School, OK, Application No. ECF202209789, Request for Waiver, WC Docket No. 21-93 (filed May 20, 2022)

Kalkaska Public Schools, MI, Application No. ECF202209785, Request for Waiver, WC Docket No. 21-93 (filed May 20, 2022)

Knowledge-First Empowerment Academy, TX, Application No. ECF202209756, Request for Waiver, WC Docket No. 21-93 (filed May 19, 2022)

Liguori Inc. DBS Liguori Academy, PA, Application No. ECF202209757, Request for Waiver, WC Docket No. 21-93 (filed May 17, 2022)

Madina Academy, CT, Application Nos. ECF202209758, ECF202209759, Request for Waiver, WC Docket No. 21-93 (filed June 15, 2022)

Marysville Public School District, MI, Application No. ECF202209786, Request for Waiver, WC Docket No. 21-93 (filed May 20, 2022)

Mesabi East School District 2711, MN, Application No. ECF202209770, Request for Waiver, WC Docket No. 21-93 (filed May 18, 2022)

Mountain View Lutheran School, NV, Application No. ECF202201380, Request for Waiver, WC Docket No. 21-93 (filed May 24, 2022)

Northern Summit Academy – Shasta, CA, Application No. ECF202209781, Request for Waiver, WC Docket No. 21-93 (filed May 19, 2022)

Onondaga-Cortland-Madison Boces, NY, Application No. ECF202209764, Request for Waiver, WC Docket No. 21-93 (filed May 23, 2022)

Paradise USD 399, KS, Application No. ECF202209774, Request for Waiver, WC Docket No. 21-93 (filed May 23, 2022)

Rockcastle County School District, KY, Application No. ECF202209761, Request for Waiver, WC Docket No. 21-93 (filed May 17, 2022)

Schoharie Central School District, NY, Application No. ECF202209805, Request for Waiver, WC Docket No. 21-93 (filed May 26, 2022)

Starkville Oktibbeha Consolidated School District, MS, Application No. ECF202209817, Request for Waiver, WC Docket No. 21-93 (filed June 10, 2022)

Summit School District Re-1, CO, Application Nos. ECF202209783, ECF202209784, Request for Waiver, WC Docket No. 21-93 (filed May 19, 2022)

Uniondale Union Free School District, NY, Application No. ECF202209753, Request for Waiver, WC Docket No. 21-93 (filed May 20, 2022)

*Late-Filed ECF FCC Form 471 – Application Filed More than 30 Days Late*⁴²

Bais Reuvan Kaminetz of Lakewood, NJ, Application No. ECF202209828, Request for Waiver, WC Docket No. 21-93 (filed June 1, 2022)

Biblioteca Municipal de Las Piedras, PR, Application No. ECF202207750, Request for Waiver, WC Docket No. 21-93 (filed July 6, 2022)

Bibliotecas Municipio de Ponce, PR, Application No. ECF202209829, Request for Waiver, WC Docket No. 21-93 (filed June 2, 2022)

Community Coordinated Care for Children 4C, FL, Application No. ECF202209849, Request for Waiver, WC Docket No. 21-93 (filed June 16, 2022)

Hawaii Academy of Arts & Science, HI, Application No. ECF202209848, Request for Waiver, WC Docket No. 21-93 (filed June 16, 2022)

⁴² See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Agri-Business Child Development et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 8278, 8280, para. 7 (WCB 2020) (*Agri-Business Child Development Order*) (finding good cause to waive the FCC Form 471 application filing window deadline for applicants impacted by the coronavirus (COVID-19) pandemic that requested a waiver of the filing deadline and submitted their applications within 60 days of the close of the filing window); see also *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 9927, 9931 n.13 (WCB 2021) (finding good cause to extend the waiver standard set out in the *Agri-Business Child Development Order* to applicants who filed their applications within 99 days of the funding year 2020 FCC Form 471 application filing window deadline); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket No. 06-122, Public Notice, 36 FCC Rcd 10035, 10037, n.7 (WCB June 30, 2021) (extending the *Agri-Business Child Development Order* waiver standard to E-Rate funding year 2021 applicants); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, 96-45, WC Docket Nos. 02-60, 21-93, 10-90, 05-337, 06-122, Public Notice, 37 FCC Rcd 2683, 2688, n.12 (WCB 2022) (granting late-filed ECF FCC Form 471 applications).

Iman Academy SW, TX, Application No. ECF202209760, Request for Waiver, WC Docket No. 21-93 (filed June 9, 2022)

Islamic Academy of Alabama, AL, Application No. ECF202209845, Request for Waiver, WC Docket No. 21-93 (filed Sept. 27, 2022)

Ka Umeke Kao PCS, HI, Application No. ECF202209824, Request for Waiver, WC Docket No. 21-93 (filed June 16, 2022)

New Horizon School West Los Angeles, CA, Application No. ECF202209846, Request for Waiver, WC Docket No. 21-93 (filed July 15, 2022)

Orange Crescent School, CA, Application No. ECF202209876, Request for Waiver, WC Docket No. 21-93 (filed July 6, 2022)

Prospect Ridge Academy, CO, Application No. ECF202209819, Request for Waiver, WC Docket No. 21-93 (filed June 24, 2022)

Wallkill Central School District, NY, Application No. ECF202209823, Request for Waiver, WC Docket No. 21-93 (filed June 2, 2022)

Washington Public Library, NJ, Application No. ECF202209826, Request for Waiver, WC Docket No. 21-93 (filed June 8, 2022)

Wilmington City School District, OH, Application No. ECF202209884, Request for Waiver, WC Docket No. 21-93 (filed July 18, 2022)

*Payment Verification*⁴³

Butte Central Catholic School, MT, Application No. ECF202105801, Request for Review and/or Waiver, WC Docket No. 21-93 (filed July 26, 2023)

Franklin County Vo-Tech School District, MA, Application No. ECF202104344, Request for Review and/or Waiver, WC Docket No. 21-93 (filed July 5, 2023)

⁴³ 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. See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8746, paras. 90, 107.

Sulphur Independent School District 1, OK, Application No. ECF202114194, Request for Review and/or Waiver, CC Docket No. 02-6 (filed July 3, 2023)⁴⁴

*Reasonable Support Amount*⁴⁵

NYSARC Inc, New York City Chapter, AHRC New York City, NY, Application No. ECF202206508, Request for Waiver, WC Docket No. 21-93 (filed May 17, 2022)

*Timely-Filed Appeals*⁴⁶

Coral Reef Montessori Academy Charter, FL, Application No. ECF202108947, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Aug. 1, 2023)

*Waiver of the Appeal Filing Deadline*⁴⁷

Legacy Academy, AR, Application No. ECF202111827, Request for Waiver, WC Docket No. 21-93 (filed Jan. 30, 2023)

Quality Education and Development LLC, NY, Application No. ECF202114363, Request for Waiver, WC Docket No. 21-93 (filed July 21, 2023)

⁴⁴ We also remand E-Rate application number 231012845 back to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis. *See, e.g., Metropolitan Nashville Public Schools, Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 12334 (WCB 2018) (granting a limited waiver of the red light rule given the disproportionate penalty the applicant would suffer coupled with other unique circumstances presented).

⁴⁵ *See Requests for Waiver and Review of Decisions of the Emergency Connectivity Fund Program Administrator by Fresno Unified School District, et al.*, WC Docket No. 21-93, Order, 37 FCC Rcd 15 (WCB 2022) (waiving the \$400 reasonable support amount cap for connected devices needed to meet the remote learning needs of students, school staff and library patrons with disabilities); *see also Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8731, para. 70 (recognizing that the reasonable cost of connected devices for individuals with disabilities may be higher than the \$400 cap in the ECF program and directing schools and libraries to seek a waiver of the support amount cap if they can demonstrate that the additional cost for the connected devices is necessary to meet the remote learning needs of students, school staff and library patrons with disabilities). We make no finding as the ultimate eligibility of the applications for which we allow a waiver of the reasonable support amount. *See supra* note 8.

⁴⁶ *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. *See Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8746, paras. 90, 107.

⁴⁷ *See, e.g., ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (granting waivers of filing deadline for appeals because they submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules establishing the appeal filing deadline. *See* 47 CFR § 54.1718. We note that the Commission adopted a shortened appeal timeframe of 30 days in the Emergency Connectivity Fund Program due to the short-term, emergent nature of the program. *See id.*; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740, 8746, paras. 90, 107. We make no finding on the underlying issues in these appeals and remand these applications back to USAC to make a determination on the merits. *See supra* note 8.

Denied*Ineligible Entities*⁴⁸

Queen University, GA, Application No. ECF202209743, Request for Waiver, WC Docket No. 21-93 (filed May 17, 2022)

*Late-Filed ECF FCC Form 471 Applications*⁴⁹

Classical Academy Charter School of Clifton, NJ, Application No. ECF202209954, Request for Waiver, WC Docket No. 21-93 (filed Nov. 18, 2022)

Colonial Heights Public Schools, VA, Application No. ECF202209978, Request for Waiver, WC Docket No. 21-93 (filed Nov. 17, 2022)

Heartland Library Cooperative, FL, Application No. ECF202209938, Request for Waiver, WC Docket No. 21-93 (filed Sept. 19 & 22, 2022)

Paterson Public Schools, NJ, Application No. ECF202209931, Request for Waiver, WC Docket No. 21-93 (filed Oct. 12, 2022)

Saint Elizabeth Ann Seton School, AK, No Application No., Request for Waiver, WC Docket No. 21-93 (filed May 24, 2022)

Scappoose Public Library District, OR, No Application No., Request for Waiver, WC Docket No. 21-93 (filed May 13, 2022)

Sullivan County Public Library, TN, Application No. ECF202210098, Request for Waiver, WC Docket No. 21-93 (filed May 29, 2023)

⁴⁸ 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 of the Decision of the Universal Service Administrator 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, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 936, 940, para. 11 (CCB 2003) (emphasizing that the ultimate burden of proof remains on the applicant). 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, to adopt the same rules of eligibility for participating schools and libraries as 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. See 47 CFR § 54.1700(g), (k) (defining eligible elementary and secondary schools for the purposes of the ECF program).

⁴⁹ See, e.g., *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8 (denying requests for waiver of the FCC Form 471 filing window deadline where petitioners failed to present special circumstances justifying waiver of our rules); *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, 37 FCC Rcd 6423, 6439 n.13 (WCB 2022) (denying late-filed ECF FCC Form 471 applications).

Contribution Methodology**WC Docket No. 06-122****Denied**

*Request for Waiver of Form 499-A Revision Deadline and Late Filing Fees*⁵⁰

Unified Telecom, Inc., Letter of Appeal, WC Docket No. 06-122 (filed Aug. 2, 2023)

Liberty Bell Telephone Co., Letter of Appeal, WC Docket No. 06-122 (filed July 27, 2023)

High-Cost Program (Connect America Fund)**WC Docket No. 10-90****Granted**

*High Cost Universal Broadband (HUBB) Milestone Certification Reporting*⁵¹

Rock Port Telephone Company, WC Docket No. 10-90, Waiver Request – Allow USAC to open HUBB for Milestone Certification (filed May 25, 2023)

⁵⁰ See, e.g., *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; Requests for Review of Decisions of Universal Service Administrator by Airband Communications, Inc., et al.*, WC Docket No. 06-122, CC Docket No. 96-45, Order, 25 FCC Rcd 10861 (WCB 2010) (denying 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); *Universal Service Contribution Methodology; Requests for Waiver of Decisions of the Universal Service Administrator by ComScape Telecommunications of Raleigh-Durham, Inc. and Millennium Telecom, LLC*, WC Docket No. 06-122, Order, 25 FCC Rcd 7399 (WCB 2010) (denying waiver requests when negligence caused late filing fee); *Universal Service Contribution Methodology; Requests for Review of Decisions of the Universal Service Administrator by Achilles Networks, Inc. et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 4646, 4648-49, paras. 5, 8 (WCB 2010); *Federal-State Joint Board on Universal Service; Request for Review by National Network Communications, Inc.*, CC Docket No. 96-45, Order, 22 FCC Rcd 6783 (WCB 2007) (finding that good cause was not shown when filer claimed it did not have skilled personnel to interpret and correctly apply FCC Form 499 instructions). To the extent filers' financial situation makes it difficult to pay the invoice in full, they may set up a payment plan with USAC to satisfy the obligation. See <https://www.usac.org/service-providers/making-payments/how-to-pay/payment-plans/>.

⁵¹ Rock Port Telephone Company timely uploaded and certified enough locations by March 1, 2023 to meet its interim milestone obligation, but did not timely certify that it met the milestone obligations. 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 HUBB portal but due to an inadvertent administrative oversight, the milestone obligation was not timely certified).

*Letter of Credit*⁵²

Declaration Networks Group, Inc., Petition for Temporary Waiver of Section 54.315(c)(2), WC Docket No. 10-90 (filed Aug. 2, 2023)

Denied*Waiver of One-Time Grace Period*⁵³

OzarksGo, LLC, Waiver Request, WC Docket No. 10-90 (filed July 21, 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 -

⁵² Declaration Networks Group, Inc. (DNG) seeks a temporary waiver of the Connect America Fund Phase II Auction (CAF II) Letter of Credit rules, which require a recipient of CAF II support to maintain a Letter of Credit (LOC) with a bank that maintains a Weiss safety rating of B- or better. We grant this waiver until December 15, 2023. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 22-951 (WCB Sept. 13, 2022) (Point Broadband Order); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-419 (WCB May 17, 2023) (ECFiber Order); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-513 (WCB June 14, 2023) (DoCoMo Order).

⁵³ OzarksGo, LLC (OzarksGo) filed and certified its locations to the HUBB on March 6, 2023 due to issues filing locations. The data for CAF II was uploaded properly but not certified timely due to seeking guidance on correcting its initial upload of locations. The Universal Service Administrative Company (USAC) notified OzarksGo that a one-time grace period for late filing would be applied to avoid a support recovery. *Connect America Fund*, WC Docket No. 10-90, et al., Report and Order, 29 FCC 15644, 15690-93, paras. 132-38 (2014) (December 2014 Connect America Order) (establishing a one-time grace period for high-cost fund recipients that file late due to administrative oversight or inadvertence. The Commission stated that the one-time grace period applies to administrative or inadvertent mistakes, and if a recipient misses a deadline more than once, the support reduction should provide incentive for the recipient to revise their procedures to ensure late filings do not become a pattern).



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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

DA 23-757
August 24, 2023

FCC SEEKS NOMINATIONS FOR MEMBERSHIP ON TECHNOLOGICAL ADVISORY COUNCIL

The Federal Communications Commission (FCC or Commission) is seeking nominations for membership on the Technological Advisory Council (TAC or Council). Following consultation with the General Services Administration, the Commission anticipates renewing the charter of the TAC, for a period of two (2) years starting on or about September 7, 2023. The Commission anticipates that the first meeting of the TAC will be in December 2023.

Nominations for membership must be submitted to the FCC no later than September 22, 2023. Procedures for submitting nominations are set forth below.

MISSION

The mission of the TAC is to provide technical advice and recommendations to the Federal Communications Commission on the issues and questions presented to it by the FCC. The TAC will focus on key issues affecting the development and deployment of emerging communications technologies to spur opportunities for innovation, competition, adoption, greater efficiencies, job creation, and other national priorities.

The TAC will provide technical advice to the Commission and make recommendations on the issues and questions presented to it. It is anticipated that Chairwoman Jessica Rosenworcel will ask the TAC to evaluate several issues, including: continued efforts at looking beyond 5G advanced as 6G begins to develop so as to facilitate U.S. leadership; studying advanced spectrum sharing techniques, including the implementation of artificial intelligence and machine learning to improve the utilization and administration of spectrum; and other emerging technologies.

BACKGROUND

The TAC is organized under, and will operate in accordance with, the provisions of the Federal Advisory Committee Act (FACA).¹ As authorized by FACA, the Council may facilitate its work through informal subcommittees, or other subgroups of the Council, which shall report their activities and recommendations to the Council as a whole.

The Commission may ask the Council to create written recommendations or reports to the Commission. The time commitment for participation in any subcommittee or other subgroup may be substantial as such groups may be asked to submit recommendations or reports to the full Council for its

¹ 5 U.S.C. 10.

consideration. However, subcommittee or other subgroup meetings may be conducted informally, using suitable technology to facilitate the meetings, subject to oversight by the Designated Federal Officer of the TAC.

Members will serve at the discretion of the Chairwoman of the Commission. Members must be willing to commit to a two-year term of service from the date of re-charter of the Council and should be willing and able to attend approximately four (4) one-day plenary committee meetings per year during the Council's term. Members also will be encouraged to participate in deliberations of at least one (1) subcommittee or other subgroup, if any are established. The Commission will determine the appropriate Council size necessary to effectively accomplish the Council's work. Members who fail to regularly attend and participate in subcommittee or plenary committee meetings without excuse for their absence may, at the FCC's discretion, be removed.

Meetings of the full Council shall be open to the public and timely notice of each meeting shall be published in the Federal Register and shall be further publicized through other appropriate vehicles. All such meetings will be fully accessible to individuals with disabilities.

WHO MAY APPLY FOR MEMBERSHIP AND OBLIGATIONS OF MEMBERS

The Commission seeks applications for membership as a primary representative or as an entity's alternate from representatives of various sectors of the communications industry, representatives of state and local government agencies and organizations, and representatives of consumers and community organizations that wish to be considered for membership on the TAC. Individuals may also apply for membership in their individual capacities. The Commission is particularly interested in receiving nominations and expressions of interest from individuals and organizations in the following categories:

- Communications service providers, and organizations representing communications service providers, including wireline and wireless communications service providers, broadcast radio and television licensees, cable television operators and other multichannel video programming distributors, satellite communications service providers, and Internet Service Providers;
- Manufacturers of communications equipment and organizations representing manufacturers of communications equipment;
- Providers of internet applications or cloud-based services;
- Scientists and engineers from academia, or who serve as independent consultants, who are recognized experts in their field; and
- Qualified representatives of other stakeholders and interested parties with relevant expertise.

Members will be selected to balance the expertise and viewpoints that are necessary to effectively address the issues to be considered by the Council. Members will be appointed as representatives of their organizations or, if appropriate, in their individual capacities as "Special Government Employees." The application requirements for each of those categories are described below. All organizational and all individual members appointed to the Council or its

working groups are subject to an ethics review by the Commission's Office of General Counsel. Council members will not be compensated for their service or for related expenses, including travel expenses.

Consistent with Executive Order 14035 (June 25, 2021) and other governing law, the Commission values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its federal advisory committees. The Commission's federal advisory committees strive for a membership that reflects the diversity of the American people.

Applicants possessing expertise or perspectives of interest to the Council who have requested to serve in an individual capacity as an SGE shall be eligible only if they are not federally registered lobbyists. SGEs are subject to a variety of restrictions under the conflict-of-interest statutes, 18 U.S.C. § 203 et seq., and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. SGEs must file confidential employee financial disclosure reports prior to beginning their service and annually thereafter. SGEs will also be subject to ethics restrictions in section 4(b) of the Communications Act, 47 U.S.C. § 154(b), and in the Commission's rules, 47 C.F.R. Part 19 and 5 C.F.R. Parts 3901 and 3902.

All members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission and shall promptly report to the DFO any changes in representation during their tenure on the federal advisory committee.

Please note this *Public Notice* is not intended to be the exclusive method by which the Commission will solicit nominations to identify qualified candidates; however, all candidates for membership on the Council will be subject to the same evaluation criteria.

APPLICATION PROCEDURES AND DEADLINE FOR ORGANIZATIONAL NOMINATIONS

All nominations should be submitted to the Commission as soon as possible, but no later than September 22, 2023. All nominations, including the requisite statements listed below, should be submitted by e-mail to TAC@fcc.gov.

No specific nomination form is required; however, each nomination for a primary representative or an alternate must include the following information:

- Name, title, and organization of the nominee;
- The nominee's mailing address, e-mail address, and telephone number;
- A description of the organization's business, including the telecommunications sector or other interests that are relevant to the Council's business, and a statement of the benefit of having the organization represented on the Council;
- A statement summarizing the nominee's qualifications and reasons why the nominee should be appointed to the Council, including a narrative detailing the nominee's involvement in issues relevant to the Council as well as a current resume of the nominee;

- A statement by the organization indicating a willingness to have its representative serve on the Council for a two-year term, attend at least four Council meetings, and participate in at least one working group;
- An acknowledgement that neither the organization nor its representative will receive reimbursement of travel expenses or honoraria from the Council.

An organizational applicant nominating a representative to serve on its behalf on the Council must submit a written confirmation by an authorized person (*e.g.*, organization or company official) that such organization or company wants the nominee to serve on its behalf on the Council. The nominating official must possess the executive authority or hold a sufficiently high-level position with the organization to select a representative whose actions will be legally binding on the organizational applicant. For example, this confirmation may be in the following format: “I am [insert official’s name], the [insert official’s title] at the [insert name of organization - *e.g.*, company, government entity, trade association, *etc.*], with responsibilities for [concise description of position]. My organization would like [insert proposed member’s name], who is currently [an employee of/consultant/attorney to the company] to serve as our representative on the Commission’s Technological Advisory Council.”

For nominees seeking to represent an entity that is a party to an FCC contract or subcontract or providing services for the benefit of the FCC under contract or subcontract, or in the case of any applicant or nominee who is individually a party to such a contract or providing services for the benefit of the FCC under such a contract, the nomination must include the following:

- A general description of the contract/agreement;
- A description of the product/services that the applicant provides pursuant to the contract/agreement;
- A list of all parties to the contract/agreement;
- The name of the Commission contracting officer (if known); and,
- A certification made by the applicant or nominee that the applicant or nominee has provided written notice to the contracting officer and the FCC Manager, Contracts and Purchasing Center, that the applicant or representative nominee, as applicable, has applied for membership on the Council.

In addition, organizational nominees are required to disclose whether they represent clients before the FCC or represent clients in matters that may come before the Council, other than representing the organizational applicant that has nominated the proposed representative for service on the Council. Each nominee shall provide with the application all details of any such representation.

APPLICATION PROCEDURES FOR INDIVIDUALS TO SERVE AS SGE MEMBERS

Nominations should be submitted to the Commission as soon as possible, but no later than September 22, 2023. All nominations, including the requisite statements listed below, should be submitted by e-mail to TAC@fcc.gov.

Individuals seeking to serve as Special Government Employee members of the Council should include the following application information:

- Name and title of the applicant; current mailing address, email address, and telephone number;
- A statement summarizing the applicant's qualifications and reasons why the applicant should be appointed to the Council. That statement shall include the individual's specific knowledge or expertise that is relevant to the work of the Council, including a statement that the applicant is not a registered lobbyist (as noted above, financial and other additional disclosures may also be required);
- A statement that the applicant does not have a contractual or other financial agreement (including as a contractor or subcontractor) with the Council;
- A statement indicating a willingness to serve on the Council for a two-year term, a commitment to attend at least four meetings per year, and a commitment to participate in at least one working group;
- An acknowledgement that the individual will not be entitled to receive reimbursement of travel expenses or payment of honoraria or other compensation from the Council;
- A current resume;
- A statement that the applicant does not have clients with matters before the FCC or with matters which may come before the Council.

FURTHER INFORMATION

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

More information about the TAC can be found at <https://www.fcc.gov/general/technological-advisory-council>. You may also contact Martin Doczkat, the Designated Federal Official (DFO) for the Technological Advisory Council, at (202) 418-2435, email: Martin.Doczkat@fcc.gov.

-FCC-



Federal Communications Commission
Washington, D.C. 20554

August 24, 2023

DA 23-758

SMALL ENTITY COMPLIANCE GUIDE

Enhanced Alternative Connect America Cost Model

FCC 23-60

WC Docket Nos. 10-90, 14-58, 09-197, 16-271

RM-11868

Adopted July 23, 2023

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although the Commission has attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of this Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in the Commission's approach to implementing a rule, or it may clarify or update the text of the Guide. Please direct your comments, recommendations, or calls for further assistance to the Commission's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC (1-888-835-5322)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

Fax: 1-866-418-0232

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I. OBJECTIVES OF THE PROCEEDING

On July 24, 2023, the Commission released a Report and Order establishing the Enhanced Alternative-Connect America Cost Model (A-CAM) program.¹ The Commission adopted the Enhanced 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 legacy rate-of-return support recipients.

The Commission adopted deployment and service obligations to align deployment with the requirements of the Infrastructure Investment and Jobs Act (Infrastructure Act),² encourage the deployment of affordable broadband service, and allow the Commission to monitor compliance with the program rules. The Commission extended the term of support for electing carriers by ten years beyond the remaining five years in the current A-CAM term, for a total of fifteen years. The Commission also 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, the Commission made eligible for the Enhanced A-CAM program all current A-CAM recipients as well as rate-of-return carriers eligible to receive legacy support and adopted a voluntary election process for eligible carriers.

In adopting this program, the Commission furthered its 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. The Commission also adopted 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.

II. COMPLIANCE REQUIREMENTS

Current A-CAM I or A-CAM II participants, as well as rate-of-return carriers that are currently eligible to receive legacy support, will have the opportunity to voluntarily elect, on a state-level basis, to receive Enhanced A-CAM support as calculated by the A-CAM. Any eligible carrier that does not elect support pursuant to this program will continue to receive support pursuant to the terms and conditions of its existing support mechanism. We describe the requirements for Enhanced A-CAM below.

A. Election, 47 CFR § 54.311(a).

Each eligible carrier interested in participating in Enhanced A-CAM must take action to accept an offer and identify the technologies it intends to use to meet the program requirements.³ The Wireline Competition Bureau will release a public notice providing procedures for how and by when the offer must be accepted.

B. Service Obligation, 47 CFR 54.308(a)(3), 47 CFR § 54.313(f)(1)(i).

Each Enhanced A-CAM carrier must commercially offer broadband and standalone facilities-based voice service meeting the following requirements to 100 percent of locations in its study areas within the state:⁴

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 (Jul. 23, 2023) (*Enhanced A-CAM Order*).

² Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act).

³ 47 CFR § 54.311(a); *Enhanced A-CAM Order* at 42-43, paras. 98-100.

⁴ 47 CFR § 54.308(a)(3).

- *Speed*: Offer broadband service at actual 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 2028.⁵ The Wireline Competition Bureau will provide a list of Enhanced A-CAM required locations concurrently with the offer of Enhanced A-CAM support and will update the list to reflect any additional information related to locations, broadband coverage, or enforceable commitments determined to have existed at the time of the offer.⁶
- *Latency*: Offer service with roundtrip latency of 100 milliseconds or less.⁷
- *Data Usage*: Offer usage allowances reasonably comparable to those available through comparable offerings in urban areas.⁸
- *Reasonable Rates*: Offer service at rates that are reasonably comparable to rates for comparable offerings in urban areas.⁹ For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark that the Wireline Competition Bureau announces annually.¹⁰

C. *Service Milestones, 47 CFR § 54.311(d)(4).*

Enhanced A-CAM carriers must complete deployment to:¹¹

- 50% of required locations by December 31, 2026
- 75% of required locations by December 31, 2027
- 100% of required locations by December 31, 2028

D. *Failure to Meet Buildout Obligations, 47 CFR § 54.320(c) & (d).*

Enhanced A-CAM carriers that do not meet their service milestones will be subject to certain reporting requirements, support reductions, and even possible recovery of support.¹² The non-compliance measures are detailed in section 54.320(d) of the Commission's rules, and the measures that will apply will depend on the size of the compliance gap (i.e., the number of required locations that the ETC fails to build out to by the applicable deadline).¹³

⁵ *Id.* 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. *Id.*

⁶ 47 CFR § 54.308(a)(3)(i).

⁷ *Id.* § 54.313(f)(1)(i); *Enhanced A-CAM Order* at 18, para. 37.

⁸ 47 CFR § 54.313(f)(1)(i); *Enhanced A-CAM Order* at 27, para. 59.

⁹ *Enhanced A-CAM Order* at 26-27, para. 59.

¹⁰ See FCC, Urban Rate Survey Orders and Public Notices, <https://www.fcc.gov/general/urban-rate-survey-orders-and-public-notice> (last visited Aug. 16, 2023).

¹¹ 47 CFR § 54.311(d)(4).

¹² *Id.* § 54.320(c) & (d); *Enhanced A-CAM Order* at 24, para. 50.

¹³ 47 CFR § 54.320(d).

E. Performance Testing, 47 CFR § 54.313(a)(6).

Enhanced A-CAM carriers remain subject to the same performance testing requirements as all other high-cost support recipients.¹⁴ The Commission requires that high-cost support recipient annually test and report the speed and latency of a random sample of locations. Carriers that fail to meet the required performance standards will be subject to additional reporting and may have a percentage of universal service support withheld/recovered based on the level of non-compliance.¹⁵

F. BEAD Program Coordination Requirements, 47 CFR § 54.313(f)(6)(i).

As a condition of receiving Enhanced A-CAM support, recipients must make efforts to avoid duplicative funding.¹⁶

- Enhanced A-CAM carriers must 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 eligible locations,¹⁷ and to otherwise coordinate with states, Tribes, and other eligible entities to help avoid duplicative federal broadband funding.
- Enhanced A-CAM carriers may not receive or use BEAD Program funding or other future federal grant funding, unless otherwise specified by the Commission or Wireline Competition Bureau, that supports broadband deployment for those locations for which they are receiving Enhanced A-CAM support.

G. Affordability Requirement, 47 CFR § 54.313(f)(6)(ii).

Enhanced A-CAM carriers must participate in the Affordable Connectivity Program (ACP) as a condition of receiving Enhanced A-CAM support.¹⁸ 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.¹⁹ Enhanced A-CAM carriers must also make available Lifeline service to qualifying low-income consumers.²⁰

H. Cybersecurity and Supply Chain Risk Plans, 47 CFR § 54.308(e).

Enhanced A-CAM carriers must implement operational cybersecurity and supply chain risk management plans by January 1, 2024.²¹ They must submit such plans to the Universal Service Administrative Company (USAC), and certify they have done so, by January 2, 2024, or within 30 days of approval under the Paperwork Reduction Act, whichever is later.²²

Cybersecurity risk management plans must reflect the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity and must 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

¹⁴ *Id.* § 54.313(a)(6); *Enhanced A-CAM Order* at 24, para. 51.

¹⁵ *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6530-33, paras. 56-67 (WCB 2018).

¹⁶ 47 CFR § 54.313(f)(6)(i); *Enhanced A-CAM Order* at 24-25, paras. 52-53.

¹⁷ More information about BEAD challenge processes is available at <https://www.internetforall.gov/bead-challenge-process-policy>.

¹⁸ 47 CFR § 54.313(f)(6)(ii); *Enhanced A-CAM Order* at 25, para. 55.

¹⁹ *Enhanced A-CAM Order* at 26, para. 57.

²⁰ *Id.* at 27, para. 59.

²¹ 47 CFR § 54.308(e)(1); *Enhanced A-CAM Order* at 47, para. 109.

²² 47 CFR § 54.308(e)(2); *Enhanced A-CAM Order* at 47, para. 109.

Goals and Objectives or the Center for Internet Security Critical Security Controls.²³ 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, and related supply chain risk management guidance from NIST 800-161.²⁴ Enhanced A-CAM carriers can consult existing federal government resources designed to share supply chain security risk information with trusted communications providers and suppliers to facilitate the creation of cybersecurity and supply-chain risk management plans.²⁵

If an Enhanced A-CAM carrier makes a substantive modification to its cybersecurity or supply chain risk management plan, that carrier must submit its updated plan to USAC within 30 days of making that modification.²⁶ 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:²⁷

- There is a change in the plan's scope, including any addition, removal, or significant alteration 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);
- There is a shift in the threat landscape prompting the organization to recognize the emergence of new threats or vulnerabilities that weren't previously accounted for in the plan;
- Any updates made to comply with new cybersecurity regulations, standards, or laws;
- 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
- 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.

The Wireline Competition Bureau will direct USAC to withhold 25 percent of the Enhanced A-CAM carrier's monthly support if the Enhanced A-CAM carrier does not timely submit a certification or its plans to USAC by the required deadline, or if at any time during the support term the Enhanced A-CAM carrier does not have in place operational cybersecurity and supply chain risk management plans

²³ 47 CFR § 54.308(e)(4); *Enhanced A-CAM Order* at 47-48, para. 111.

²⁴ 47 CFR § 54.308(e)(5). *See also* Key Practices in Cyber Supply Chain Risk Management: Observations from Industry, and related supply chain risk management guidance from NIST 800-161 <https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8276.pdf> (last visited Aug. 17, 2023).

²⁵ *Enhanced A-CAM Order* at 49, para. 114. *See also* FCC Small Business Cyber Planner 2.0, <https://www.isao.org/resource-library/government-programs/fcc-small-business-cyber-planner-2-0/> (last visited Aug. 16, 2023); *see also* Federal Communications Commission, *Cybersecurity for Small Businesses*, <https://www.fcc.gov/communications-business-opportunities/cybersecurity-small-businesses> (last visited Aug. 16, 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 Aug. 16, 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 Aug. 16, 2023).

²⁶ 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48, para. 112.

²⁷ 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

meeting the Commission's requirements.²⁸ Once the carrier comes into compliance, USAC will stop withholding support, and the carrier will receive all of the support that has been withheld.²⁹

I. Tribal Government Engagement, 47 CFR § 54.313(a)(5).

Enhanced A-CAM carriers must demonstrate on an annual basis that they have engaged with Tribal governments in their supported areas 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.³⁰

Enhanced A-CAM carriers must also initiate engagement with any relevant Tribal governments within 90 days of being extended an Enhanced A-CAM offer.³¹ The Commission expects that 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.³² The Commission expects 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.³³ If a state awards BEAD Program funds to another service provider to serve locations subject to an Enhanced A-CAM authorization, the Enhanced A-CAM carrier and the Tribal government can notify the Wireline Competition Bureau that they mutually agree to forego the Enhanced A-CAM deployment obligation for those locations, and the Wireline Competition Bureau will adjust the Enhanced A-CAM recipient's support and deployment obligations.³⁴

J. Tariff Requirements for Legacy Rate-of-Return Carriers

Legacy rate-of-return carriers authorized to receive Enhanced A-CAM support will have requirements related to tariffs.³⁵ 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 consumer broadband-only loops (CBOL) charges.³⁶ 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.³⁷

III. RECORDKEEPING AND REPORTING REQUIREMENTS

²⁸ 47 CFR § 54.308(e)(3)(i),(ii); *Enhanced A-CAM Order* at 47, para. 109.

²⁹ 47 CFR § 54.308(e)(3)(iii).

³⁰ *Id.* § 54.313(a)(5); *Enhanced A-CAM Order* at 44, para. 103.

³¹ *Enhanced A-CAM Order* at 44, para. 104.

³² *Id.* at 45, para. 104.

³³ *Id.* at 45, para. 104. 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 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." *Enhanced A-CAM Order* at 45, para. 104; Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (NOFO) (May 13, 2022), at 37 n.52, 48 n.70, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

³⁴ *Enhanced A-CAM Order* at 45, para. 105.

³⁵ *Enhanced A-CAM Order* at 39, para. 91.

³⁶ *Id.*

³⁷ *Id.*

To comply with Broadband Deployment Reporting (47 CFR § 54.316) and Annual Reporting (47 CFR § 54.313), each Enhanced A-CAM recipient must:

- By March 1 of each year, submit in the High-Cost Universal Broadband (HUBB) portal information regarding the locations to which the carrier is offering broadband service in satisfaction of its public interest obligations. This information includes latitude/longitude, address information, and the date of deployment.³⁸
- By March 1 of each year following a service milestone, submit in the HUBB portal a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations to the required number of locations.³⁹
- All Enhanced A-CAM recipients must continue to submit an annual FCC Form 481, as already required, by July 1,⁴⁰ which must also include:
 - A certification that the recipient 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;⁴¹
 - A certification that the recipient has 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;⁴²
 - A description and certification that in the previous 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;⁴³ and
 - A certification, that they have maintained their cybersecurity and supply chain risk management plans pursuant to section 54.308(e) of the Commission's rules, as well as report whether they filed any substantive modifications pursuant to section 54.308(e)(6) in the prior year, including the date they filed any substantive modifications.⁴⁴

Enhanced A-CAM recipients remain subject to all other reporting and record retention requirements currently applicable to all high-cost support recipients, including the requirement to retain all records for at least 10 years from receipt of funding.⁴⁵ They also remain subject to random compliance audits and other investigations.⁴⁶

³⁸ 47 CFR § 54.316(a)(9); *Enhanced A-CAM Order* at 23, para. 49 n.158.

³⁹ 47 CFR § 54.316(b)(8).

⁴⁰ 47 CFR § 54.313(a), (f); *Enhanced A-CAM Order* at 27, para. 59.

⁴¹ 47 CFR § 54.313(f)(6)(i); *Enhanced A-CAM Order* at 24-25, para. 52.

⁴² 47 CFR § 54.313(f)(6)(i); *Enhanced A-CAM Order* at 25, para. 53.

⁴³ 47 CFR § 54.313(f)(6)(ii); *Enhanced A-CAM Order* at 26, para. 57.

⁴⁴ 47 CFR § 54.313(f)(6)(iii); *Enhanced A-CAM Order* at 49, para. 112.

⁴⁵ 47 CFR § 54.320(b).

⁴⁶ *Id.* § 54.320(a).

IV. IMPLEMENTATION DATE

The rules in the *Enhanced A-CAM Order* shall become effective August 17, 2023, with the exception of the following rules, which require the Office of Management and Budget's (OMB) approval under the Paperwork Reduction Act: 47 CFR §§ 54.308(e)(2), 54.308(e)(6), 54.313(f)(1)(i), 54.313(f)(6)(i), 54.313(f)(6)(ii), 54.313(f)(6)(iii), 54.316(a)(9), and 54.316(b)(8). These rules shall become effective after the Commission publishes a notice in the Federal Register announcing OMB approval and the relevant effective date.

V. INTERNET LINKS

A copy of the *Enhanced A-CAM Order* is available at: <https://www.fcc.gov/document/fcc-adopts-plan-bring-reliable-broadband-rural-communities>.

A copy of the Federal Register Summary of the *Enhanced A-CAM Order* is available at: <https://www.govinfo.gov/content/pkg/FR-2023-08-17/pdf/2023-16674.pdf>.



PUBLIC NOTICE

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OET ANNOUNCES COMMENCEMENT OF TESTING OF THE 6 GHZ BAND AUTOMATED FREQUENCY COORDINATION SYSTEMS

ET Docket No. 21-352

By the Chief, Office of Engineering and Technology:

I. INTRODUCTION

1. The Office of Engineering and Technology (OET) will permit testing for the automated frequency coordination (AFC) systems that will manage access to 6 GHz band spectrum by standard power unlicensed devices to commence. Previously, OET conditionally approved thirteen entities to operate AFC systems conditioned on each system undergoing a rigorous testing process. This Public Notice provides information on the AFC system testing process. This process will require that the AFC systems undergo both lab testing and a public trial. Once the conditionally approved AFC systems have successfully completed the testing process, OET will approve them for full commercial operation.¹

II. BACKGROUND

2. On April 23, 2020, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (*6 GHz Report and Order*) that made broad swaths of the 6 GHz band (5.925–7.125 GHz) available for expanded unlicensed operations.² The *6 GHz Report and Order* adopted rules for two different types of unlicensed operations—standard-power operations and low-power indoor operations.³ For standard-power operations, standard-power access points and fixed client devices operate under the control of AFC systems in two portions of the 6 GHz band—the U-NII-5 band (5.925–6.425 GHz) and the U-NII-7 band (6.525–6.875 GHz).⁴ The U-NII-5 and U-NII-7 bands are heavily used by licensed point-to-point microwave systems.⁵ In addition, the 6.65–6.6752 GHz portion of the U-NII-7

¹ To the extent possible, OET will aim to approve multiple AFC systems concurrently. However, OET will not delay approval of AFC systems that successfully complete testing if issues arise during testing that may significantly delay other AFC systems from obtaining approval.

² *Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020) (*6 GHz Report and Order*).

³ *Id.* at 3860, paras. 17-18.

⁴ 47 CFR § 15.407(k)(1); *6 GHz Report and Order*, 35 FCC Rcd at 3860, 3862, 3923, paras. 17-18, 22, 192. Only standard-power and fixed-client 6 GHz unlicensed devices are required to operate pursuant to an AFC system. 47 CFR § 15.407(k)(1). Standard-power devices may operate both outdoors and indoors at power levels above the low-power indoor device power limits. *Id.* § 15.407(a)(4). A fixed client device is “intended as customer premise equipment that is permanently attached to a structure, operates only on channels provided by an AFC, has a geolocation capability, and complies with antenna pointing angle requirements.” 47 CFR § 15.403.

⁵ *6 GHz Report and Order*, 35 FCC Rcd at 3855, para. 7.

band is used for radio astronomy observations at a limited number of observatories.⁶ The AFC systems will manage spectrum access for standard-power access points and fixed client devices to prevent harmful interference from occurring to the microwave systems and radio astronomy observatories.⁷

Unlicensed Use of the 6 Gigahertz Band

Device Class	Operating Bands	Maximum EIRP	Maximum EIRP Power Spectral Density
Standard-Power Access Point (AFC Controlled)	U-NII-5 (5.925-6.425 GHz) U-NII-7 (6.525-6.875 GHz)	36 dBm	23 dBm/MHz
Fixed Client (AFC Controlled)		36 dBm	23 dBm/MHz
Client Connected to Standard-Power Access Point		30 dBm	17 dBm/MHz
Low-Power Access Point (indoor only)	U-NII-5 (5.925-6.425 GHz) U-NII-6 (6.425-6.525 GHz) U-NII-7 (6.525-6.875 GHz)	30 dBm	5 dBm/MHz
Client Connected to Low-Power Access Point	U-NII-8 (6.875-7.125 GHz)	24 dBm	-1 dBm/MHz

3. The *6 GHz Report and Order* specified a multi-stage process laying out the steps that OET must follow to approve AFC systems.⁸ The first requirement directed OET to issue a public notice soliciting proposals from prospective AFC system operators while providing an opportunity for the public to comment on the proposals.⁹ OET was then directed to conditionally approve applicants who demonstrate their proposed AFC systems will comply with all AFC requirements.¹⁰ Applicants who receive conditional approval are then required to provide a test system that will be subject to a public trial period, which will include thorough testing in both a controlled environment and through demonstration projects.¹¹

4. On September 28, 2021, the Commission issued a Public Notice requesting proposals from prospective AFC system operators.¹² In response to the Public Notice, the Commission received fourteen

⁶ *Id.* at 3884, para. 87.

⁷ 47 CFR § 15.407(l), (m); *6 GHz Report and Order*, 35 FCC Rcd at 3862, para. 22.

⁸ *6 GHz Report and Order*, 35 FCC Rcd at 3870-71, para. 49.

⁹ *Id.*

¹⁰ *Id.* at 3871, para. 49.

¹¹ *Id.*

¹² *The Commission Begins the Process for Authorizing 6 GHz Band Automated Frequency Coordination Systems*, ET Docket No. 21-352, Public Notice, FCC 21-100, 2021 WL 4500447, at *1, *3, *4, paras. 2, 7, 10 (Sept. 28, 2021).

applications to operate AFC systems as well as eight comments regarding the applications.¹³ One applicant, Amdocs, later withdrew their application.¹⁴

5. On November 2, 2022, OET issued a Public Notice (2022 Public Notice) conditionally approving the thirteen remaining applicants to operate AFC systems: Broadcom, Google, Comsearch, Sony Group, Kyrio, Key Bridge Wireless, Nokia Innovations, Federated Wireless, Wireless Broadband Alliance, Wi-Fi Alliance (WFA), Qualcomm, Plume Design, and RED Technologies.¹⁵ OET indicated in the Public Notice that these conditionally approved AFC systems will not be available for commercial operations until they receive final approval from OET.¹⁶ To receive final approval the AFC systems will be required to undergo lab testing and demonstration project(s).¹⁷ While the 2022 Public Notice did not provide details on this required testing, it did provide preliminary information to enable the AFC system applicants to begin preparing for the testing process.

III. AFC SYSTEM TESTING

6. As directed by the *6 GHz Report and Order*, OET requires that the conditionally approved AFC systems undergo rigorous testing, both in a controlled environment and through a demonstration project before we will approve them for commercial operations.¹⁸ As OET indicated in the *2022 Public Notice*, the controlled environment testing shall consist of testing conducted by a third-party test lab using a set of tests to be specified by OET.¹⁹ The *2022 Public Notice* also announced our intent to require each of the AFC system applicants to conduct a public trial as a demonstration project where they make a website available that provides an opportunity for members of the public to test the functionality of their AFC system.²⁰ OET now provides details regarding the required lab testing and the public trial. The AFC system applicants may commence testing their AFC systems.

A. Lab Testing

7. *Lab Test Plan*: The Wi-Fi Alliance developed a plan for testing AFC systems.²¹ This test plan provides that the test lab will perform the following tests to validate AFC systems' functionality:

- Successful registration of a standard-power device with the AFC system:²² The AFC system is sent a spectrum request containing all the information required by the Commission's rules and returns a response indicating successful registration.

¹³ See the 14 applications to operate AFC systems filed in ET Docket No. 21-352 between October 28, 2021, and November 11, 2021. APCO International; the Utilities Technology Council and Edison Electric Institute; Wi-Fi Alliance; Dynamic Spectrum Alliance; Verizon; AT&T Services; Apple, Broadcom et al.; and the Fixed Wireless Communications Coalition (FWCC) filed comments in ET Docket No. 21-352 on December 21, 2021.

¹⁴ Amdocs March 25, 2022 *Ex Parte* at 1.

¹⁵ *OET Announces Conditional Approval for 6 GHz Band Automated Frequency Coordination Systems*, ET Docket 21-352, Public Notice, DA 22-1146, 1, para. 1 (Nov. 2, 2022) <https://www.fcc.gov/document/oet-announces-conditional-approval-6-ghz-band-afc-systems> (2022 Public Notice).

¹⁶ *Id.* at 4, para. 5.

¹⁷ *Id.* at 19-20, para. 41.

¹⁸ *6 GHz Report and Order*, 35 FCC Rcd at 3871, para. 49.

¹⁹ *2022 Public Notice* at 19-20, paras. 41-42.

²⁰ *2022 Public Notice* at 21-22, para. 45.

²¹ *Wi-Fi Alliance AFC System (SUT) Compliance Test Plan Version 1.5*, available at <https://www.wi-fi.org/discover-wi-fi/6-ghz-afc-resources>.

²² *Id.* at 12-13.

- Unsuccessful registration of a standard-power device with an AFC system:²³ The AFC system is sent a spectrum request which is missing information that is required by the Commission's rules such as the FCC identifier, manufacturer's serial number, geographic coordinates, uncertainty of the geographic coordinates, and antenna height. The AFC system returns a response indicating no available frequencies or channels.
- Fixed service protection:²⁴ The AFC system is sent a series of spectrum requests for different geographic coordinates, heights, and location uncertainties which are referred to as "test vector inputs." The AFC system will calculate the available frequencies and permitted transmit power levels using the appropriate propagation models for each test vector which will be compared to independently calculated "test vector outputs."
- International border protection:²⁵ The AFC system is sent a series of spectrum requests for locations in the vicinity of international borders. The AFC system will calculate the available frequencies and permitted transmit power levels using the appropriate propagation models for each test vector which will be compared to independently calculated test vector outputs.
- Protection of radio astronomy locations:²⁶ The AFC system is sent a series of spectrum requests for locations that are in the vicinity of radio astronomy observatories which must be protected in the 6650-6675.2 MHz frequency range. The AFC system returns available frequencies which do not include this frequency range.

8. OET finds that this test plan is appropriate for lab testing AFC systems. The test plan focusses on the main function of the AFC systems, which is protecting incumbent fixed service stations and radio astronomy observatories. Wi-Fi Alliance and the Wireless Innovation Forum (WinnForum) developed and recently released a set of test vector inputs and corresponding test vector outputs.²⁷ To illustrate that these test vectors adequately test the functionality of the AFC system, WinnForum created a traceability matrix which maps the test vector inputs to the requirements for the AFC system that are identified in the WinnForum's AFC system functional requirements document.²⁸ The functional requirements document is a technical standard for AFC systems based on the Commission's rules.²⁹ As the traceability matrix illustrates, the test vector inputs will exercise the AFC systems over a wide range of conditions comprising locations requiring all three specified propagation models (free space, Winner II, and Irregular Terrain Model) to be used, different environments (urban, rural, and suburban), and different fixed microwave antenna heights.³⁰ These test vectors have been designed to exercise the full variety of propagation environments and microwave link characteristics that can occur in practice to verify that the AFC system is protecting those links from harmful interference in accordance with the Commission's rules.

²³ *Id.* at 13-14.

²⁴ *Id.* at 14-16.

²⁵ *Id.* at 16-17.

²⁶ *Id.* at 17-19.

²⁷ *AFC System (SUT) Compliance Test Vectors v1.2*, Wi-Fi Alliance, available at <https://www.wi-fi.org/discover-wi-fi/6-ghz-afc-resources>.

²⁸ *Traceability Matrix*, WinnForum, ET Docket 21-352, filed Dec. 1, 2022; *Functional Requirements for the U.S. 6 GHz Band under the Control of an AFC System*, WinnForum, ET Docket 21-352, filed Oct. 31, 2022.

²⁹ *Functional Requirements for the U.S. 6 GHz Band under the Control of an AFC System*, WinnForum, ET Docket 21-352, filed Oct. 31, 2022 at 7.

³⁰ *AFC System (SUT) Compliance Test Vectors v1.2*, Wi-Fi Alliance, available at <https://www.wi-fi.org/discover-wi-fi/6-ghz-afc-resources>.

9. We reviewed these test vectors and conclude that they effectively test the functionality of the AFC systems for a variety of conditions. Based on this review, we will permit conditionally approved AFC systems to commence lab testing upon release of this Public Notice.³¹ Test labs can now use the Wi-Fi Alliance test plan with these test vectors to examine AFC system operations. The test lab will create a test report describing the results of each test performed and the AFC system applicant will file that report in ET Docket No. 21-352.³² OET will examine the test report and either issue a notice that we are satisfied that the AFC system has successfully passed the lab test or we may require the AFC system applicants to provide additional information or make modifications to their AFC system to correct any deficiency that is indicated by the test results.

10. We are confident that lab test results consistent with the test vectors will provide assurance that the AFC systems have been implemented in accordance with the Commission's rules. In addition to illustrating that the calculations needed to determine frequency availability and permitted power levels are in accordance with the specified propagation models and interference protection criteria, the test plan also verifies that the AFC systems are properly registering standard-power devices and are taking into account the nation's border regions.

11. *Test Labs:* To provide flexibility for AFC system applicants, OET is providing two eligibility options for determining which test labs may conduct the required AFC system lab testing. First, OET is permitting FCC-recognized accredited testing laboratories that have also been approved through WinnForum's Citizens Broadband Radio Service Device (CBSD) testing and certification program to conduct the lab testing.³³ FCC recognized accredited testing laboratories are organizations which conduct testing required for devices to obtain certification under the Commission's equipment authorization rules.³⁴ Typically, this testing involves conducting radio frequency measurements to determine conducted power levels and out-of-band emissions rather than software testing. However, FCC recognized accredited testing laboratories that have been approved through WinnForum's CBSD testing and certification program already have experience using specific test software and a test harness to ensure that the CBSDs operate under the control of a spectrum access system. WinnForum developed a similar test harness to conduct AFC testing.³⁵ Because the software for AFC testing is similar to that used for CBSD testing, OET believes the testing laboratories that conduct the CBSD testing have the necessary experience and expertise to conduct AFC system lab testing.

12. To provide additional options for AFC testing, OET is also permitting test labs that have been accredited by WinnForum to conduct AFC system lab testing.³⁶ Under the accreditation process created by WinnForum, a prospective test lab can submit an application to WinnForum that includes proof of ISO/IEC 17025 accreditation to the WinnForum 6 GHz AFC system test plans, an overview of the test lab

³¹ We reserve the right to make additions or subtractions to the set of test vectors or modify one or more of them, as appropriate, during the course of the lab testing process.

³² Because these test reports are in the public interest and simply report test results along with any actions that may have been taken to modify an AFC system to ensure compliance, we do not expect that they will contain proprietary or company specific non-public information. Thus, they will be available for public inspection.

³³ A list of FCC recognized accredited testing laboratories can be found at <https://apps.fcc.gov/oetcf/eas/reports/TestFirmSearch.cfm>. As of May 20, 2022, there are 569 FCC recognized accredited testing laboratories. A list of WinnForum-approved CBSD test labs can be found at <https://cbrs.wirelessinnovation.org/cbsd-certification-program>.

³⁴ 47 CFR §§ 2.907, 2.948; *Accredited Testing Laboratory Program Roles and Responsibilities*, Office of Engineering and Technology, KDB Publication 974614 D01 (Apr. 2, 2019), https://apps.fcc.gov/kdb/GetAttachment.html?id=koP7QuHnAbqrT0URaUjRBw%3D%3D&desc=974614%20D01%20Accredited%20Test%20Lab%20Roles%20and%20Resp%20v05r01&tracking_number=44684.

³⁵ Wi-Fi Alliance and WinnForum Oct. 20, 2022 *Ex Parte* ET Docket No. 21-352 at 6.

³⁶ 2022 *Public Notice* at 21, para. 44.

including its experience with the test modules, the resumes of the lab's subject matter experts and engineers who will be involved with the testing, a demonstration of execution of the test harness software, a written description of the test procedures, a test report template, and a valid set of sample test vectors representative of additional tests that the test lab may run.³⁷ A task group of industry stakeholders operating independently of WinnForum and not including representatives of the candidate test labs will review the application to ensure all requirements are satisfied.³⁸ OET believes that this rigorous process will ensure that approved test labs are capable of conducting the lab testing.

B. Public Trial

13. To further test AFC system functionality, OET is requiring, in addition to lab testing, AFC systems be subject to a public trial period. During this public trial period each AFC system applicant will be required to make their AFC system available on the Internet to provide any interested member of the public an opportunity to test the AFC system functionality. This public testing satisfies the Commission imposed requirement in the *6 GHz Report and Order* that conditionally approved AFC system applicants "provide a test system that will be subject to a public trial period to provide interested parties an opportunity to check that [the AFC system] provides accurate results."³⁹ In accordance with the testing requirements in the *6 GHz Report and Order*, the public trial may be conducted concurrently with the lab testing.

14. The AFC system applicant must provide clear instructions for users regarding use of the test portal and how to enter test vectors either individually or in batch (if such functionality is made available). The test portal must also contain clear information instructing users how to seek help or get questions answered if issues using the test portal arise. It must also provide capability for users to enter test locations for anywhere within the United States, including U.S. territories and possessions. The input information should include the latitude, longitude, and height of the test location, the location uncertainty in the horizontal plane (i.e. latitude and longitude), and the height uncertainty. The website should permit the user to specify the horizontal location uncertainty using any of the methods permitted by the *AFC System to AFC Device Interface Specification*.⁴⁰ The AFC system under test must then return a list of the frequency ranges on which a standard-power device at that location would be able to transmit and the corresponding maximum power level for each frequency range.

15. The Internet-based test portal must also provide a means for users to submit challenges to the AFC system applicant if the user believes that the available frequency ranges and power levels are not in compliance with the Commission's rules. This functionality can be implemented either by direct entry within the test portal or by submitting an email. A challenge should include contact information such as an email or phone number for the party challenging the results as well as an explanation describing why it believes the returned available frequencies and/or power levels are believed to be incorrect. An AFC system applicant may contact the party challenging the results if additional information regarding the challenge is needed. The AFC applicant must respond to the challenger with an explanation of why it either believes the challenge raises a valid concern or is without merit.

16. OET will permit AFC system applicants to either work together to jointly operate a public trial test portal as a single point of entry for testing multiple AFC systems or to operate individual test

³⁷ *Wireless Innovation Forum Authorized AFC System Test Lab Requirements*, Version 1.0.0, August 4, 2022, <https://6ghz.wirelessinnovation.org/assets/WINNF-TS-5009-V1.0.0%206GHz%20AFC%20System%20ATL%20Requirements%20Specification.pdf> at 3.

³⁸ *Id.*

³⁹ *6 GHz Report and Order*, 35 FCC Rcd at 3870-71, para. 49.

⁴⁰ The location uncertainty may be specified as 1) an ellipse with a specified center point and major and minor axis lengths; 2) a polygon with specified vertices; or 3) a polygon identified by its center and array of vectors. *AFC System to AFC Device Interface Specification*, Version 1.5, Wi-Fi Alliance, 14-15. Available on the Wi-Fi Alliance website at <https://www.wi-fi.org/discover-wi-fi/6-ghz-afc-resources>.

portals. Providing a single test portal for multiple AFC systems would benefit the public by providing a means to test multiple AFC systems with identical coordinates at the same time making it easy to compare the outputs returned by the different AFC systems. However, OET appreciates that requiring the AFC system applicants to jointly create a test portal could be complex and not all AFC systems may be complete and ready for testing in the same timeframe. Therefore, while OET believes a single point of entry for testing all AFCs has many benefits for the public, we will not require such a system and will permit each AFC system applicant the option of using a common Internet-based test portal with other AFC systems or setting up its own public trial test portal.

17. The public trial test portals must be accessible to the public for a minimum of forty-five days. At least one week before the portal becomes accessible, the AFC applicant must file a notice in ET Docket Number 21-352 stating when the test portal will become available and provide a URL for accessing it. The AFC applicant must be capable of accepting challenges to the available frequencies and/or permitted power levels returned by the website for fifteen days after the end of this forty-five day period. This will provide users sufficient time to analyze all test results and launch challenges, if appropriate. All dates, including test start date, end date, and end of the challenge period must be clearly specified on the test portal.

18. Once the deadline for submitting challenges has expired, the AFC applicant must prepare a report describing the public trial. This report must include statistics regarding the number of public tests conducted as well as additional data as the AFC applicant deems appropriate. In addition, the report must include a summary of each challenge received, and an explanation as to why the challenge did or did not raise a valid concern with the functionality of the AFC system. If the challenge did raise a valid concern, the report must explain the actions the AFC system applicant took or is taking to resolve this concern as well as the date on which any software changes were completed or are expected to become complete. If the software changes have already been completed, the AFC applicant must provide evidence that the updated AFC system under test adequately addresses the concern(s) raised in the challenge(s). If the software has not yet been updated, the AFC applicant must file a supplemental report once the AFC system software is updated and fully tested and provide evidence that the updated AFC system under test has corrected the issue(s) identified by the challenge(s). The AFC applicant must file these reports in ET docket No. 21-352.⁴¹ OET will examine the public trial reports and may require AFC system applicants to provide additional information or make modifications to their AFC system if necessary to correct any deficiency that may still remain or correct any other issues that may arise during the public trial.

C. Additional Testing Not Necessary

19. In the *2022 Public Notice*, OET indicated that it was considering requiring AFC system applicants to conduct an AFC system integration test.⁴² OET envisioned that such testing could verify that deployed standard power devices operate under the control of the AFC systems on the appropriate channels and at the specified power levels. The *2022 Public Notice* referred to the Initial Commercial Deployment (ICD) required for the Spectrum Access Systems (SAS) that control spectrum access in the CBRS band (3550-3700 MHz) as one possible model for integration test.⁴³ OET concludes that additional AFC system testing beyond the lab testing and public trial is not necessary.

20. Several commenters express the need for additional AFC testing such as field testing or end-to-end testing. For example, AT&T suggests that AFC applicants provide a list of test locations for field

⁴¹ Because these test reports are in the public interest and simply report test results along with any actions that may have been taken to modify an AFC system to ensure compliance, we do not expect that they will contain proprietary or company specific non-public information. Thus, they will be available for public inspection.

⁴² *2022 Public Notice* at 22, para. 48.

⁴³ *2022 Public Notice* at 22-23, para. 49 citing *Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure and Deadline for Filing Spectrum Access System Initial Commercial Deployment Proposals*, Public Notice, GN Docket No. 53-319, 33 FCC Rcd 7390 (2018).

test.⁴⁴ According to AT&T, “OET should make clear that an AFC system will be deemed to provide ‘accurate results’ within the meaning of the *6 GHz Report and Order* only if it is validated as compliant with the Commission’s rules on an end-to-end basis and fully protects primary FS licensees.”⁴⁵ Verizon advocates selecting one or more representative real-world fixed links for testing purposes.⁴⁶ APCO points out that “OET has not confirmed that the process for testing AFC systems will entail real world testing with standard power devices . . .”⁴⁷ The International Association of Fire Chiefs request that any testing be either conducted or verified by a federal entity, such as the National Institute of Standards and Technology’s Public Safety Research Division.⁴⁸

21. Commenters also express an interest in permitting incumbents to either be involved in the testing process or have additional input into the process. UTC and the Edison Electric institute jointly advocate that AFC system proponents allow incumbent licensees full transparency into the configuration and operations of their systems through field and lab testing stating that access to a “black box” that generates some results is insufficient to demonstrate incumbents will be protected from harmful interference.⁴⁹ According to Verizon, incumbent licensees need to be able to test AFC systems in a way that provides confidence that fixed links will be protected.⁵⁰ FWCC requests that information about planned testing be made available in advance of the test period to allow interested parties to propose additional testing, if necessary, to help prepare tests that will rigorously demonstrate the AFC system’s compliance with the Commission’s rules.⁵¹ APCO suggest that if the AFC approval process continues, it should be for the purpose of conducting field tests in collaboration with public safety licensees to develop AFC system parameters and procedures to identify and eliminate interference.⁵²

22. OET is not convinced that additional testing beyond the lab testing and public trial we are requiring is needed. The testing process is intended to verify that the AFC systems are operating in conformance with the rules which the Commission adopted. In the *6 GHz Report and Order*, the Commission concluded that the rules that require standard power devices to operate under the control of an AFC system will prevent harmful interference from occurring to incumbent fixed microwave links as well as radio astronomy sites.⁵³ These rules establish that the AFC system is to use microwave link information from the Commission’s Universal Licensing System, and the propagation models and the interference protection criteria specified by the Commission to determine the frequencies and power levels at which the standard-power devices may operate.⁵⁴ The lab testing, which will involve exercising the AFC systems with a set of test vectors that cover the full range of possible conditions, will achieve the goal of verifying the AFC system operations are in accordance with Commission’s rules. The public trial, which will allow all interested parties to explore the outputs of the AFC systems, will provide additional assurance as to the correct operation of the AFC systems.

⁴⁴ AT&T Comments at 27-28.

⁴⁵ AT&T April 26, 2022 *Ex Parte* at 13.

⁴⁶ Verizon Comments at 14.

⁴⁷ APCO International Dec. 7, 2022 *Ex Parte* at 3.

⁴⁸ International Association of Fire Chiefs January 11, 2021 *Ex Parte* at 2.

⁴⁹ UTC/EEI Comments at 7.

⁵⁰ Verizon May 16, 2022 *Ex Parte* at 4.

⁵¹ FWCC Comments at 9.

⁵² APCO International May 31, 2022 *Ex Parte* at 3.

⁵³ *6 GHz Report and Order*, 35 FCC Rcd at 3862, para. 22.

⁵⁴ 47 CFR §§ 15.407(k)(3), (l).

23. OET does not believe there will be any utility in requiring end-to-end testing that includes both AFC systems and standard power devices. The lab testing and public trial will verify that the AFC systems are generating available frequencies and permitted power levels that are appropriate under the Commission's rules while the equipment authorization process will check that the standard power devices are operating as instructed by the AFC system commands.⁵⁵ Furthermore, OET disagrees with APCO's suggestion that the purpose of field testing should be to develop AFC system parameters or develop procedures for identifying and eliminating interference. In adopting the 6 GHz rules the Commission did not task OET with requiring testing for such purposes.

24. OET has sufficient real-world experience with database controlled systems to be confident that they work as intended to support the conclusion that integration testing is not necessary. First, AFC systems are much simpler than the SAS systems used in CBRS because AFC systems are not a fully dynamic system managing near real-time frequency assignments based on constantly changing inputs. AFC systems are also simpler than the white space databases because they do not need to account for the possibility of protecting short term registration based wireless microphones. In contrast, AFC systems must protect fixed microwave links pursuant to licensing records contained in ULS. Moreover, unlike other database enabled systems, each AFC system operates independently and is not required to coordinate with other AFC systems. Thus, once device testing is conducted which verifies that the 6 GHz standard power device correctly communicates and executes the commands provided by the AFC system, and once lab testing and public trials of the AFC system are conducted and deemed acceptable, additional testing such as integration testing involving operation of actual standard power devices in the field will provide no additional information about the correct operation of the AFC system than what will be available from all prior testing. Additional testing beyond the lab testing and public trial would only delay the availability of standard power devices to the American public without providing any significant benefits and would not be in the public interest.

25. OET also sees no reason for additional involvement by the incumbents in the testing process. Because the lab testing will be performed by an independent test lab that is either FCC recognized or has undergone a rigorous approval process by the WinnForum, OET has confidence that the testing will be done in a thorough and accurate manner. Nor is there any reason to conclude that testing by a recognized test lab that has tested sophisticated CBSDs would be in any way inferior to testing performed by a government entity. The public trial requirement, which will permit any interested party to exercise the AFC systems, will provide additional assurance that the AFC systems are being adequately tested. OET also sees no reason to allow time for interested parties to provide additional input into the testing process. There has been ample opportunity to provide input into the process since the Commission solicited AFC system proposals on September 28, 2021 and OET sees no reason to create additional delays by soliciting further input on AFC testing.

IV. ADDITIONAL ISSUES

26. *Canadian Requirements:* AT&T urges the Commission to condition final approval of the AFC systems on compliance with requirements that the Canadian spectrum regulator, Innovation, Science, and Economic Development Canada (ISED), adopted for AFC systems.⁵⁶ According to AT&T, because AFC systems deployed in Canada will have to meet these requirements, requiring the same measures in the United States should have trivial additional costs.⁵⁷ AT&T points to a number of ISED requirements which it claims the Commission should apply to AFC systems:

⁵⁵ OET has recently issued guidance on the certification of standard power devices. *Part 15 Subpart E U-NII 6 GHz General Guidance Bands 5, 6, 7, 8*, Federal Communications Commission, Office of Engineering and Technology, Laboratory Division, KDB 987594 D01v02 (Aug. 9, 2023) <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?id=277034&switch=P>.

⁵⁶ AT&T Feb. 7, 2023 *Ex Parte* at 1.

⁵⁷ *Id.*

- Standard power device users should be required to register a point of contact responsible for resolving interference issues with the device, which the AFC operator shall disclose to the ISED upon request and to the microwave licensee, minus any personal information, for the purpose of investigating interference cases;⁵⁸
- AFC systems should retain detailed logs of standard power device registrations, which shall include references to the registered information of the associated standard-power device;⁵⁹
- The AFC operator should provide a method for querying the AFC systems for available frequencies and power levels at a particular location;⁶⁰
- ISED may impose different standards necessary to protect incumbent systems that the AFC systems will be required to comply with. Similar to this requirement AT&T requests that the Commission explicitly condition final AFC system approvals on a requirement that the AFC systems respond and incorporate Commission adjustments of their coordination method from time to time as needed.⁶¹

27. According to AT&T, adopting these requirements will provide substantial assistance to microwave incumbents and the Commission in resolving harmful interference caused by standard power devices.⁶² AT&T suggests that implementing these requirements need not delay standard power device deployment as the approval of AFC systems could proceed with the commitment that the updated AFC system capabilities would be available as soon as possible.

28. Apple, Broadcom et al view AT&T's request as improperly seeking reconsideration of decisions already made in the *6 GHz Report and Order*.⁶³ According to Apple, Broadcom, et al, neither the Communications Act nor the Commission's rules allow for the untimely filing of petitions for reconsideration based on the contrary decisions of a non-U.S. regulator. Apple, Broadcom, et al point to requirements for registering a point of contact for devices, retaining detailed logs, and providing a method of querying the AFC system for available frequencies and power levels as going beyond the requirements of the rules.⁶⁴ Apple, Broadcom et al. believe there is no need to condition approval of the AFC systems on the AFC operators responding to and incorporating Commission adjustments of their coordination methods as they are required to comply with enforcement instructions by the rules. Furthermore, Apple, Broadcom, et al. explain that to the extent AT&T suggests that the Commission might adjust AFC protection thresholds in the Commission rules, this would require notice-and-comment rulemaking and cannot be changed by OET through the AFC system approval process.⁶⁵

29. As an initial matter, OET has no information as to which AFC system applicants plan to apply to manage 6 GHz band spectrum access in Canada. However, OET believes it is possible that many of the 13 applicants may choose not to serve the Canadian market. Hence, OET cannot assume they all will implement these features to meet Canadian requirements and do not agree with AT&T's suggestion that the cost of complying with these requirements will be trivial.

⁵⁸ *Id.* at 2.

⁵⁹ *Id.* at 2.

⁶⁰ *Id.* at 2.

⁶¹ *Id.* at 3.

⁶² *Id.* at 4.

⁶³ Apple, Broadcom et al March 17, 2023 *Ex Parte* at 1.

⁶⁴ *Id.* at 2-3.

⁶⁵ *Id.* at 3.

30. OET is required to implement the rules for standard power devices and AFC systems as adopted by the Commission. Several of AT&T's suggestions go beyond the Commission's rules, and therefore, OET cannot adopt them regardless of their merit. This is true of AT&T's request that standard power device registrations include providing a point of contact, which would go beyond the information that the rules specify be provided for device registration.⁶⁶ There is also no requirement that AFC operators provide a method to query the AFC systems for available frequencies and power levels at a particular location other than during the testing and approval process.⁶⁷ While the rules do require AFC systems to store registered information, this will only be the information that the standard power devices are required to provide during registration and not the additional information ISSED is requiring.⁶⁸ As to AT&T's request that AFC systems respond to and incorporate adjustments to the coordination method from time to time as needed, Apple, Broadcom et al. are correct that notice-and-comment rulemaking is required to change any parameters or requirements in the Commission's rules. However, OET does note that the rules require that the AFC systems establish and follow protocols to comply with enforcement instructions from the Commission.⁶⁹ To the extent that it is necessary to resolve instances of harmful interference that may arise, these enforcement instructions could require adjustments to the AFC systems' operations.

31. *Propagation Model Parameters*: In the 2022 *Public Notice*, OET addressed the reliability and confidence levels used in the propagation models employed by the AFC systems.⁷⁰ OET noted that industry had not reached an agreement on these propagation model parameters.⁷¹ While OET did not specify particular values to use for these parameters, it did indicate that using 50% for the reliability and confidence levels in the ITM model and 50% for the confidence level in the WINNER II model and clutter models are lower bounds on these parameters that are consistent with the *6 GHz Report and Order*.⁷² OET indicated that these lower bounds represent the minimum protection level that must be provided to incumbent microwave stations, but emphasized that AFC systems may use more stringent levels (*i.e.*, predict additional standard-power device path loss by using higher reliability and confidence levels in the propagation models).

32. A group of commenters representing incumbents and one AFC system applicant note that industry reached a consensus on these propagation model parameters shortly before release of the 2022 *Public Notice*.⁷³ The agreed upon parameters are significantly more conservative than the 50% levels specified as a bound by OET.⁷⁴ These commenters seek clarification that the 2022 *Public Notice* should not be interpreted to override the industry consensus standards which are now specified in the WinnForum functional requirements document.⁷⁵ AT&T also points out that ISSED has included these

⁶⁶ *6 GHz Report and Order*, 35 FCC Rcd at 3883, para. 83; 47 CFR § 15.407(k)(8)(ii).

⁶⁷ *6 GHz Report and Order*, 35 FCC Rcd at 3871, para. 49 ("Applicants that receive a conditional approval will then be required to provide a test system that will be subject to a public trial period to provide interested parties an opportunity to check that it provides accurate results.").

⁶⁸ *6 GHz Report and Order*, 35 FCC Rcd at 3884 para. 86; 47 CFR § 15.407(k)(5).

⁶⁹ 47 CFR § 15.407(k)(15)(vi).

⁷⁰ 2022 *Public Notice* at 15-18, paras. 33-38.

⁷¹ *Id.* at 17, para. 38.

⁷² *Id.* at 18, para. 38.

⁷³ APCO International, AT&T Services, Comsearch, Edison Electric Institute, Enterprise Wireless Alliance, Fixed Wireless Communications Coalition, Utilities Technology Council, Verizon Jan. 27, 2023 *Ex Parte*.

⁷⁴ *Id.* at 2.

⁷⁵ *Id.* at 2 (citing *Functional Requirements for the U.S. 6 GHz Band under the Control of an AFC System*, WINNF-TS-1014, WinnForum, 44, 45, Table 6 (Oct. 31, 2022)).

industry consensus parameters in its specification document for AFC systems, which it claims underscores that the Commission should clarify that the *2022 Public Notice* does not override the industry consensus on these parameters.⁷⁶

33. According to Apple, Broadcom et al, OET was not overriding WinnForum or any other industry body by establishing minimum values for the propagation parameters in the *2022 Public Notice*.⁷⁷ Rather, they state that OET made clear that it believes in the value of industry consensus on this matter and that AFC operators have the option of adopting such levels on their own initiative. Apple, Broadcom et al claim there is nothing left for OET to clarify on this matter and that AT&T is attempting to seek untimely reconsideration of a settled issue.

34. OET fails to see how our statements in the *2022 Public Notice* can be interpreted as overriding the industry consensus on the propagation model parameters. While the *2022 Public Notice* did state that using the median values for the reliability and confidence levels are consistent with the *6 GHz Report and Order* and are sufficient to ensure that fixed service microwave links are adequately protected from receiving harmful interference, OET also emphasized that AFC systems may use parameters that provide more stringent levels of interference protection.⁷⁸ As the industry consensus parameters do in fact provide a higher degree of interference protection to incumbent licensees, AFC systems operating with these parameters would be operating consistently with our statements in the *2022 Public Notice*.

35. *Interference Reporting*: Many of the AFC system applicants have indicated an intention to collaborate with industry groups to formulate procedures for acting on reports of potential harmful interference.⁷⁹ OET strongly encourages the AFC system operators to work together to develop a process for addressing such reports. At a minimum, OET suggests that the AFC operators provide a means for 6 GHz licensed incumbents to report harmful interference. This could take the form of an email address where interference reports could be sent or an Internet portal that collects information on interference events.⁸⁰ This information could then be shared with all the AFC system operators and Commission Enforcement Bureau staff.

V. APPROVAL OF AFC SYSTEMS

36. After a conditionally approved AFC system operator submits reports describing their AFC system lab testing and public trial in ET Docket No. 31-352, they will be thoroughly examined by OET staff. OET will not approve an AFC system for full commercial operation until all valid issues, if any, revealed either by the lab testing or the public trial have been adequately addressed. OET staff may require the AFC applicant to provide supplemental information or conduct additional tests to ensure that OET staff have confidence that the AFC system functions as intended and provides interference protection to incumbent systems. If the reports and any additional requested information indicate that the

⁷⁶ AT&T Feb. 7, 2023 *Ex Parte* at 4.

⁷⁷ Apple, Broadcom et al March 17, 2023 *Ex Parte* at 4.

⁷⁸ *2022 Public Notice* at 18, para. 38.

⁷⁹ See e.g., Broadcom Feb. 24, 2022 *Ex Parte* ET Docket No. 21-352, at 3; Kyrio Feb. 25, 2022 *Ex Parte* ET Docket No. 21-352, at 3; Qualcomm Automated Frequency Coordination System Operator Application: Responses to Supplemental Questions, ET Docket No. 21-352, at 4 (filed Feb. 28, 2022); Supplement to Proposal from Sony Group Corporation to Serve as an Automated Frequency Coordination System Operator, ET Docket No. 21-352, at 4-5 (filed Feb. 24, 2022); Wi-Fi Alliance Feb. 22, 2022 *Ex Parte* ET Docket No. 21-352, at 6; Supplement to the Proposal by Federated Wireless to Serve as an Automated Frequency Coordination System Operator in the 6 GHz Band, ET Docket No. 21-352, at 9 (filed Feb. 9, 2022); Supplement to Comsearch Proposal to be Approved as an Automated Frequency Coordination Operator, ET Docket No. 31-352, at 9-10 (filed Mar. 1, 2022).

⁸⁰ One example of such an interference reporting mechanism is the webpage Federated Wireless has set up for reporting interference in the CBRS band. See <https://www.federatedwireless.com/report-cbrs-interference/>.

AFC system is in compliance with the Commission's rules governing AFC system operation, OET will issue a public notice approving the AFC system for commercial operation.

37. *Further Information.* Questions regarding this Public Notice may be directed to Nicholas Oros, Office of Engineering and Technology, at (202) 418-0636 or Nicholas.Oros@fcc.gov.

-FCC-



PUBLIC NOTICE

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DA No. 23-760

Report No. SAT-01753

Friday August 25, 2023

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-MOD-20221114-00159 E S2237 Intelsat License LLC
Modification

Effective Date:

Nature of Service: Fixed Satellite Service

On August 24, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for modification of the license for Intelsat 11 to: (1) extend the license term of the satellite to March 15, 2025, and (2) specify operations with a revised C-band coverage area. Intelsat 11 operates in inclined orbit at the 43.0° W.L. orbital location and is capable of operating using the following frequencies: 5925-6425 MHz, 12.75-13.25 GHz, and 13.75-14.0 GHz (Earth-to-space); and 3700-4200 MHz and 10.70-11.45 MHz (space-to-Earth). Intelsat conducts telemetry, tracking, and command with Intelsat 11 using the following center frequencies: 11.448 GHz and 11.449 GHz (space-to-Earth), and 13.2465 GHz and 13.9955 GHz (Earth-to-space).

SAT-STA-20230503-00102 E S2423 Intelsat License LLC
Special Temporary Authority

Effective Date:

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

SAT-STA-20230601-00129 E S2423 Intelsat License LLC
Special Temporary Authority

Effective Date:

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

SAT-STA-20230628-00151 E S2423 Intelsat License LLC
Special Temporary Authority

Effective Date:

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

SAT-STA-20230724-00183 E S3017 Hughes Network Systems, LLC

Special Temporary Authority

Grant of Authority

Effective Date: 08/18/2023

Nature of Service: Fixed Satellite Service

On August 18, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Hughes Network Systems, LLC for special temporary authority for a period of 60 days to operate the EchoStar XXIV (Jupiter 3) space station at the 95.2° W.L. orbital location using the 18.9-19.3 GHz and 28.6-29.1 GHz frequency bands for the purpose of conducting in-orbit testing during an initial period following launch and placement of the satellite at its assigned orbital location.

SAT-STA-20230801-00191 E S2423 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 08/24/2023

On August 24, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC, for special temporary authority for a period of up to 30 days to operate Horizons 2 with a new bias of 1.0° E, 0.0° N and operate two of its beams with revised coverage areas.

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



PUBLIC NOTICE

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DA No. 23-761

Report No. SCL-00429

Friday August 25, 2023

Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules. 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); see Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. 47 CFR §§ 1.767, 1.768. Cable landing licensees should review the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

INFORMATIVE

SCL-STA-20230411-00009

Latam Telecommunications, L.L.C.

On August 23, 2023 we granted the request for special temporary authority (STA) filed by Puerto Rico Telephone Company, Inc. and LATAM Telecommunications, LLC (Applicants) to continue operating the segment and associated landing points connecting Isla San Andrés, Colombia and Puerto Limón, Costa Rica to the América Móvil Submarine Cable System (AMX1 system) while the Commission considers a forthcoming application for authority for that segment and landing points. The Applicants acknowledge that grant of this STA request will not prejudice action by the Commission on the forthcoming license modification application and that such STA is subject to cancellation or modification upon notice without a hearing. The Applicants further acknowledge that such STA can be revoked by the Commission on its own motion without a hearing.

The STA expires on February 19, 2024.

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

In the Matter of)	
)	
WorthRome, LLC	)	NAL/Account No. MB-202341410018
KVHZ(AM), Wasilla, AK	)	FRN: 0031277197
K296FP, Willow Creek, AK	)	Facility ID Nos. 161023, 146572

ORDER

Adopted: August 30, 2023

Released: August 31, 2023

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Order, we adopt the attached Consent Decree between the Media Bureau (Bureau) and WorthRome, LLC (Licensee), the licensee of KVHZ(AM), Wasilla, Alaska and its associated FM translator, K296FP, Willow Creek, Alaska. The Consent Decree resolves the Bureau's investigation into Licensee's compliance with section 301 of the Communications Act of 1934, as amended (Act),¹ and sections 73.1560(d), 73.1690(b)(5), 73.1740, 73.1745, and 74.1263(b) of the Commission's rules (Rules).²

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 301 of the Act, and sections 73.1560(d), 73.1690(b)(5), 73.1745, and 73.1740 of the Rules, by reducing daytime power, limiting operating hours, and/or discontinuing operations of KVHZ(AM) without Commission notification or authorization; and (2) section 74.1263(b) of the Rules by originating programming on K296FP while KVHZ(AM) was silent. The Bureau proposed a civil penalty of \$7,000, an amount the Bureau determined to be consistent with section 503(b) of the Act,³ section 1.80 of the Rules,⁴ and the Commission's *Forfeiture Policy Statement*.⁵ In response,

¹ 47 U.S.C. § 301.

² 47 CFR §§ 73.1560(d), 73.1690(b)(5), 73.1740, 73.1745, 74.1263(b).

³ 47 U.S.C. § 503(b). 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.

⁴ 47 CFR § 1.80.

⁵ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999).

Licensee submitted financial information in support of a requested reduction based on a claimed inability to pay that full amount.⁶

3. In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.⁷ Nevertheless, the Commission recognizes that, in some cases, other financial indicators, such as net losses, may also be relevant.⁸ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.⁹ In considering claims of financial hardship, the range of penalties that the Commission has deemed reasonable generally average approximately five percent of the violator's gross annual income and have not exceeded eight percent thereof.¹⁰ Licensee's gross revenues are modest but, under applicable standards, the proposed \$7,000 civil penalty would not be excessive. Nevertheless, the Commission has also recognized that even an amount of five percent of gross revenues may be excessive if a licensee operated at a significant loss.¹¹ In the present case, Licensee has shown that it has incurred only losses since becoming the Stations' licensee in 2021, despite its principals taking no salary. For the documented portions of 2021 and 2022, respectively, the Stations' gross revenues only covered 73 percent and 71 percent of their operating expenses.¹² We further note that the primary cause of Licensee's violations is a malfunctioning transmitter which Licensee has recently made special financial arrangements to replace¹³ and find that the Stations' limited resources would best be used for that purpose of coming into compliance.¹⁴ We, thus, find that there is a sufficient basis to reduce (but not cancel) the penalty amount. Licensee agrees to make a four thousand dollar (\$4,000) civil penalty payment to the United States Treasury¹⁵ for which it has a

⁶ The Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Here, three full years of data is not available because Licensee has only been in business since mid-2021. Licensee submitted federal tax returns for 2021 and 2022. It also submitted two detailed profit and loss statements covering the periods April 16, 2021 to December 31, 2021 and January 1, 2022 to May 18, 2022.

⁷ See *Methow Valley Comm. Dist.*, Forfeiture Order, DA 23-403, para. 6 (MB rel. May 12, 2023).

⁸ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

⁹ *Id.*

¹⁰ See, *Zuma Beach FM and Emergency Comm. Broad., Inc.*, Memorandum Opinion and Order, 34 FCC Rcd. 5302, 5303-04, note 14 (MB 2019) and cases cited therein.

¹¹ See *Valley Air, LLC*, Letter Order, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture which, although reasonable in comparison to gross revenues, would pose a financial hardship where licensee incurred large losses during the same period).

¹² For purposes of these calculations we rely primarily on Licensee's profit and loss documents which detail the Stations' direct operating expenses such as utilities and rent. We give less weight to the larger losses claimed on Licensee's tax returns which include more general deductions, such as depreciation.

¹³ Licensee states that it was only able to order the replacement transmitter after it built up a sufficient relationship with a sponsor to convince it to pay for advertising in advance. See Statement of Aaron I.B. Coman, Managing Member, WorthRome, LLC (dated July 24, 2023) at 1.

¹⁴ See generally *Calvary Ed. Broad. Network, Inc.*, Consent Decree, 35 FCC Rcd 10240, 10249-50, para. 18 (MB 2020) (station's limited resources best directed to fulfilling Consent Decree obligation to make a costly facility modification needed to correct violations rather than to paying a civil penalty).

¹⁵ A reduction of this size is comparable to that in another cases involving significant losses. See *Hawkins Broad. Co.*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 (continued on next page))

demonstrated ability to pay. The remainder of the proposed civil penalty will be suspended. However, Licensee will pay the remainder of the original proposed civil penalty if the Commission finds during the next three years that Licensee misled the Commission regarding its current financial status.

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

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

6. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j) and 503(b) of the Communications Act of 1934, as amended,¹⁶ and by the authority delegated by sections 0.61 and 0.283 of the Commission's rules,¹⁷ the Consent Decree attached hereto **IS ADOPTED** without change, addition, or modification.

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

8. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Aaron I.B. Coman, Owner/Operator, WorthRome LLC, 5800 West Locksley Loop, Wasilla, AK 99623 and to its representatives, Susan A. Marshall, Esq. and Stephen T. Lovelady, Esq., Shainis & Peltzman, Chartered, 1850 M St., N.W., Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues but licensee operated with significant losses).

¹⁶ *Id.* § 154(i).

¹⁷ 47 CFR §§ 0.61, 0.283.

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

In the Matter of)	
)	
WorthRome, LLC	)	NAL/Account No. MB-202341410018
KVHZ(AM), Wasilla, AK	)	FRN: 0031277197
K296FP, Willow Creek, AK	)	Facility ID Nos. 161023, 146572

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and WorthRome LLC (hereafter “Licensee,” as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau’s investigation into the Licensee’s operation of AM station KVHZ(AM), Wasilla, Alaska and its associated FM translator, K296FP, Willow Creek, Alaska. To resolve this matter, Licensee agrees to pay a civil penalty in the amount of Four Thousand Dollars (\$4,000).

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 an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Media Bureau of the Commission.
 - (d) “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) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Licensee is subject by virtue of its business activities, including but not limited to the FM Translator Program Origination Rules and the Notification and Authorization Rules.
 - (g) “FM Translator Program Origination Rules” means Section 74.1263(b) of the Rules, and other Communications Laws that prohibit, with limited exceptions, FM Translators from originating programming and from operating if its associated AM station has not operated during the past 24 hours.
 - (h) “Investigation” means the Bureau’s investigation into the Licensee’s operation of the Stations;
 - (i) “Licensee” means WorthRome LLC (FRN: 0031277197), and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (j) “Notification and Authorization Rules” means Section 301 of the Act, Sections 73.1560(d), 73.1690(b)(5), 73.1740, and 73.1745 of the Rules, and other Communications Laws that prohibit the use or operation of a broadcast radio station

without a valid Commission authorization or inconsistent with such authorization, or that require the station to operate in a manner which complies with the Rules and in accordance with the station's authorization, or that require notification to or authorization from the Commission if operations are limited, discontinued, or at an unauthorized power.

- (k) “Parties” means Licensee and the Bureau, each of which is a “Party.”
- (l) “Renewal Application” means the Application of Licensee, File No. 0000162500 (filed Oct. 1, 2021) to renew the licenses of the Stations.
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations;
- (n) “Stations” means KVHZ(AM), Wasilla, Alaska, (Facility ID No. 161023); and its associated FM translator station K296FP, Willow Creek, Alaska (Facility ID No. 146572).
- (o) “Violations” means the violations of section 301 of the Act, and sections 73.1740, 73.1560(d), 73.1690(b)(5), 73.1745, and 74.1263(b) of the Rules, which are stipulated in paragraph 12 of this Consent Decree.

II. BACKGROUND

3. Section 301 of the Act prohibits the operation of a broadcast station except under, and in accordance with, a Commission-granted authorization. Section 73.1740 of the Rules requires that if a broadcast station must limit or discontinue operations for reasons beyond its control it must notify the FCC no later than the tenth day of limited or discontinued operation and file a request for Special Temporary Authority (STA) if the limited or discontinued operations last more than 30 days. Similarly, section 73.1560(d) of the Rules provides that if it becomes technically impossible for a station to operate at authorized power, it must notify the FCC if reduced power will exceed ten consecutive days and file a request for STA if the reduced power will last more than 30 days. Section 73.1745 of the Rules states that “[n]o broadcast station shall operate . . . with modes or power, other than those specified and made a part of the license . . .” Section 73.1690(b)(5) requires the licensee of a commercial AM station to apply for and obtain a construction permit from the Commission before reducing the AM station’s power. Section 74.1263(b) of the Rules prohibits an FM translator station from originating programming while its primary station is off the air¹⁸ except in limited circumstances not applicable here.¹⁹

¹⁸ 47 CFR § 74.1231(b) (“An FM translator may be used for the purpose of retransmitting the signals of a primary AM or FM radio broadcast station . . . and originating programming to the extent authorized in paragraphs (f), (g), and (h) of this section.”); 47 CFR § 74.1263(b) (“An . . . FM translator station rebroadcasting . . . an AM or FM primary station shall not be permitted to radiate . . . when signals of the primary station are not being transmitted,” except for nighttime transmission by a translator rebroadcasting a Class D station that has operated during the daytime in the last 24 hours).

¹⁹ Sections 74.1231(f) and (g) allow FM translators to originate “emergency warnings of imminent danger” and acknowledgments of “financial support deemed necessary to the continued operation of the translator.” 47 CFR § 74.1231(f), (g). Section 74.1231(h) permits an FM translator station that rebroadcasts a Class D AM radio broadcast station as its primary station to originate programming during the hours the primary station is not operating, subject to the provisions of § 74.1263(b). 47 CFR § 74.1231(h). Section 74.1263(b) provides that origination on such a translator is allowed so long as the Class D AM radio station “has operated during the daytime in the last 24 hours.” 47 CFR § 74.1263(b). None of these exceptions are relevant here.

4. On September 7, 2020, the Commission received an informal complaint alleging that KVHZ(AM) had been off the air for an extended period and that K296FP had been originating programming while KVHZ(AM) was silent. Licensee obtained the Stations approximately one year thereafter through an assignment of license granted on September 29, 2021 and consummated the purchase of the Stations on September 30, 2021.²⁰ On October 1, 2021, all broadcast stations in Alaska were required to apply for license renewal in advance of the February 1, 2022 license expiration of all such licenses in that state. Licensee thus filed the Renewal Application. The Bureau has been treating the September 2020 complaint as an informal objection to the Renewal Application.

5. The Bureau sent inquiries to Licensee on March 4, 2022 and July 7, 2023 regarding KVHZ(AM)'s operational status and K296FP's programming.²¹ On April 18, 2022, shortly after the first inquiry, Licensee filed a request for Special Temporary Authority (STA) to operate KVHZ(AM) with reduced power and the Bureau granted the request that same day. Licensee has since submitted records of weekly tests of KVHZ(AM)'s Emergency Alert System showing that the station was not silent for extended periods. Nevertheless, Licensee's responses to the two inquiries²² reflect other violations. Licensee estimates that: (1) KVHZ(AM) had been off-the-air approximately 18 days within approximately eight periods between Licensee's September 30, 2021 acquisition and the February 1, 2022 end of the license term; (2) FM translator K296FP continued to operate during those periods; (3) there were additional periods extending over a summer and winter when KVHZ(AM) operated but at reduced power due to a problem with its transmitter which was deemed unrepairable;²³ (4) Licensee ordered a replacement transmitter on June 14, 2023 and was, as of August 2023, still awaiting delivery and installation; and (5) KVHZ(AM)'s periods of discontinued operations never exceeded 30 days but might have exceeded 10 days.²⁴ The Bureau has no record of Licensee making required notifications of discontinued, limited, or reduced power operations prior to the April 18, 2022 STA request.

6. In light of the compliance issues uncovered by the Investigation, the Parties have agreed to enter into this Consent Decree by which both the Licensee and the Bureau intend to be legally bound.

III. 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 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 of the Effective Date, this Consent Decree shall have the same force and effect as any other order of the Commission. Licensee agrees that it is required to comply with each

²⁰ Notice of Consummation, File No. 0000161879 (rec. Sept. 30, 2021).

²¹ Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to WorthRome, LLC (dated Mar. 4, 2022); Email to Stephen Lovelady, Esq. Steve@s-plaw.com from Irene Bleiweiss, Attorney, Audio Div. (July 7, 2023).

²² Email from Steve Lovelady, Steve@s-plaw.com to Tom Hutton and Victoria McCauley, Audio Div. (dated May 23, 2022) ("Our client does not have exact records, but estimates that since it purchased the assets there have been eight (8) occasions when the AM station was temporarily off-the-air due to transmission line shorting issues, and the FM translator continued to broadcast.").

²³ *Id.*, transmitting Statement of Van Craft, Technical Consultant (dated July 12, 2023) (site very difficult to access due to marshy summer and icy winter conditions).

²⁴ *Id.*, transmitting Statement of Aaron I.B. Coman, Managing Member, WorthRome, LLC (dated July 24, 2023).

individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Licensee fails to satisfy any condition or Rule, in the absence of Commission alteration of the condition or Rule, it will be deemed noncompliant and may be subject to possible enforcement action, including, but not limited to, revocation of the relief, designation of the matter for hearing, letters of admonishment and/or forfeitures. 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 such, Licensee agrees to the terms, conditions, and procedures contained herein.

11. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against 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.²⁵

12. **Admission of Liability.** The Licensee hereby stipulates that (1) KVHZ(AM) reduced daytime power, limited operating hours, and/or discontinued operations without Commission notification or authorization in violation of section 301 of the Act, and sections 73.1560(d), 73.1690(b)(5), 73.1745, and/or 73.1740 of the Rules; and (2) K296FP originated programming at times when KVHZ(AM) was not operational in violation of section 74.1263(b) of the Rules.

13. **Civil Penalty.** In light of Licensee's demonstrated inability to pay and subject to the provisions of paragraph 14 below, Licensee agrees to pay a Civil Penalty to the United States Treasury in the amount of Four Thousand Dollars (\$4,000), 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 1996.²⁶ Licensee will also send electronic notification of payment to Irene Bleiweiss at Irene.Bleiweiss@fcc.gov on the date said payment is made.

14. **Suspended Penalty.** Licensee further agrees that, upon an Event of Default (as described below in paragraph 17), it will pay a further civil penalty to the United States Treasury in the amount of an additional Three Thousand dollars (\$3,000) (Additional Civil Penalty). Licensee acknowledges and agrees that upon an Event of Default, the Additional Civil Penalty shall also become a "Claim" or "Debt" as defined in Section 3701(b)(1) of the DCIA,²⁷ and all procedures for collection of the Additional Civil Penalty may, at the Commission's discretion, be initiated against Licensee.

²⁵ See 47 CFR § 1.93(b).

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

²⁷ *Id.*

15. **Payment.** 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),²⁸ or by wire transfer. Payments by check or money order to pay a civil penalty are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).²⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/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. 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.

16. Any request to make full payment over time under an installment plan should be sent to: Associate Managing Director-Financial Operations, Federal Communications Commission, 45 L St. NE, Washington, D.C. 20554.³⁰ Questions regarding payment procedures should be directed to the Financial

²⁸ Payments made using CORES do not require the submission of an FCC Form 159.

²⁹ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

³⁰ See 47 CFR § 1.1914.

Operations Group Help Desk by telephone, 1-877-480-3201, (option #6), or by e-mail, ARINQUIRIES@fcc.gov.

17. **Event of Default.** Licensee agrees that an Event of Default shall occur upon (1) the failure to pay the Civil Penalty to the United States Treasury on or before the day specified in paragraph 13 or other date(s) specified in any installment requested and approved under paragraph 16; (2) the release of an order within three years of the Effective Date by the Commission, such as a Notice of Apparent Liability for Forfeiture that is uncontested or a Forfeiture Order, finding that Licensee or any other entity owned, operated, or controlled by, or under common control with Licensee violated the FM Translator Program Origination Rules or Notification and Authorization Rules; or (3) the release of an order by the Commission finding that Licensee materially misstated its financial condition in the documents it produced to support its claim of inability to pay.

18. **Interest, Charges for Collection, and Acceleration of Maturity Date.** Upon an Event of Default, all procedures for collection permitted by the DCIA and other provisions of law may, at the Commission's discretion, be initiated and the following shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Licensee: (a) any unpaid Civil Penalties referenced in paragraph 13, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (b) the Additional Civil Penalty referenced in paragraph 15, which shall accrue interest at a rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent per annum from the date of the Event of Default until payment in full; (c) any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717; and (d) any administrative charge(s), including the costs of collection, litigation, and attorneys' fees.

19. **Waivers.** As of the Effective Date, Licensee waives 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. 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 Licensee nor the Commission shall contest the validity of the Consent Decree or Adopting Order, and Licensee shall waive any statutory right to a *trial de novo*. Licensee hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. section 504 and 47 CFR section 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

20. **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.

21. **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.

22. **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.

23. **Successors and Assigns.** Licensee agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees. Licensee agrees that any future application to

assign or transfer control of the Stations will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties of the Licensee set forth in this Consent Decree.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties concerning the Investigation and the Violations.

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

MEDIA BUREAU

FEDERAL COMMUNICATIONS COMMISSION

By: 

Albert Shuldiner

Chief, Audio Division, Media Bureau

Date: 8/30/2023

WorthRome, LLC

By: _____

Aaron Coman, Managing Member

Date: _____

assign or transfer control of the Stations will include a statement executed by an authorized representative of the proposed assignee or transferee consenting to assumption of the responsibilities and duties of the Licensee set forth in this Consent Decree.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties concerning the Investigation and the Violations.

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

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MEDIA BUREAU

FEDERAL COMMUNICATIONS COMMISSION

By: _____

Albert Shuldiner

Chief, Audio Division, Media Bureau

Date: _____

WorthRome, LLC

By:  _____

Aaron Coman, Managing Member

Date: 8/29/2023

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
	)	NAL/Acct. No. MB-202341410019
Northwest Rock N Roll Preservation Society	)	FRN: 0009515602
)	
Application for License to Cover	)	Facility ID No. 150021
K266BM, Olympia, Washington	)	Application File No. 115909
)	

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

Adopted: August 25, 2023

Released: August 25, 2023

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us an application (2020 License Application)¹ filed by Northwest Rock N Roll Preservation Society (NWR) for a license to cover the facilities authorized in a construction permit for K266BM, Olympia, Washington (NWR Translator), that was issued on February 25, 2020 (2020 Permit).² Also before us are (1) Informal Objections (Objections) to the 2020 License Application filed by Bustos Media Holdings, LLC (Bustos), and Bicoastal Media Licenses IV, LLC (Bicoastal),³ (2) an Opposition to Informal Objection (NWR Bicoastal Opposition) that NWR filed in response to the Bicoastal Objection,⁴ (3) a Supplement (Bustos Supplement) filed by Bustos,⁵ and (4) an Opposition to Informal Objection and Supplement, and Motion to Strike (NWR Bustos Opposition or NWR Motion to Strike) filed by NWR in response to the Bustos Objection and the Bustos Supplement.⁶ In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,⁷ we find NWR apparently willfully and repeatedly engaged in unauthorized operation of the NWR Translator in violation of section 301 of the Communications Act of 1934, as amended (Act),⁸ and apparently willfully made false certifications to the Commission in an earlier application in violation of section 1.17(a)(1) of the Commission's rules (Rules).⁹ Based upon our review of the facts and circumstances before us, we deny

¹ Application File No. 115909 (2020 License Application).

² Application File No. BMPFT-20190618ABI. *See also Broadcast Actions*, Public Notice, Report No. 49684, at 1 (MB Feb. 28, 2020).

³ Pleading File No. 116061 (Bustos Objection); Pleading File No. 116076 (Bicoastal Objection).

⁴ Pleading File No. 118217 (NWR Bicoastal Opposition).

⁵ Pleading File No. 120495 (Bustos Supplement).

⁶ Pleading File No. 121197 (NWR Bustos Opposition or NWR Motion to Strike).

⁷ This NAL is issued pursuant to section 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the FCC's rules (Rules). *See* 47 U.S.C. § 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the NAL under section 0.283 of the Rules. *See* 47 CFR § 0.283.

⁸ 47 U.S.C. § 301.

⁹ 47 CFR § 1.17(a)(1).

the NWR Motion to Strike, and grant in part and otherwise deny the Objections. We also conclude that NWR is apparently liable for a monetary forfeiture in the amount of twenty thousand dollars (\$20,000).

II. BACKGROUND

2. Between April 25, 2013, and December 4, 2019, the NWR Translator was authorized to rebroadcast the signal of KGHO-LP, Hoquiam, Washington at an Effective Radiated Power (ERP) of 10 watts.¹⁰

3. On August 29, 2016, NWR obtained a construction permit (2016 Permit) to increase the NWR Translator's ERP to 70 watts and change its primary station from KGHO-LP to KGTK(AM), Olympia, Washington.¹¹ In 2017, at NWR's request, we modified the 2016 Permit to specify an increased ERP of 250 watts (2017 Permit).¹² On June 18, 2019, NWR filed an application (2019 Modification Application) to modify the 2017 Permit for a second time.¹³

4. As the 2017 Permit's expiration date of August 29, 2019, approached, and the 2019 Modification Application remained pending, NWR applied for a license to cover the facilities authorized in the 2017 Permit (2019 License Application).¹⁴ We granted the 2019 License Application on December 4, 2019.¹⁵

5. Our grant of a license to cover the 2017 Permit converted the pending 2019 Modification Application from a request to modify the 2017 Permit to a request to modify the license issued on December 4, 2019 (2019 License). NWR amended the 2019 Modification Application on February 13, 2020. On February 25, 2020, we granted the application and issued the 2020 Permit.

6. On June 8, 2020, NWR filed the 2020 License Application, which seeks a license to cover the facilities authorized in the 2020 Permit. A few days later, Bustos and Bicoastal filed the Objections. Among other things, the Objections allege that the NWR Translator is not operating as authorized,¹⁶ NWR has made false statements to the Commission about the NWR Translator's operations,¹⁷ NWR has violated the LPFM cross-ownership rule,¹⁸ and NWR underwent an unauthorized transfer of control.¹⁹ NWR filed the NWR Bicoastal Opposition on July 21, 2020. Therein, NWR disputes Bicoastal's assertion that the NWR Translator was engaging in unauthorized operations.²⁰ Bustos filed the Bustos Supplement on August 17, 2020, which asserts the NWR Translator had been off

¹⁰ See Application File No. BLFT-20130402ACL (2013 License); *Broadcast Actions*, Public Notice, Report No. 47978, at 10 (MB April 30, 2013).

¹¹ See Application File No. BPFT-20160729AKW; *Broadcast Actions*, Public Notice, Report No. 48811, at 15 (MB Sept. 1, 2016).

¹² See Application File No. BMPFT-20170925ADX; *Broadcast Actions*, Public Notice, Report No. 49090, at 20 (MB Oct. 13, 2017).

¹³ See Application File No. BMPFT-20190618ABI (2019 Modification Application).

¹⁴ See Application File No. BLFT-20190904ABL (2019 License Application).

¹⁵ See *Broadcast Actions*, Public Notice, Report No. 49629, at 2 (MB Dec. 9, 2019).

¹⁶ Bicoastal Objection at 1-2, Bustos Objection at 2-6.

¹⁷ *Id.*

¹⁸ Bustos Objection at 5-6.

¹⁹ *Id.* at 7-8.

²⁰ NWR Bicoastal Opposition at 1.

the air for more than thirty days without Commission authorization.²¹ NWR filed the NWR Bustos Opposition on September 4, 2020. NWR argues that Bustos lacked standing to file the Bustos Objection,²² and disputes Bustos' assertions regarding unauthorized operations, false statements to the Commission, LPFM cross-ownership violations, and an unauthorized transfer of control of NWR.²³

7. NWR amended the 2020 License Application on June 3, 2021.²⁴ On that same date, NWR notified the Commission that the NWR Translator had changed primary stations and was now rebroadcasting the signal of KBRD(AM), Lacey, Washington.²⁵

III. DISCUSSION

A. Procedural Issues

8. We reject NWR's arguments that the Bustos Objection and the Bustos Supplement are procedurally defective. While NWR suggests that Bustos lacks standing to object to the 2020 License Application,²⁶ standing is not required to file an informal objection or a supplement to such an objection.²⁷

9. We also reject NWR's assertion that Bustos did not mail copies of the Bustos Objection and the Bustos Supplement to NWR in "a timely manner."²⁸ In fact, both pleadings included certificates of service indicating they had been mailed to NWR,²⁹ and Bustos has stated that it also emailed those pleadings to NWR.³⁰ It appears, however, that Bustos did not use the proper address for NWR. Bustos used an address—PO Box 5672, Lacey, WA 98509-5672—that NWR listed in a pleading filed with the Commission,³¹ rather than the address—PO Box 2673, Olympia, WA 98507-2673—listed in NWR's most recently filed FCC application.³² We conclude that this error was harmless, because NWR did, in fact, obtain copies of the pleadings and filed the NWR Bustos Opposition in response to them. Because NWR suffered no prejudice from Bustos' use of a different address than that specified in the Rules, we decline to strike the Bustos Objection or the Bustos Supplement.

B. Substantive Issues

²¹ Bustos Supplement at 3-4.

²² NWR Bustos Objection at 1-2.

²³ *Id.* at 2-5.

²⁴ *See Applications*, Public Notice, Report No. PN-1-210608-01, at 22 (MB June 8, 2021).

²⁵ Email from Northwest Rock N Roll Preservation Society to Rob Gates, Electronics Engineer, Audio Division (dated June 3, 2021 4:55 PM DST).

²⁶ NWR Bustos Opposition at 1-2 (questioning Bustos' standing to object to the 2020 License Application).

²⁷ *See, e.g., Chapin Enter., LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252, para. 7 (2014); *Edgewater Broad. Inc.*, Letter Order, 34 FCC Rcd 4594, 4596 (MB 2019).

²⁸ NWR Bustos Opposition at 1.

²⁹ Bustos Objection at Certificate of Service; Bustos Supplement at Certificate of Service.

³⁰ Bustos Supplement at 4-5.

³¹ *Id.*

³² *See* 47 CFR § 1.5 ("unless any licensee advises the Commission to the contrary, the address contained in the licensee's most recent application will be used by the Commission").

10. *Unauthorized Operations.* We find that NWR's operation of the NWR Translator between December 4, 2019, and June 13, 2020, was unauthorized.³³ On those dates, NWR should have been operating the NWR Translator pursuant to the 2019 License (*i.e.*, rebroadcasting the signal of KGTK(AM) at 250 watts). NWR, however, admits that it did not actually begin rebroadcasting KGTK(AM), or increase the NWR Translator's power to 250 watts until June 13, 2020.³⁴ Between December 4, 2019, and June 13, 2020, NWR continued operating the NWR Translator with the facilities authorized in its obsolete 2013 License,³⁵ and continued rebroadcasting the signal of KGHO-LP.³⁶ These unauthorized operations violated section 301 of the Act. Below, we propose a forfeiture to address this violation.³⁷

11. *Operational History.* We reject Bustos' assertion that the NWR Translator was silent in the summer of 2020.³⁸ NWR has explained that the licensee of KGTK(AM) was experiencing issues with the feed between its studio and its transmitter, and that these issues resulted in KGTK(AM)'s signal

³³ Because we find that the NWR Translator's unauthorized operations lasted for less than one year, we reject Bustos' argument that the NWR Translator's license expired under section 312(g) of the Act. Bustos Objection at 6; Bustos Supplement at 4; Renewal Objection at 2. *See also* 47 U.S.C. § 312(g) (providing that "[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary").

³⁴ NWR Bicoastal Opposition at 1 ("On June 13, 2020, NWR finished its' [sic] program tests and commenced relaying KGTK at 250 watts. NWR never relayed KGHO-LP at 250 watts."); Northwest Rock N Roll Preservation Society, Opposition to Petition for Reconsideration & Supplement and Motion to Strike, Application File No. BNPF-20180418ABI, at 3 (filed Sept. 8, 2020) (stating that, when we granted the 2019 License without first granting the 2019 Modification Application, NWR was "[blindsided]" and "was not ready to change power and primary station at that site, which has limited access during the winter months"). *See also* Application File Nos. BSTA-20200129AAJ at Exh. 12; BSTA-20200213ABI at Exh. 12 (both seeking authorization for the NWR Translator to continue to rebroadcast KGHO-LP at 10 watts, and both indicating that NWR was waiting for an audio line from KGTK(AM) and having equipment issues). It appears NWR never operated the NWR Translator with the facilities authorized in the 2019 License. Instead, it continued operating the NWR Translator with the facilities authorized in the 2013 License until it was ready to begin operating the NWR Translator with the facilities authorized in the 2020 Permit pursuant to program test authority.

³⁵ Those facilities operated with an ERP of 10 watts. *See* 2013 License. Accordingly, NWR did not—as Bicoastal and Bustos allege—violate section 74.1235(b)(2) of the Rules. Bicoastal Objection at 2; Bustos Objection at 5. *See also* 47 CFR § 74.1235(b)(2).

³⁶ Based on NWR's statement that it did not begin rebroadcasting KGTK(AM) at 250 watts until June 13, 2020, we would expect any evidence collected before that date to demonstrate that the NWR Translator was rebroadcasting KGHO-LP. That is exactly what the evidence submitted by Bicoastal and Bustos shows. *See* Bustos Objection at 5 (indicating that counsel "personally observed while in the Olympia, Shelton and Yelm areas of western Washington State on May 6, 2020: that [the NWR Translator] was ... rebroadcasting KGHO-LP"); Bustos Objection at 3-5 (including links to recordings made on June 11, 2020 that include music and/or station identifications for KGHO-LP); Bicoastal Objection at Miner Decl. (same).

³⁷ We will not, as Bustos urges, commence a revocation proceeding. Bustos Objection at 5; Renewal Objection at 2. This decision is within our discretion. *See NTCH, Inc. v. FCC*, 841 F.3d 497, 503 (D.C. Cir. 2016) ("The FCC has full discretion to decide whether to initiate revocation proceedings."). Furthermore, our decision to propose a forfeiture rather than commence a revocation proceeding aligns with precedent. *See, e.g., Birach Broad. Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 12398 (MB 2018); *Roy E. Henderson*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5223 (MB 2018) (both proposing forfeiture related to extended period of operation from licensed site with non-conforming facilities).

³⁸ Bustos Supplement at 3-4.

containing low audio level and a hum, all of which was rebroadcast on the NWR Translator.³⁹ NWR submitted recordings for July 11, 16, and 20, 2020, which corroborate its claims.⁴⁰ Additionally, while one of the recordings submitted by Bustos appears to contain only static, at least one does contain low audio.⁴¹ Based on the record as a whole, we find NWR's account of events to be credible, and determine that no further investigation of Bustos' claim is required.

12. *Cross-Ownership.* We reject Bustos' argument that NWR has violated section 73.860 of the Rules, which generally prohibits grant of an LPFM license if such grant will result in the applicant or a party to the application holding an attributable interest in any other non-LPFM broadcast station.⁴² Bustos alleges that John Spencer, President of KGHO-LP's licensee, and Brian Spencer, President of NWR, are "either related or business associates (or both)" and therefore each holds attributable interests in the NWR Translator and the other three FM translators licensed to NWR, and KGHO-LP. However, Bustos has failed to substantiate its claim that the President of NWR and the President of Grays Harbor LPFM are related or in business together. Moreover, even if the two were related, a familial relationship, standing alone, does not create an attributable interest.⁴³ Finally, even if Bustos had proved the existence of a section 73.860 violation, it would be KGHO-LP's licensee, not NWR, that would be sanctioned for the violation.

13. *False Certifications.* The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing."⁴⁴ Full and clear disclosure of all material facts in every application (or response to a Commission request for information) is essential to the efficient administration of the Commission's licensing process, and the Commission's proper analysis of an application is critically dependent on the accuracy and completeness of information and data that only the applicant can provide.⁴⁵ Misrepresentation and lack of candor raise serious concerns as to the likelihood that the Commission can rely on an applicant, permittee, or licensee to be truthful.⁴⁶

14. Section 1.17(a)(1) provides that no person shall, in any written or oral statement of fact, "intentionally provide material factual information that is incorrect or intentionally omit material

³⁹ NWR Bustos Opposition at 3-4.

⁴⁰ Email from Brian Spencer, Northwest Rock N Roll Preservation Society, to Albert Shuldiner, Chief, Audio Division (July 17, 2020 1:48 PM EDT); Email from Brian Spencer, Northwest Rock N Roll Preservation Society, to Albert Shuldiner, Chief, Audio Division (July 22, 2020 7:57 PM EDT).

⁴¹ Bustos Supplement at 3 (including link to recording from August 2, 2020); Bustos Media Holdings, LLC, Reply to Opposition to Petition for Reconsideration & Supplement, and Motion to Strike, Application File No. BNPFT-20180418ABI, at 5 (Sept. 17, 2020) (including link to recording from September 15, 2020).

⁴² See Bustos Objection at 5-6. See also 47 CFR § 73.860.

⁴³ *John Dunnegan*, Letter, Order, 23 FCC Rcd 8617, 8618 (MB 2008).

⁴⁴ See *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000) (*Contemporary Media*); *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1209-10, para. 58 (1986) (*Character Policy Statement*), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 1 FCC Rcd 421 (1986) (subsequent history omitted).

⁴⁵ *Entertainment Media Trust*, Hearing Designation Order and Notice of Opportunity for Hearing, 34 FCC Rcd 4351, 4370, para. 58 (MB 2019).

⁴⁶ *Character Policy Statement*, 102 FCC 2d at 1209-11, paras. 54-61. The fundamental importance of truthfulness and candor on the part of applicants and licensees in their dealings with the Commission is well established. See *FCC v. WOKO, Inc.*, 329 U.S. 223 (1946) (*WOKO*); *Nick J. Chaconas*, Decision, 28 FCC 2d 231, 233, para. 9 (1971); *Lebanon Valley Radio, Inc.*, Decision, 35 FCC 2d 243, para. 26 (Rev. Bd 1972).

information that is necessary to prevent any material factual statement that is being made from being incorrect or misleading.⁴⁷ A misrepresentation (a false statement of fact or false certification made with intent to deceive the Commission) is within the scope of section 1.17(a)(1).⁴⁸ Similarly, lack of candor (a concealment, evasion, or other failure to be fully informative, accompanied by an intent to deceive the Commission) is within the scope of the rule.⁴⁹ A necessary and essential element of both misrepresentation and lack of candor is intent to deceive.⁵⁰ Intent to deceive can be found where a licensee or applicant knowingly makes a false statement (or false certification), and can also be found from motive or logical desire to deceive,⁵¹ or when the surrounding circumstances clearly show the existence of intent to deceive.⁵²

15. We find that NWR made false certifications in the 2019 License Application when it certified that “the station is now in satisfactory operating condition and ready for regular operation.” and “[t]he facility was constructed as authorized in the underlying construction permit.”⁵³ As discussed above, at the time it filed the 2019 License Application, NWR had not constructed the facilities authorized in the 2017 Permit.⁵⁴

16. We also find that NWR apparently made the false certifications with an intent to deceive the Commission. NWR was aware that the NWR Translator’s new facilities had not been constructed when it filed the 2019 License Application. Further, NWR appears to have had a motive for making the false certifications. Had NWR admitted that it had not constructed the new facilities, we would have dismissed the 2019 License Application and the 2017 Permit would have expired.⁵⁵

17. While grant of the 2019 License Application is final and dismissal of that application is not an option, we can and will sanction NWR for the false certifications.⁵⁶ Despite the fact that NWR made false certifications in the 2019 License Application, we believe NWR can reasonably be expected to

⁴⁷ 47 CFR § 1.17(a)(1).

⁴⁸ See *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129, para. 6 (1983) (*Fox River*); *San Francisco Unified Sch. Dist.*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, nn.40-41 (2004) (subsequent history omitted); *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435, para. 7 (2004) (*Discussion Radio*).

⁴⁹ See *Fox River*, 93 FCC 2d at 129, para. 6; *Discussion Radio*, 19 FCC Rcd at 7435, para. 7.

⁵⁰ *Swan Creek*, 39 F.3d at 1222; *Discussion Radio*, 19 FCC Rcd at 7435, para. 7.

⁵¹ See *Discussion Radio*, 19 FCC Rcd 7435, para. 7; *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, para. 6 (Rev. Bd. 1994).

⁵² *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int’l Dev., Inc.*, Memorandum Opinion and Order, BC Docket No. 78-40, 86 FCC 2d 808, 816, n.39 (1981), *aff’d sub nom. KXIV, Inc. v. FCC*, 704 F.2d 1294 (D.C. Cir. 1983).

⁵³ See 2019 License Application, Section II – Legal, Item 5, and Section III – Engineering, Item 4.

⁵⁴ See Northwest Rock N Roll Preservation Society, Opposition to Petition for Reconsideration and Motion to Strike, BNPFT-20180418ABI (filed Sept. 6, 2020) (admitting that NWR “was not ready to change power and primary station” when the 2019 License Application was granted on December 4, 2019).

⁵⁵ See *Terry Keith Hammond*, Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order, 21 FCC Rcd 10267, 10273-74, para. 15 (2006); *William L. Zawila*, Order to Show Cause, Notice of Opportunity for Hearing and Hearing Designation Order, 18 FCC Rcd 14938, 14964, para. 98 (2003).

⁵⁶ See *Character Policy Statement*, 102 FCC 2d at 1227-1228, para. 103. See also *The Lutheran Church/Missouri Synod*, Memorandum Opinion and Order, 12 FCC Rcd 2152, 2166-2167, para. 25 (1997).

deal truthfully with the Commission in the future.⁵⁷ We note that NWR voluntarily disclosed the NWR Translator's unauthorized operations in pleadings filed with the Commission.⁵⁸ We conclude that a forfeiture is the appropriate sanction.

18. *Unauthorized Transfer of Control.* We reject Bustos' assertion that NWR underwent an unauthorized transfer of control. Bustos argues that an unauthorized transfer of control occurred because NWR's initial board was comprised of three individuals (Ethel Giberson, Marie Hellinger, and Diane Alderman) while its board at the time Bustos made the allegation was comprised of three different individuals (Gary Jonah, Rita Rameriz and Brian Spencer).⁵⁹ We acknowledge that, as Bustos claims,⁶⁰ the Commission has held that control of a membership organization resides in the governing board.⁶¹ However, Bustos ignores the fact that, in this case, the original NWR board members were replaced gradually over time.⁶² The Commission tentatively concluded in the *Transfers of Control* proceeding that gradual changes in the governing board of a membership organization do not constitute a transfer of control so long as a majority of the organization's directors are not replaced at one time.⁶³ While we are not bound by the tentative conclusions set forth in that proceeding,⁶⁴ we note that the Commission has hewed to them in later policy making decisions.⁶⁵ We conclude it is appropriate to do so here too.

⁵⁷ See *Character Policy Statement*, 102 FCC 2d at 1228, para. 103 (purpose of Commission's character inquiry is not to eliminate licensees from further activity in broadcasting but to make predictive judgment as to licensee's propensity to deal truthfully with Commission and to comply with rules and policies).

⁵⁸ See *supra* note 34.

⁵⁹ Bustos Objection at 7-8.

⁶⁰ *Id.*

⁶¹ See, e.g., *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5910, para. 28 (2009) (recognizing that "many NCE broadcast licensees are non-profit, non-stock entities, or governmental organizations that are controlled by governing boards or trustees").

⁶² A review of NWR's submissions to the Washington Secretary of State reveals that initially NWR's board was comprised of three people (Ethel Giberson, Marie Hellinger, and Diane Alderman). See Corporations and Charities Filing System, Business Search, Filing History, available at <https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessFilings> (UBI Number 603 040 929). NWR added a board member (Katrina Thompson) in 2011, and added two additional board members (Dot Christensen and Rita Ramirez) in 2012. Then, in 2013, it added two additional board members (Brian Spencer, and Kathy Spencer) but lost a board member (Thompson). In 2016, Gary Jonah replaced Hellinger. In 2017, the board shrank to three members (Ramirez, Jonah and Paul Kelley). In 2018, Brian Spencer replaced Kelley. In 2020, two former board members (Alderman, and Hellinger) returned. In 2022, Ramirez left the NWR board.

⁶³ *Transfers Of Control Of Certain Licensed Non-Stock Entities*, Notice of Inquiry, 4 FCC Rcd 3403, 3405, para. 14 (1989).

⁶⁴ *The KBOO Foundation*, Memorandum Opinion and Order, 31 FCC Rcd 1358, 1359, n.19 (2016) ("That some applicants may have relied upon the tentative conclusions contained in the [Transfers of Control] NOI does not alter the fact that such conclusions do not constitute binding precedent.").

⁶⁵ See *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educ. Broad. Stations and Low Power FM Stations*, Report and Order 34 FCC Rcd 851, 876, n. 176 (2019) ("For NCE permittees and licensees, the Commission's policy on board changes is not codified; rather, it has been based on proposals that were initially set out--albeit never adopted--in the Transfers of Control NOI, which relies on definitions rather than waivers."); *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21921, para. 20 (2007) (applying the *Transfers of Control* guidelines to "appropriate LPFM licensees").

Accordingly, we find that, because the nature of the changes to the NWR board were gradual, no unauthorized transfer of control of NWR occurred.

19. *Expenses.* We will not, as NWR requests, require Bustos to pay the expenses it has incurred.⁶⁶ Absent an agreement by Bustos to voluntarily pay these costs, the Commission is without the statutory authority to compel such payments.⁶⁷

C. Proposed Forfeiture

20. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission”⁶⁸ To determine the appropriate forfeiture amount, we must consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁶⁹ The Commission has established forfeiture guidelines, base penalties for certain violations and has identified criteria that it considers when determining the appropriate penalty in any given case.⁷⁰ Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.⁷¹ We may adjust a forfeiture upward for violations that are egregious, intentional, continuous, and/or repeated, and violations that cause substantial harm or generate substantial economic gain for the violator.⁷² We may also adjust a forfeiture upward where there is an ability to pay, or where there is a history of prior violations of FCC requirements.⁷³

21. NWR apparently willfully and repeatedly violated section 301 of the Act by operating the NWR Translator at a variance from its licensed parameters between December 4, 2019, and June 13, 2020. Section 1.80(b)(10) of the Rules sets forth a base forfeiture of \$10,000 for operating without an instrument of authorization. NWR also apparently willfully violated section 1.17(a)(1) of the Rules by falsely certifying in the 2019 License Application that it had constructed the facilities authorized in the 2017 Permit and that the facilities were ready for operation. Pursuant to the *Forfeiture Policy Statement* and Section 1.80(b)(10) of the Rules, the base forfeiture for misrepresentation or lack of candor is the statutory maximum (currently \$59,316).⁷⁴

⁶⁶ NWR Bustos Opposition at 5.

⁶⁷ *Turner v. FCC*, 514 F.2d 1354 (D.C. Cir. 1975).

⁶⁸ 47 U.S.C. § 503(b).

⁶⁹ *Id.* § 503(b)(2)(E); 47 CFR § 1.80(b)(10).

⁷⁰ 47 CFR § 1.80(b)(10).

⁷¹ *Id.* at Table 3.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *The Commission’s Forfeiture Policy Statement and Amendment to Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098, para. 21 (1997) (“Regardless of the factual circumstances of each case, misrepresentation to the Commission always is an egregious violation. Any entity or individual that engages in this type of behavior should expect to pay the highest forfeiture applicable to the service at issue.”); 47 CFR § 1.80(b)(10), Table 1. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires the FCC to adjust annually the civil monetary penalties covered thereunder, and provides that new penalty levels shall apply to penalties assessed after the effective date of the increase, “including [penalties] whose associated violation predated such increase[.]” Pub. L. No. 114-74, 129 Stat. 584, 599 (2015). *See also*

(continued....)

22. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we believe downward adjustment of both base forfeiture amounts is appropriate. Taking into account that (1) the NWR Translator provides a secondary service, (2) NWR's unauthorized operation of the NWR Translator was not comparable to "pirate" radio operations, and (3) NWR has a history of compliance with the Act, and the Commission's rules and policies,⁷⁵ we propose a total forfeiture in the amount of \$20,000.

IV. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED** that the Motion to Strike (Pleading File No. 121197) filed by Northwest Rock N Roll Preservation Society on September 4, 2020, **IS DENIED**.

24. **IT IS FURTHER ORDERED** that the Informal Objections filed by Bicoastal Media Licenses IV, LLC (Pleading File No. 116061), and Bustos Media Holdings, LLC (Pleading File No. 116076), on June 12, 2020, **ARE GRANTED IN PART AND OTHERWISE DENIED**.

25. **IT IS FURTHER ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules, that Northwest Rock N Roll Preservation Society is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for its apparent willful and repeated violations of section 301 of the Communications Act of 1934, as amended, and its apparent willful violations of section 1.17(a)(1) of the Commission's rules.

26. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, that, within thirty (30) days of the release date of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, Northwest Rock N Roll Preservation Society, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

27. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system), or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:

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

Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-21-10 (OMB Dec. 23, 2020). Accordingly, while the false certifications were made in 2019, the statutory maximum on the date this *NAL* is released applies.

⁷⁵ See, e.g., *Pirate Media Group, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 34 FCC Rcd 12280 (MB 2019).

[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.

28. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554. Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

29. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules. The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. A courtesy copy emailed to Heather.Dixon@fcc.gov will assist in processing the response.

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

30. **IT IS FURTHER ORDERED** that copies of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Brian Spencer, Northwest Rock N Roll Preservation Society, PO Box 2673, Olympia, WA 98507-2673.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau



PUBLIC NOTICE

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

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

DA 23-764
Released: August 28, 2023

COMMISSION REGISTRATION SYSTEM (CORES) IS OPEN FOR PAYMENT OF FISCAL YEAR (FY) 2023 REGULATORY FEES

FY 2023 REGULATORY FEES ARE DUE SEPTEMBER 20, 2023

On August 10, 2023, the Federal Communications Commission (Commission or FCC) released *Assessment and Collection of Regulatory Fees for Fiscal Year 2023; Review of the Commission's Assessment and Collection of Regulatory Fees*, Report and Order, FCC 23-66 (*FY 2023 Regulatory Fees Report and Order*). This document is available for viewing at <http://www.fcc.gov/regfees>. **Regulatory fee payments must be received by the Commission no later than 11:59 PM, Eastern Daylight Time, on September 20, 2023.**¹ While FY 2023 regulatory fees will not become effective until the rulemaking is published in the Federal Register, regulatees, at their own discretion, may submit payments at any time before the FY 2023 regulatory fees due date.

The Commission has discontinued the use of the Fee Filer system and incorporated this payment system into the Commission Registration System (CORES). To use CORES, you need to be registered with the FCC at <https://apps2.fcc.gov/fccUserReg/pages/login.htm>. Once your FCC username is registered and verified, you can access CORES and select the option to associate your existing FRN to that username, if you have not already done so. To make a FY 2023 regulatory fee payment, login to the following website using your username and password: <https://apps.fcc.gov/core/userLogin.do>.

Commission licensees and regulatees should consult the *FY 2023 Regulatory Fees Report and Order* for specific information concerning regulatory fee payment obligations, the regulatory fee process, and regulatory fee requirements for payment. The Commission also publishes industry-specific guidance under the heading *FY 2023 - Who Owes Fees and What Is My Fee*, which can be found on the Commission website at <http://www.fcc.gov/regfees>.

In the *FY 2023 Regulatory Fees Report and Order*, the Commission extended the streamlined filing procedures and other temporary measures it implemented in FYs 2020-2022 for fee waiver, deferral, and installment payment requests based on financial hardship related to the COVID-19 pandemic. A detailed description of these streamlined filing procedures and the other temporary measures the Commission extended can be found in the public notice entitled *Procedures for Filing Requests for Waiver, Reduction, Deferral and Installment Payment of FY 2023 Regulatory Fees Due to the Coronavirus Pandemic*.

¹ The Commission has instituted a mandatory electronic payment policy, which means that licensees will not be able to make regulatory fee payments by check, money order, or cashier's check. Only credit card, ACH, and wire transfer payments will be accepted. Please make sure that your electronic fee payment is made and the transaction is complete by the due date for FY 2023 regulatory fees.

on the Commission website at <http://www.fcc.gov/regfees>.

Section 9A(c) of the Communications Act requires the Commission to impose a late payment penalty of 25% of the unpaid amount to be assessed on the first day following the deadline for filing these fees, and thereafter, to assess interest on the unpaid fee and penalty until paid in full.² Except as described in the *Procedures for Filing Requests for Waiver, Reduction, Deferral and Installment Payment of FY 2023 Regulatory Fees Due to the Coronavirus Pandemic* public notice, if a regulatee fails to pay its regulatory fees, the 25% penalty and/or accrued interest in full, the Commission will withhold action on and dismiss all pending applications and other requests for benefits filed by the regulatee, pursuant to section 1.1161 of the Commission's rules.³ Failure to pay in full a regulatory fee, the 25% penalty and/or accrued interest on the fee and penalty may also result in revocation of a regulatee's license or authorization, pursuant to section 1.1164 of the Commission's rules.⁴ In the case of partial payments (underpayments) of regulatory fees, the payor will be given credit for the amount paid, and the Commission will assess the 25% penalty and interest on the portion of the fee that is not paid in a timely manner.

REGULATORY FEES GUIDANCE

The following Fact Sheets, Public Notices, and website listed below will become available at <http://www.fcc.gov/regfees> to help licensees with their regulatory fee obligations:

Fact Sheet: *What You Owe—Cable Television Systems, IPTV, and DBS for FY 2023*

Fact Sheet: *What You Owe—Media Service Licensees for FY 2023*

Fact Sheet: *What You Owe—Commercial Wireless Services for FY 2023*

Fact Sheet: *What You Owe—International and Satellite Services for FY 2023*

Fact Sheet: *What You Owe—Interstate Telecommunications Service Providers (ITSP) for FY 2023*

Fact Sheet: *Regulatory Fee Exemptions for FY 2023, General Exemptions*

Public Notice: *Payment Methods and Procedures for Fiscal Year 2023 Regulatory Fees*

Public Notice: *Procedures for Filing Requests for Waiver, Reduction, Deferral and Installment Payment of FY 2023 Regulatory Fees Due to the Coronavirus Pandemic*

Website: *FY 2023 Regulatory Fees Information Look-up for Media Services*, <http://fccfees.com>

ADDITIONAL INFORMATION

Licensees and regulatees should contact the Commission's Financial Operations help desk with inquiries regarding regulatory fees at (877) 480-3201, Option 6, or email inquiries to ARINQUIRIES@fcc.gov.

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² 47 U.S.C. § 159A(c).

³ 47 CFR § 1.1161.

⁴ 47 CFR § 1.1164.



PUBLIC NOTICE

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

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

DA Number: 23-765
Released: August 28, 2023

PAYMENT METHODS AND PROCEDURES FOR FISCAL YEAR 2023 REGULATORY FEES

On August 10, 2023, the Federal Communications Commission (Commission or FCC) released *Assessment and Collection of Regulatory Fees for Fiscal Year 2023; Review of the Commission's Assessment and Collection of Regulatory Fees*, Report and Order, FCC 23-66 (FY 2023 Regulatory Fees Report and Order). This document is available for viewing at <http://www.fcc.gov/regfees>. **Regulatory fee payments must be received by the Commission no later than 11:59 PM, Eastern Daylight Time, on September 20, 2023.¹** While FY 2023 regulatory fees will not become effective until the rulemaking is published in the Federal Register, regulatees, at their own discretion, may submit payments at any time before the FY 2023 regulatory fees due date.

YOU MUST BE REGISTERED WITH A USERNAME AND PASSWORD TO USE CORES

The Commission has discontinued the use of the Fee Filer system and incorporated this payment system into the Commission Registration System (CORES). To use CORES, you need to be registered with the FCC at <https://apps2.fcc.gov/fccUserReg/pages/login.htm>. Once your FCC username is registered and verified, you can access CORES and select the option to associate your existing FRN to that username, if you have not already done so. To make a FY 2023 regulatory fee payment, login to the following website using your username and password: <https://apps.fcc.gov/core/userLogin.do>.

MANDATORY USE OF CORES

All regulatory fee payors are required to use CORES for fee filing and payment via Automated Clearing House (ACH), Visa or MasterCard debit card, or credit card. Licensees and regulatees must first enter CORES with a valid username and password at: <https://apps2.fcc.gov/fccUserReg/pages/login.htm>, and follow the online prompts to review their data and submit an electronic fee payment. **The use of CORES to pay regulatory fees is mandatory, and payments in the form of checks, money orders, and cashier's checks will not be accepted.**² To make a wire transfer payment, please enter CORES and submit your fee information, and then complete and fax your financial institution's wire cover memo and an electronic FCC Form 159 (or equivalent) to the Commission at (202) 418-2843, or send an e-mail to RROGWIREFAXES@fcc.gov at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting the account. Please include your **FRN, Voucher Number, Payer Name, and the Amount of the Wire** in the wire cover memo to assist us in posting your payment quickly, and to avoid costly delays that could result in penalties and interest for missing the payment due date. Please see the following link, <https://www.fcc.gov/licensing-databases/fees/wire-transfer>, for information on initiating a wire transfer. Please note that most wire transfers

¹ The Commission has instituted a mandatory electronic payment policy, which means that licensees will not be able to make regulatory fee payments by check, money order, or cashier's check. Only credit card, ACH, and wire transfer payments will be accepted. Please make sure that your electronic fee payment is made and the transaction is complete by the due date for FY 2023 regulatory fees.

² Payors should note that this change will mean that entities that have previously paid both regulatory fees and application fees at the same time by paper check will no longer be able to do so because regulatory fees payments by paper check will no longer be accepted.

initiated after 6:00 p.m. (EDT) will be credited the next business day. Please also note that an ACH, credit card, or MasterCard or Visa debit card transaction could take several days for the payment to be transferred from a financial institution to the Commission. **Therefore, any automated notification you receive from the Commission or Pay.gov following submission of your payment is an acknowledgement of submission, and not an acknowledgement that the funds have been received by the Commission. As a precaution, fee payors should always check their bank statements to ensure that the funds have actually been transferred to the Commission by the regulatory fee payment due date.**

Interstate Telecommunications Service Providers (ITSPs)

Please follow the guidance provided in the Fact Sheet: *What You Owe—Interstate Telecommunications Service Providers (ITSP) for FY 2023*.

Satellite Space Station Licensees

Please follow the guidance provided in the Fact Sheet: *What You Owe—International and Satellite Services Licensees for FY 2023*.

Earth Station Licensees

Please follow the guidance provided in the Fact Sheet: *What You Owe—International and Satellite Services Licensees for FY 2023*.

Cable Television Relay Service (CARS) Licensees

Please follow the guidance provided in the Fact Sheet: *What You Owe—Cable Television Systems, IPTV, and DBS for FY 2023*.

Media Service Licensees

Please follow the guidance provided in the Fact Sheet: *What You Owe—Media Service Licensees for FY 2023*.

Commercial Wireless Services

Please follow the guidance provided in the Fact Sheet: *What You Owe—Commercial Wireless Service Licensees for FY 2023*.

Exemptions

Please see the guidance in the Fact Sheet: *Regulatory Fee Exemptions for FY 2023, General Exemptions*.

For additional information, filers in these and any other fee category may contact the Financial Operations help desk at 877-480-3201, Option 6. An additional number to call is (202) 418-1995.

LIMITATIONS ON CREDIT CARD TRANSACTIONS

In accordance with *Treasury Financial Manual*, Volume I, Part 5, Chapter 7000, Section 7055.20, *Transaction Maximums*, the highest amount that can be charged on a credit card for transactions with federal agencies is \$24,999.99.³ Transactions greater than \$24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the \$24,999.99 limit.

³ Customers who owe an amount on a bill, debt, or other obligation due to the federal government are prohibited from splitting the total amount due into multiple payments. Splitting an amount owed into several payment transactions violates the credit card network and the Bureau of Fiscal Service rules. An amount owed that exceeds the \$24,999.99 maximum, may not be split into two or more payment transactions in the same day by using one or multiple cards. Also, an amount owed that exceeds the \$24,999.99 maximum may not be split into two or more transactions over multiple days by using one or more cards. *Treasury Financial Manual*, Volume I, part 5, Chapter 7000, Section 7055.30, *Prohibition on Splitting Transactions*.

Customers who wish to pay an amount greater than \$24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after submitting regulatory fee information through CORES. Further details will be provided regarding payment methods and procedures at the time of FY 2023 regulatory fee collection in Fact Sheets, available at <https://www.fcc.gov/regfees>. The *Treasury Financial Manual*, Volume I, Part 5, Chapter 7000, *Credit and Debit Card Collection Transactions* was updated on June 23, 2022, effective October 1, 2022, and reduced the credit card limit of intra-governmental transactions (government-to-government) from \$24,999.99 to \$10,000.00.

Regulatory fee payments that exceed the U.S. Treasury limit and are rejected by Treasury, causing a payment not to meet the required payment deadline, will be subject to interest, fees, and a 25% late payment penalty.

ELECTRONIC FILING AND PAYMENT PROCEDURES (FOR ALL ENTITIES)

All fee payors must enter the Commission's CORE system to begin the process of filing and paying FY 2023 regulatory fees. The CORES login is located at: <https://apps.fcc.gov/cores/userLogin.do>. After logging in with your username and password, select the "Manage Existing FRNs | FRN Financial | Bills and Fees" option, then select "Regulatory Fee Manager" to start the process of paying FY 2023 regulatory fees. It is the responsibility of each fee payor to determine its regulatory fee obligation. Although the Commission makes every effort to assure the accuracy of the information contained in CORES, the Commission cautions fee payors that any errors in the information contained in CORES do not relieve fee payors of their responsibility to pay all of their fees correctly. If necessary, fee payors must make adjustments, corrections, additions, or deletions to the information contained in CORES to pay all of their fee obligations.

For assistance with regulatory fee rates/calculations, exemption status and de minimis questions, please contact the Financial Operations help desk at (877) 480-3201, Option #6. For technical assistance with making payments through CORES, please contact the CORES help desk at (877) 480-3201, Option #1.

PAYMENT METHODS

Licensees and regulatees may pay their regulatory fees by any of the following methods:

- Credit card (online) via CORES
- Wire transfer (submit via CORES)
- ACH/debit from bank account (online) via CORES
- Visa or MasterCard debit cards (online) via CORES

Checks, Money Orders, and Cashier's Checks are No Longer Accepted for Payment of Regulatory Fees⁴

Credit Card (online):

- The FCC accepts Visa, MasterCard, Discover, and American Express.
- To pay online by credit card, fee payors must first submit electronic filing information through CORES, and will then have the option to pay online by choosing the "Pay by Credit Card" option.
- Limitations on credit card transactions: As noted previously, the U.S. Treasury will reject credit card transactions greater than \$24,999.99 from a single credit card in a single day.

⁴ Payors should note that this change will mean that entities that have previously paid both regulatory fees and application fees at the same time by paper check will no longer be able to do so because regulatory fees payments by paper check will no longer be accepted.

Any automated notification you receive from the Commission or Pay.gov following submission of your credit card payment is an acknowledgement of submission, and not an acknowledgement that the funds have been received by the Commission. As a precaution, fee payors should always check their bank statements to ensure that the funds have actually been transferred to the Commission by the regulatory fee payment due date.

Wire Transfer:

A wire transfer is a transaction that is initiated through a bank, authorizing the bank to wire funds from an account to the U.S. Treasury, New York, New York. All payments made by wire transfer payable to the Commission must be supported by faxing the “Wire Transfer Instructions” from CORES to the Commission at (202) 418-2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. The Wire Transfer Instructions can also be e-mailed to RROGWIREFAXES@fcc.gov. These instructions contain valuable information (e.g. FRN, Voucher Number, Payer Name, and the Amount of the Wire) that will help to post the payment more quickly, and avoid costly delays that could result in penalties and interest for missing the payment due date. Please note that most wire transfers initiated after 6:00 p.m. (EDT) will be credited the next business day, and wires initiated outside of the United States may take additional time. Fee payors should discuss arrangements (including bank closing schedules, and bank wire transaction fees for which the Commission is not responsible) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline, especially if the wire transfer is an international one. Complete instructions for making wire payments are posted at <https://www.fcc.gov/licensing-databases/fees/wire-transfer>. **Fee payors are responsible for obtaining confirmation from their financial institution that payment was successfully debited from the designated account(s) prior to the deadline to avoid additional fees.**

As a reminder, all regulatory fees **MUST** be filed, submitted and paid through CORES with the exception of wire transfers, which are initiated from the payor’s financial institution. If you have any questions, please contact the Financial Operations help desk at 877-480-3201, Option 6. In addition, we urge all entities who send wire transfer payments to include the **Voucher Number, Payor Name, and Payor FRN in the wire description area.**

When initiating the wire transfer, please provide the bank with the following information to complete the transfer:

ABA Routing Number: 021030004
Receiving Bank: TREAS NYC
33 Liberty St.
New York, NY 10045

BNF: FCC/ACCT--27000001
OBI Field: (Skip one space between each information item)\“REGULATORY PAY”
Payor FRN: (Exactly as on remittance instrument)
Payor Name: (Exactly as on remittance instrument)
Phone: (Daytime Phone #, exactly as on remittance instrument)
Voucher Number: Exactly as on remittance (Form 159-E) instrument)

ACH Payments, Visa Debit Cards and MasterCard Debit Cards (Debit from Bank Account)

- To pay online from a bank account, fee payors must first submit their electronic filing information via CORES; licensees will then have the option to pay online by choosing the “Pay from Bank Account” option. **Note:** Fee payors are strongly encouraged to contact their financial institutions to confirm that the correct routing number for this method of payment is being used. Fee payors should also verify with their bank that their account has authorization to accept ACH or debit card transactions, as applicable to the payment

method fee payors choose. The payor's bank may request the FCC's Company ID # 2700000103. **Please also note that any automated notification you receive from the Commission or Pay.gov following submission of your payment is an acknowledgement of submission, and not an acknowledgement that the funds have been received by the Commission. As a precaution, fee payors should always check their bank statements to ensure that the funds have actually been transferred to the Commission by the regulatory fee payment due date.**

- Fee payors may choose to pay by ACH using personal checking, personal savings, business checking, and business savings.
- For purposes of meeting the filing deadline, the Commission will consider payment to be received when account information is successfully accepted. Funds may not clear for up to 2 business days. **Fee payors are responsible for obtaining confirmation from their financial institution that payment was successfully debited from the designated account(s) prior to the deadline to avoid additional fees.**

DE MINIMIS REGULATORY FEE LEVEL

Regulatees whose total FY 2023 annual regulatory fee liability, including all categories of regulatory fees for which payment is due, is \$1,000 or less are exempt from payment of FY 2023 regulatory fees. Thus, if the sum total of all annual FY 2023 regulatory fees is \$1,000 or less, you are considered *de minimis* and do not have to pay FY 2023 regulatory fees. If you are *de minimis*, you will not need to report this exemption to the Commission. The *de minimis* threshold applies only to filers of annual regulatory fees (not regulatory fees paid through multi-year wireless filings), and it is not a permanent exemption. Rather, each regulatee will need to re-evaluate and re-calculate its regulatory fee liability each year in order to determine whether they meet the *de minimis* exemption established by the Commission's annual regulatory fee order. Regulatees are responsible for calculating their total fee obligation to determine whether they qualify for this *de minimis* exemption. The Commission reserves the right to request documentation that supports a *de minimis* exemption claim.

OTHER QUESTIONS REGARDING REGULATORY FEES

The following Fact Sheets and websites are available at <http://www.fcc.gov/regfees> to help licensees in the event they are unable to pay their regulatory fee obligations:

Public Notice: *Procedures for Filing Requests for Waiver, Reduction, Deferral and Installment Payment of FY 2023 Regulatory Fees Due to the Coronavirus Pandemic*

Fact Sheet: *Regulatory Fee Exemptions for FY 2023, General Exemptions*

ADDITIONAL INFORMATION

Licensees and regulatees should contact the Commission's Financial Operations help desk with inquiries regarding regulatory fees at (877) 480-3201, Option #6, (202) 418-1995, or e-mail inquiries to ARINQUIRIES@fcc.gov. If a licensee needs assistance with making a payment through CORES they should call (877) 480-3201, Option #1.

- FCC -



PUBLIC NOTICE

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

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

DA 23-766
Released: August 28, 2023

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON A
REQUEST FOR WAIVER FILED BY THE NORTH CAROLINA STATE HIGHWAY PATROL
SEEKING TO LICENSE A SPECIALIZED MOBILE RADIO POOL CHANNEL**

ULS File Number 0010444325

Comments Due: September 12, 2023

Reply Comments Due: September 27, 2023

The Public Safety and Homeland Security Bureau (Bureau) seeks comment on the above-captioned application and waiver request filed on March 6, 2023, by the North Carolina State Highway Patrol (NCSHP).¹ NCSHP is a Public Safety Pool licensee seeking to license two 800 MHz Specialized Mobile Radio (SMR) Pool channels (856.5375 MHz and 859.0375 MHz).² It also seeks to license associated mobile units on the mobile transmit side of the SMR channel pairs (811.5375 MHz and 814.0375 MHz).³

In its waiver request attached to its application, NCSHP proposes to operate two trunked 800 MHz channel pairs to supplement and enhance “limited coverage” areas of Surry County. NCSHP indicates that “[d]ue to the lack of Public Safety Spectrum and proximity of several other 800 MHz users, it is not possible for the State Highway Patrol to provide adequate coverage for Emergency Responder radio systems from frequencies within the 800 MHz Public Safety allocation. Our best efforts of fill-in coverage have reduced this need to just two 800 MHz frequency pairs.”⁴

Consequently, NCSHP seeks a waiver of Section 90.617(d) of the Commission rules so it can license SMR Pool frequencies 856.5375 MHz and 859.0375 MHz for use at its base station repeater and SMR Pool frequencies 811.5375 MHz and 814.0375 MHz for associated mobile units operating within 40 kilometers of the base station repeater.⁵ Section 90.617(d) states that frequencies in the SMR Pool are available for licensing “only to eligibles in the SMR category” including SMR stations and eligible end users.⁶ Therefore, NCSHP, a public safety entity, would not be eligible to license the requested SMR channel pair absent a waiver.

¹ North Carolina State Highway Patrol Application, ULS File no. 0010444325 (dated Mar. 6, 2023) (NCSHP Application). *See also* Attachment to NCSHP Application labeled “Waiver Request” at 1 (attached Mar. 6, 2023) (Waiver Request).

² *See* NCSHP Application.

³ *Id.*

⁴ Waiver Request at 1.

⁵ *Id.* *See also* NCSHP Application.

⁶ 47 CFR § 90.617(d).

In support of its waiver request, NCSHP includes with its application a letter from its frequency coordinator, APCO International (APCO), stating that APCO has conducted a search of 851-860 MHz spectrum and assigned 856.5375 MHz and 859.0375 MHz to NCSHP because “there are no other 851-860 MHz public safety or vacated spectrum frequencies that can be assigned because they or the interstitials fail short spacing.”⁷ APCO subsequently filed an addendum to this letter certifying “there are no business channels that can be assigned because they or the interstitials fail short spacing, and they do not meet the applicant’s legacy system requirements. Business channels had been included in our searches but were inadvertently omitted from our prior letter.”⁸

NCSHP says that it needs these two SMR frequency pairs to remedy its system coverage problem. It contends that other SMR co-channel users can remain “sovereign and protected, while allowing NCSHP Emergency Responders the ability to communicate while on emergency incident scenes.”⁹

We seek comment on whether the Bureau should grant NCSHP a waiver of the eligibility requirements in section 90.617(d) of the Commission’s rules. Interested parties may file comments on or before September 12, 2023. Parties may file replies on or before September 27, 2023.

Instructions for Filing Comments

All comments and reply comments should reference the subject North Carolina State Highway Patrol Waiver Request and the DA number indicated on this *Public Notice*. Comments may be filed: (1) electronically by accessing the applicant’s file number(s) in the Commission’s Universal Licensing System (ULS),¹⁰ or (2) by filing paper copies.

Electronic Filers: Pleadings may be submitted electronically as follows:

- Begin the process by using the following link to the ULS website <https://wireless2.fcc.gov/UlsEntry/pleadings/pleadingsType.jsp>. The link will take you to the “Pleading Information” screen for “Non-docketed Pleadings” where you select “Reply” in the drop-down window for the type of pleading and then enter the pleadings filer information. Completion of the contact information is optional. Upon completion of this screen, please note the instructions for the filing: “Pleadings must be dated and must include a signature, in this instance an electronic signature, and the address and phone number of the signing party.”¹¹ Click on “CONTINUE.”
- The second step is to complete the *File Numbers/Call Signs* screen. Click if the pleading pertains to a File Number or Call Sign and enter the File Number or Call Sign. Please note that you must enter a File Number or Call Sign to continue. If the pleading pertains to multiple applications or licenses, you must enter each File Number or Call Sign as

⁷ Letter from Judy Stone, APCO AFC Team Leader, APCO International to Federal Communications Commission at 1 (Feb. 24, 2023) (attached to NCSHP Application on Mar. 6, 2023) (APCO Coordination Statement).

⁸ Letter from Carol DiCaro, AFC Processor, APCO International to Federal Communications Commission at 1 (Aug. 18, 2023) (attached to NCSHP Application on Aug. 18, 2023) (APCO Addendum).

⁹ Waiver Request at 1.

¹⁰ *Wireless Telecommunications Bureau Enhances the Commission’s Universal Licensing System to Implement Electronic Filing for Pleadings*, Public Notice, 21 FCC Rcd 424 (WTB 2006). See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-125A1.pdf.

¹¹ See 47 CFR Part 1.

appropriate. After clicking the “SUBMIT” button, the screen will update to show all the File Numbers/Call Signs associated with the pleading. At this time, you may delete selected File Numbers/Call Signs from the page before continuing.

- The third step is to complete the *Attach File* screen to attach the pleading document. Use the drop down box to select Pleading or Confidential Pleading. The “BROWSE” button opens a file upload window where you will locate and select your pleading file. The Description field allows you to enter a brief description for the pleading. Click the “ADD ATTACHMENT” button to upload your pleading. You may submit up to thirty files for each pleading but each file must be smaller than 10 MB in size. You also can delete any selected file from the pleading.
- Finally, to complete your electronic pleading submission, click on the “SUBMIT PLEADING” button and the *Confirmation* screen will be displayed. The *Confirmation* screen will display your Confirmation Number as well as your entered pleadings information. You may print this page for your records by selecting the Print Page link at the top of the page and have the option of submitting another pleading or returning to the ULS website by selecting a link at the bottom of the page.

The ULS Application Search results will display pleadings under the ADMIN tab when a comment or reply comment has been filed. Users can view the pleading by clicking on the link for the specific comment or reply comment in the Description field. The general public will not be able to view confidential pleadings.

For additional information or assistance on how to file a comment or reply comment or other relevant pleading, you may visit the Web at <https://www.fcc.gov/available-support-services>. You may also call the FCC ULS Customer Support Center at (877) 480-3201 and select option 2. Assistance from the FCC ULS Customer Support Center is available between the hours of 8 a.m. to 6:00 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all telephone calls to the FCC ULS Customer Support Center are recorded.

Paper Filers: Parties who choose to file by paper must submit 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.¹²
- 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 St, 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).

¹² In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission’s electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law. *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

For further information regarding this matter, contact Roberto Mussenden, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-1428 or Roberto.Mussenden@fcc.gov.

- FCC -

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

In the Matter of)	
)	
ELKO TELEVISION DISTRICT	)	Facility ID Nos.: 19376, 19386, 19389,
	)	19399, 129079, 128763, 127034, 128751,
Licensee of Stations K08IO-D, Wells, NV;	)	128750, 127036, 129081
K36PN-D, Beowawe, NV; K20JQ-D, Wells, NV;	)	NAL/Acct. No.: 202341420015
K26JB-D, Wells, NV; K24GE-D, Wells, NV;	)	FRN: 0006952121
K22GW-D, Wells, NV; K16FV-D, Ryndon, NV;	)	LMS File Nos. 195105, 195115, 195116,
K18GT-D, Ryndon, NV; K06NY-D, Ryndon, NV;	)	195285, 195299, 201078
K08NQ-D, Ryndon, NV, K12PT-D, Ryndon, NV)	

FORFEITURE ORDER

Adopted: August 28, 2023

Released: August 28, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of two thousand two hundred and ninety nine dollars (\$2299) to Elko Television District (Licensee), licensee of K08IO-D, Wells, NV; K36PN-D, Beowawe, NV; K20JQ-D, Wells, NV; K26JB-D, Wells, NV; K24GE-D, Wells, NV; K22GW-D, Wells, NV; K16FV-D, Ryndon, NV; K18GT-D, Ryndon, NV; K06NY-D, Ryndon, NV; K08NQ-D, Ryndon, NV, K12PT-D, Ryndon, NV (Stations). We find that the Licensee willfully violated section 73.3539(a) of the Commission's rules (Rules) by failing to timely file license renewal applications for the Stations (Applications).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 Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.³ The applications were not filed until July 15, 2022; July 19, 2022; and September 28, 2022. The Licensee provided no explanation for its untimely filing of the Applications.

¹ See 47 CFR § 73.3539; Applications of Elko Television District for Renewal of License, LMS File Nos. 195105, 195115, 195116 (filed Jul. 15, 2022) (filed for stations K08IO-D, K36PN-D, and K20JQ-D respectively). Application of Elko Television District For Renewal of License, LMS File No. 201078 (filed Sep. 28, 2022) (filed for K12PT-D). As is permitted, the Licensee filed to renew the licenses for stations K26JB-D, K24GE-D, and K22GW-D in a single application. Application of Elko Television District for Renewal of License, LMS File No. 195285 (filed Jul. 19, 2022). In addition it filed to renew the licenses for stations K16FV-D, K18GT-D, K06NY-D, and K08NQ-D in a single application. Application of Elko Television District for Renewal of License, LMS File No. 195299 (filed Jul. 19, 2022).

² *Id.* § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

3. On April 11, 2023, we issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of sixteen thousand five hundred dollars (\$16,500) to Licensee for its apparent violations of section 73.3539(a) of the Rules.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

4. On May 9, 2023, the Licensee provided a response requesting reduction or cancellation of the proposed forfeiture based Licensee's claimed inability to pay it, stating that the Licensee "is a taxpayer-funded Special District established by the State of Nevada and the City and County of Elko."⁶ The Response also noted that the Licensee's trustees lacked institutional knowledge and detailed steps taken after receipt of the *NAL* to maintain compliance in the future.⁷ On July 6, 2023, at the request of Video Division staff, the Licensee supplemented their request for relief with financial audits that included, among other things, the Licensee's revenues for fiscal years 2020, 2021, and 2022, in order to demonstrate that imposition of the proposed forfeiture would be excessive.⁸

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁹ section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ 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."¹²

6. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹³ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁴ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission recognizes that, in some cases, other

⁴ *Elko Television District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-312 (Vid. Div. April. 11, 2023) (*NAL*).

⁵ *Id.* at para. 10.

⁶ Response to Notice of Apparent Liability for Forfeiture of Elko Television District at 1-2 (dated May 8, 2023) (Response).

⁷ Response at 2, 5.

⁸ Amendment to Response to Notice of Apparent Liability for Forfeiture for Elko Television District (dated July 6, 2023).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 CFR § 1.80.

¹¹ *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).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ See *NAL* at 5, para. 14.

¹⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

financial indicators, such as net losses, may also be relevant.¹⁵ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁶

7. Here, the Licensee provided financial documents to demonstrate that the proposed forfeiture of \$16,500 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,¹⁷ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.¹⁸ Consistent with precedent and based on the financial documentation provided, the proposed forfeiture does not appear to be excessive and we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's history of compliance and the unique facts and circumstances presented, notably the fact that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to \$2299 is appropriate for the violations involved in this case.¹⁹ This amounts to \$209 per station.

8. Accordingly, we have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We find that Licensee willfully²⁰ violated section 73.3539(a) of the Rules.²¹ However, for the reasons set forth above, we find that reducing the cumulative forfeiture to two thousand two hundred and ninety nine dollars (\$2299) is warranted.

IV. ORDERING CLAUSES

9. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.283 and 1.80, that Elko Television District, **IS LIABLE FOR A MONETARY FORFEITURE** in the

¹⁵ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

¹⁶ *Id.*

¹⁷ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

¹⁸ See e.g., *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period). *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

¹⁹ See *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (paid May 18, 2023) (reducing the proposed forfeiture based on the Station's history of compliance and fact that the station is a community translator serving rural areas with limited or no over-the-air television service).

²⁰ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

²¹ 47 CFR § 73.3539(a).

amount of \$2299 for its apparent willful violation of section 73.3539(a) of the Commission's rules, 47 CFR § 73.3539(a).

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's CORES (the Commission's online payment system),²² 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:²³

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

11. 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,

²² Payments made using the Commission's CORES system do not require the submission of an FCC Form 159.

²³ 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.

²⁴ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

DC 20554.²⁵ 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.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Elko Television District, P.O. Box 456, Elko, NV 89803. A copy shall also be sent to its counsel, Adam J. Sandler, Esq. by electronic mail to adam.sandler@pillsburylaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁵ See 47 CFR § 1.1914.

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

In the Matter of)	
)	
ELKO TELEVISION DISTRICT	)	Facility ID Nos.: 19374, 19379, 19380,
	)	19381, 19382, 19383, 19401, 19407, 19408,
Licensee of Stations K12MD-D, Elko, NV;	)	126978, 19405
K23FC-D, Elko, NV; K06MK-D, Elko, NV;	)	NAL/Acct. No.: 202341420016
K25FR-D, Elko, NV; K08LS-D, Elko, NV;	)	FRN: 0006952121
K15EE-D, Elko, NV; K05JU-D, Elko, NV;	)	LMS File Nos. 195104, 195107, 195109,
K19FZ-D, Elko, NV; K17DT-D, Elko, NV;	)	195110, 195111, 195113, 195292, 195293,
K24NB-D, Elko, NV; K26OE-D, Elko, NV	)	195294, 195295, 195297

FORFEITURE ORDER

Adopted: August 28, 2023

Released: August 28, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of two thousand two hundred and ninety nine dollars (\$2299) to Elko Television District (Licensee), licensee of K12MD-D, Elko, NV; K23FC-D, Elko, NV; K06MK-D, Elko, NV; K25FR-D, Elko, NV; K08LS-D, Elko, NV; K15EE-D, Elko, NV; K05JU-D, Elko, NV; K19FZ-D, Elko, NV; K17DT-D, Elko, NV; K24NB-D, Elko, NV; and K26OE-D, Elko, NV (Stations). We find that the Licensee willfully violated section 73.3539(a) of the Commission's rules (Rules) by failing to timely file license renewal applications for the Stations (Applications).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 Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.³ The applications were not filed until July 15, 2022; and July 19, 2022. The Licensee provided no explanation for its untimely filing of the Applications.

3. On April 13, 2023, we issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of sixteen thousand five hundred dollars (\$16,500) to Licensee for its apparent violations of section 73.3539(a) of the Rules.⁴ The *NAL*

¹ See 47 CFR § 73.3539; Applications of Elko Television District for Renewal of Licenses, LMS File Nos. 195104, 195107, 195109, 195110, 195111, 195113 (filed Jul. 15, 2022) (filed for stations K12MS-D, K23FC-D, K06MD-D, K25FR-D, K08LS-D, and K15EE-D respectively). Applications of Elko Television District for Renewal of Licenses, LMS File Nos. 195292, 195293, 195294, 195295, 195297 (filed Jul. 19, 2022) (filed for stations K05JU-D, K19FZ-D, K17DT-D, K24NB-D, and K26OE-D respectively).

² *Id.* § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

⁴ *Elko Television District, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture*, DA 23-322 (Vid. Div. April. 13, 2023) (*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

4. On May 9, 2023, the Licensee provided a response requesting reduction or cancellation of the proposed forfeiture based on the Licensee's claimed inability to pay it, stating that the Licensee "is a taxpayer-funded Special District established by the State of Nevada and the City and County of Elko."⁶ The Response also noted that the Licensee's trustees lacked institutional knowledge and detailed steps taken after receipt of the *NAL* to maintain compliance in the future.⁷ On July 6, 2023, at the request of Video Division staff, the Licensee supplemented their request for relief with financial audits that included, among other things, the Licensee's revenues for fiscal years 2020, 2021, and 2022, in order to demonstrate that imposition of the proposed forfeiture would be excessive.⁸

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁹ section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ 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."¹²

6. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹³ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁴ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission recognizes that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁵ If gross revenues are sufficiently great,

⁵ *Id.* at para. 10.

⁶ Response to Notice of Apparent Liability for Forfeiture of Elko Television District at 1-2 (dated May 8, 2023) (Response).

⁷ Response at 2, 5.

⁸ Amendment to Response to Notice of Apparent Liability for Forfeiture for Elko Television District (dated July 6, 2023).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 CFR § 1.80.

¹¹ *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).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ See *NAL* at 5, para. 14.

¹⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁵ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁶

7. Here, the Licensee provided financial documents to demonstrate that the proposed forfeiture of \$16,500 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,¹⁷ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.¹⁸ Consistent with precedent and based on the financial documentation provided, the proposed forfeiture does not appear to be excessive and we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's history of compliance and the unique facts and circumstances presented, notably the fact that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to \$2299 is appropriate for the violations involved in this case.¹⁹ This amounts to \$209 per station.

8. Accordingly, we have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We find that Licensee willfully²⁰ violated section 73.3539(a) of the Rules.²¹ However, for the reasons set forth above, we find that reducing the cumulative forfeiture to two thousand two hundred and ninety nine dollars (\$2299) is warranted.

IV. ORDERING CLAUSES

9. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.283 and 1.80, that Elko Television District, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2299 for its apparent willful violation of section 73.3539(a) of the Commission's rules, 47 CFR § 73.3539(a).

¹⁶ *Id.*

¹⁷ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

¹⁸ See e.g., *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period). *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

¹⁹ See *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (paid May 18, 2023) (reducing the proposed forfeiture based on the Station's history of compliance and fact that the station is a community translator serving rural areas with limited or no over-the-air television service).

²⁰ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

²¹ 47 CFR § 73.3539(a).

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's CORES (the Commission's online payment system),²² 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:²³

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

11. 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 20554.²⁵ 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.

²² Payments made using the Commission's CORES system do not require the submission of an FCC Form 159.

²³ 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.

²⁴ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁵ See 47 CFR § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Elko Television District, P.O. Box 456, Elko, NV 89803. A copy shall also be sent to its counsel, Adam J. Sandler, Esq. by electronic mail to adam.sandler@pillsburylaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of)	
)	
ELKO TELEVISION DISTRICT	)	Facility ID Nos.: 129068, 129071, 129073,
	)	128758, 129150
Licensee of Stations K32GK-D, Elko, NV;	)	NAL/Acct. No.: 202341420017
K34HE-D, Elko, NV; K36HA-D, Elko, NV;	)	FRN: 0006952121
K35OI-D, Starr Valley, NV; K28PJ-D, Elko, NV	)	LMS File Nos. 201074, 201080
)	
)	
)	

FORFEITURE ORDER

Adopted: August 28, 2023

Released: August 28, 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 and forty five dollars (\$1045) to Elko Television District (Licensee), licensee of K32GK-D, Elko, NV; K34HE-D, Elko, NV; K36HA-D, Elko, NV; K35OI-D, Starr Valley, NV; and K28PJ-D, Elko, NV (Stations). We find that the Licensee willfully violated section 73.3539(a) of the Commission's rules (Rules) by failing to timely file license renewal applications for the Stations (Applications).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 Stations' licenses should have been filed by June 1, 2022, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of October 1, 2022.³ The applications were not filed until September 28, 2022. The Licensee provided no explanation for its untimely filing of the Applications.

3. On April 18, 2023, we issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of seven thousand five hundred dollars (\$7,500) to Licensee for its apparent violations of section 73.3539(a) of the Rules.⁴ The *NAL* gave the

¹ See 47 CFR § 73.3539; Application of Elko Television District for Renewal of License, LMS File No. 201080 (filed Sep. 28, 2022). As is permitted, the licensee filed for renewal of the of the licenses of stations K32GK-D, K34HE-D, K36HA-D, and K35OI-D in a single renewal application. Application of Elko Television District for Renewal of License, LMS File No. 201074 (filed Sep. 28, 2022).

² *Id.* § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

⁴ *Elko Television District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-334 (Vid. Div. April. 18, 2023) (*NAL*).

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

4. On May 9, 2023, the Licensee provided a response requesting reduction or cancellation of the proposed forfeiture based Licensee's claimed inability to pay it, stating that the Licensee "is a taxpayer-funded Special District established by the State of Nevada and the City and County of Elko."⁶ The Response also noted that the Licensee's trustees lacked institutional knowledge and detailed steps taken after receipt of the *NAL* to maintain compliance in the future.⁷ On July 6, 2023, at the request of Video Division staff, the Licensee supplemented their request for relief with financial audits that included, among other things, the Licensee's revenues for fiscal years 2020, 2021, and 2022, in order to demonstrate that imposition of the proposed forfeiture would be excessive.⁸

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),⁹ section 1.80 of the Rules,¹⁰ and the Commission's *Forfeiture Policy Statement*.¹¹ 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."¹²

6. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.¹³ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.¹⁴ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission recognizes that, in some cases, other financial indicators, such as net losses, may also be relevant.¹⁵ If gross revenues are sufficiently great,

⁵ *Id.* at para. 10.

⁶ Response to Notice of Apparent Liability for Forfeiture of Elko Television District at 1-2 (dated May 8, 2023) (Response).

⁷ Response at 2, 5.

⁸ Amendment to Response to Notice of Apparent Liability for Forfeiture for Elko Television District (dated July 6, 2023).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 CFR § 1.80.

¹¹ *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).

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ *See NAL* at 5, para. 14.

¹⁴ *See Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

¹⁵ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.¹⁶

7. Here, the Licensee provided financial documents to demonstrate that the proposed forfeiture of \$7,500 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,¹⁷ although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.¹⁸ Consistent with precedent and based on the financial documentation provided, the proposed forfeiture does not appear to be excessive and we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's history of compliance and the unique facts and circumstances presented, notably the fact that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to \$1045 is appropriate for the violations involved in this case.¹⁹ This amounts to \$209 per station.

8. Accordingly, we have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We find that Licensee willfully²⁰ violated section 73.3539(a) of the Rules.²¹ However, for the reasons set forth above, we find that reducing the cumulative forfeiture to one thousand and forty five dollars (\$1045) is warranted.

IV. ORDERING CLAUSES

9. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.283 and 1.80, that Elko Television District, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$2299 for its apparent willful violation of section 73.3539(a) of the Commission's rules, 47 CFR § 73.3539(a).

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing

¹⁶ *Id.*

¹⁷ *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

¹⁸ *See e.g., Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period). *Hawkins Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 12519, 12521 (MB 2010) (reducing a forfeiture amount from \$7,000 to \$4,000 where the proposed forfeiture amount would have constituted approximately 7 percent of the licensee's average gross revenues and licensee operated with significant loss), citing *CARE Broadcasting, Inc.*, Forfeiture Order, 24 FCC Rcd 1411 (MB 2010) (reducing forfeiture amount from \$14,000 to \$3,400 where the proposed forfeiture amount would have constituted approximately 11 percent of Licensee's average gross revenues).

¹⁹ *See Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (paid May 18, 2023) (reducing the proposed forfeiture based on the Station's history of compliance and fact that the station is a community translator serving rural areas with limited or no over-the-air television service).

²⁰ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

²¹ 47 CFR § 73.3539(a).

House) debit from a bank account using the Commission's CORES (the Commission's online payment system),²² 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:²³

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²⁴ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

²⁵ See 47 CFR § 1.1914.

12. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Elko Television District, P.O. Box 456, Elko, NV 89803. A copy shall also be sent to its counsel, Adam J. Sandler, Esq. by electronic mail to adam.sandler@pillsburylaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau



PUBLIC NOTICE

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

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

DA 23-771

Released: August 28, 2023

PROCEDURES FOR FILING REQUESTS FOR WAIVER, REDUCTION, DEFERRAL AND INSTALLMENT PAYMENT OF FISCAL YEAR 2023 REGULATORY FEES

On August 10, 2023, the Federal Communications Commission (Commission or FCC) released *Assessment and Collection of Regulatory Fees for Fiscal Year 2023; Review of the Commission's Assessment and Collection of Regulatory Fees*, Report and Order, FCC 23-66 (*FY 2023 Regulatory Fees Report and Order*). This document is available for viewing at <http://www.fcc.gov/regfees>. **Regulatory fee payments must be received by the Commission no later than 11:59 PM, Eastern Daylight Time, on September 20, 2023.**¹ While FY 2023 regulatory fees will not become effective until the rulemaking is published in the Federal Register, regulatees, at their own discretion, may submit payments at any time before the FY 2023 regulatory fees due date.

Except as otherwise explained in this Public Notice and in the *FY 2023 Regulatory Fees Report and Order*, regulatory fees that are not paid in full by September 20, 2023 will be assessed a 25% late payment penalty, and the unpaid regulatory fee and the 25% late payment penalty will accrue interest until paid in full.² Further, the Commission may pursue all available remedies to collect unpaid regulatory fee debt, including placing delinquent debtors on “red light”, dismissing delinquent debtors’ pending applications and request for benefits³ and referring the delinquent debt to the United States Treasury for further collection.⁴

The Commission has extended to FY 2023 the temporary COVID-19 relief measures it adopted for FY

¹ The Commission has instituted a mandatory electronic payment policy, which means that licensees will not be able to make regulatory fee payments by check, money order, or cashier’s check. Only credit card, ACH, and wire transfer payments will be accepted. Please make sure that your electronic fee payment is made and the transaction is complete by the due date for FY 2023 regulatory fees.

² 47 U.S.C. § 159a(c); 31 USC § 3717; 47 CFR §§ 1.1164 and 1.1940.

³ Under the Commission’s “red light” rule, the Commission will not act on any application or request for benefit filed by a party that owes delinquent debt to the Commission. The delinquent debtor must pay its debt in full or make payment arrangements satisfactory to the Commission. Failure to do so will result in dismissal of the debtor’s filing. 47 CFR §§ 1.1164 and 1.1910.

⁴ 31 U.S.C. § 3701, *et seq.*; 47 CFR § 1.1901, *et. seq.*

2020-2022.⁵ While the Commission's authority to provide relief is limited,⁶ the Commission is using its existing authority to offer assistance to regulatees that are still recovering from the economic impact of the pandemic, by streamlining and easing its processes for requesting and obtaining waiver, reduction, deferral and installment payment relief for FY 2023 regulatory fees, as it did for FY 2020--2022 regulatory fees. Importantly, the Commission's standard for granting a waiver request remains the same. The Commission may waive, reduce or defer payment of a regulatory fee in a specific instance if a regulatee demonstrates good cause for the relief sought and that waiver, reduction or deferral of the fee promotes the public interest. Fee relief may be granted, but only to those regulatees "unambiguously articulating 'extraordinary circumstances' outweighing the public interest in recouping the cost of the Commission's regulatory services."⁷

Waiver, reduction and deferral on financial hardship grounds.

A request for waiver or reduction of a FY 2023 regulatory fee⁸ based on financial hardship must be filed on or before September 20, 2023 and accompanied by either (i) full payment of the FY 2023 regulatory fee or (ii) a request to defer payment. Parties filing such requests based on financial hardship must make a good faith effort to submit with their requests financial documentation sufficient to demonstrate financial hardship.⁹ A party seeking relief under section 1.1166 from payment of its FY 2023 regulatory fees based on financial hardship may file a single request for all forms of relief sought.¹⁰ Parties are directed to file their requests electronically by emailing their requests, together with all supporting financial documents, to the following email address: regfeerelief@fcc.gov.

Parties filing requests to waive, reduce and/or defer payment of FY 2023 regulatory fees based on financial hardship grounds must make a good faith effort to submit all financial documents necessary to show financial hardship with their requests. Parties filing waiver, reduction and/or deferral requests have one opportunity after filing their requests to submit supplemental financial documents, provided that the supplemental documents must be submitted on or before January 31, 2024. Supplemental documents submitted after January 31, 2024 will not be considered.¹¹ In order to prove financial hardship sufficient to justify a waiver, a regulatee must show that it lacks sufficient funds to pay its FY 2023 regulatory fee

⁵ The Commission codified certain of these temporary measures in sections 1.1166 and 1.1914 of its regulations. *Review of Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, MD Docket Nos. 23-159 and 23-301, Report and Order and Notice of Proposed Rulemaking, 2023 WL 3579239, at *6 and 5197492, at *41 (2023) (*FY 2023 Regulatory Fees Report and Order*). However, because the revised rules will not become effective until the Office of Management and Budget approves the revisions under the Paperwork Reduction Act, the Commission continues the revisions under section 1.1166 and 1.1914 as temporary measures until the revised rules become effective.

⁶ The Commission must collect \$390,192,000 in FY 2023 regulatory fees and it must fairly and proportionately allocate the burden of those fees among regulatees. It cannot exempt groups of regulatees, other than those expressly exempt in the statute. Similarly, it cannot waive, reduce or defer fees or the 25% late payment penalty, except on a case-by-case basis, where extraordinary circumstances are shown. *FY 2023 Regulatory Fees Report and Order*, at *1 and *40.

⁷ *FY 2023 Regulatory Fees Report and Order*, at *40.

⁸ Requests to waive, reduce and/or defer payment of regulatory fees may include requests to waive, reduce and/or defer payment of the 25% penalty and accrued interest. 47 U.S.C. § 159a(d); 47 CFR 1.1166.

⁹ Waiver requests based on financial hardship filed after the September 20, 2023 deadline will not be dismissed for late filing. However, all regulatory fees that are not paid in full or for which a request to waive and defer is not filed by the September 20, 2023 deadline will be automatically assessed a 25% late payment penalty and may accrue interest under 47 U.S.C. § 159a(c); 47 CFR § 1.1164.

¹⁰ *FY 2023 Regulatory Fees Report and Order*, at *40.

¹¹ *Id.* at *39.

in full while maintaining service to the public.¹² Among the documents that a regulatee may wish to include to prove financial hardship sufficient to justify a waiver are: tax returns, a balance sheet and profit and loss statement (audited if possible), cashflow projections for the next twelve months, a list of officers and highest paid individual employees with each person's compensation. Regulatees should also include documents demonstrating that their financial difficulties are due to the continuing effects of the pandemic, such as banking and investment account records, credit card statements, monthly statements of cash receipts and disbursements, accounting ledgers and journals, and loan (including secured and unsecured loans, lines of credit, etc.) documents, including balances owed. For individual regulatees, such documents might include wage statements, documents disclosing non-wage income, such as rental income; real estate valuations and mortgage documents; bank, credit card and loan statements; account numbers and balances for all cash accounts and investments; monthly income and expense summaries. Commission staff will inform and work with regulatees that have filed financial hardship waiver requests if additional documents are needed to render a decision on their waiver requests.

The Commission waives the "red light" under section 1.1910 of the Commission's rules¹³ to the extent necessary to permit a regulatee that owes debt to the Commission to request a waiver or reduction of its FY 2023 regulatory fees on financial hardship grounds.¹⁴ However, the Commission will not grant a financial hardship waiver request without satisfactory resolution of all outstanding debt owed by the regulatee to the Commission. Depending upon the severity of a regulatee's financial circumstances, satisfactory resolution of debt may include full payment, payment of a reduced amount, curing defaults under existing installment payment agreements and/or payment via an installment payment agreement.

Waiver or reduction of fees on other grounds.

Requests for waiver or reduction of FY 2023 regulatory fees on any grounds other than financial hardship may be combined in a single filing and must be filed by September 20, 2023. Parties are directed to file their requests electronically by emailing their requests, together with all supporting documents, to the following email address: regfeerelief@fcc.gov.¹⁵ Parties filing waiver or reduction requests have one opportunity after filing their requests to submit supplemental documents to support their requests, provided that the supplemental documents must be submitted on or before January 31, 2024. Supplemental documents submitted after January 31, 2024 will not be considered.¹⁶ A request filed on grounds other than financial hardship that is filed by a party on "red light" under section 1.1910 of the Commission's rules will be dismissed.¹⁷

Installment payment of FY 2023 regulatory fee debt.

A regulatee that is financially unable to pay its FY 2023 regulatory fee debt in full before the September 20, 2023 payment deadline may request an installment payment plan electronically, by sending its request, together with supporting financial documentation to regfeerelief@fcc.gov. The request may be combined in a single filing with a waiver and deferral request made on financial hardship grounds.¹⁸ The supporting financial documentation submitted with an installment payment request must show that the

¹² *Id.* at *40.

¹³ 47 CFR §1.1910.

¹⁴ *FY 2023 Regulatory Fees Report and Order*, at *39.

¹⁵ *Id.* at *127.

¹⁶ *Id.* at *125.

¹⁷ 47 CFR §1.1164; 47 CFR §1.1910.

¹⁸ *FY 2023 Regulatory Fees Report and Order*, at *40.

regulatee cannot pay its FY 2023 fees in full by September 20, 2023.¹⁹ Commission staff will inform and work with regulatees that have filed installment payment requests if additional documents are needed to render a decision on the installment payment requests.

The Commission also waives the “red light” under section 1.1910 of its rules²⁰ to the extent necessary to permit a party that owes debt to the Commission to request installment payment relief. However, the Commission will not grant an installment payment request without satisfactory resolution of all outstanding debt owed to the Commission by the party requesting the relief.²¹ Depending upon the severity of a regulatee’s financial circumstances, satisfactory resolution of a regulatee’s debt may include full payment, payment of a reduced amount, curing defaults under existing installment payment agreement and/or an installment payment agreement for the delinquent debt. If an installment payment request for FY 2023 regulatory fee debt is granted, the Commission will ease the payment terms it typically requires for installment payment agreements, including reducing the interest rate it typically charges to a nominal rate of interest and waiving the 10% down payment.²²

-FCC-

¹⁹ 47 CFR § 1.1914.

²⁰ 47 CFR §1.1910.

²¹ *FY 2023 Regulatory Fees Report and Order*, at *39.

²² *Id.*



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 23-772

Released: September 1, 2023

WIRELINE COMPETITION BUREAU ANNOUNCES POSTING OF 2023 TARIFF REVIEW PLAN FOR EXOGENOUS COST FILINGS BY RATE-OF-RETURN CARRIERS THAT ELECTED INCENTIVE REGULATION FOR BUSINESS DATA SERVICES

WC Docket No. 23-9

By this Public Notice, the Wireline Competition Bureau (Bureau) announces the release of the 2023 tariff review plan (TRP) for use by rate-of-return carriers that elected incentive regulation for their business data services (BDS) offerings, pursuant to the *Rate-of-Return Business Data Services Order*¹ (electing carriers). The TRP worksheets are posted on the Commission's website at: <https://www.fcc.gov/wireline-competition/ty-2023-2024-midcourse-bds-trps-incentive-regulation-ilecs>.

The *2023 Tariff Review Plan Order* requires electing carriers to file tariff review plans reflecting any exogenous cost adjustment for Telecommunications Relay Service (TRS), North American Numbering Plan Administration (NANPA), and regulatory fees in rates to be effective October 3, 2023.² As the Bureau explained in the *2023 Tariff Review Plan Order*, the exogenous cost adjustment for TRS must be "grossed up" to spread the entire adjustment over the remaining months in the tariff year.³ The TRP worksheets adjust BDS rates using factors for TRS, NANPA, and regulatory fees.

The TRP worksheets posted on the Commission's website were prepared by the National Exchange Carrier Association (NECA) for electing carriers for which NECA files BDS rates and is designed to ensure that carriers make exogenous cost and rate adjustments in accordance with the Commission's rules.⁴ Electing carriers that do not participate in the NECA tariff should also file a TRP.⁵ As staff has reviewed the linked TRPs, electing carriers are encouraged to use them. Carriers are free, however, to create and use their own TRPs, as long as those TRPs comply with our rules.

Consistent with the *2023 Tariff Review Plan Order*, the October 3, 2023 exogenous cost filing and rate adjustment is optional for electing carriers if the total amount of such exogenous cost adjustments would either increase rates or meet a *de minimis* threshold of \$1,040.00, which is the current standard

¹ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144, Report and Order, Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403 (2018) (*Rate-of-Return Business Data Services Order*); see 47 CFR § 61.50.

² See *July 1, 2023 Annual Access Tariff Filings*, WC Docket No. 23-9, Order, DA 23-386, 2023 WL 3476422, at *5-6, paras. 11-13 (PPD May 11, 2023) (*2023 Tariff Review Plan Order*).

³ *Id.* at *11-12, paras. 40-41.

⁴ See 47 CFR § 61.50(c).

⁵ See *2023 Tariff Review Plan Order* at *11-12, paras. 40-41. Electing carriers must complete and file one of two Excel workbooks. The "TY 2023-2024 Individual Study Area BDS Midcourse TRP" workbook is for carriers that establish a Price Cap Index (PCI), Actual Price Index (API), Service Band Indices (SBIs), and upper SBI limits separately for each study area. The "TY 2023-2024 Holding Company BDS Midcourse TRP" workbook is for carriers that establish a PCI, API, SBIs and upper SBI limits at the holding company level.

tariff filing fee.⁶ Finally, we remind carriers submitting tariff revisions reflecting exogenous cost adjustments that they must pay the \$1,040.00 standard tariff filing fee through the new payment system in the Commission's Registration System (CORES).⁷

For further information, please contact Christopher Koves, Pricing Policy Division, Wireline Competition Bureau, (202) 418-8209, Christopher.Koves@fcc.gov; or Richard Kwiatkowski, Economic Analysis Division, Office of Economics and Analytics, (202) 418-1383, Richard.Kwiatkowski@fcc.gov.

- FCC -

⁶ See *2023 Tariff Review Plan Order* at *12, para. 41; 47 CFR § 1.1105.

⁷ See 47 CFR § 1.1105; FCC, Commission Registration System for the FCC, <https://www.fcc.gov/licensing-databases/commission-registration-system-fcc> (last visited Sept. 1, 2023).

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

In the Matter of)	
)	
Clear Rate Communications	)	Complaint No. 6409797
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: August 29, 2023

Released: August 29, 2023

By the Acting Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.¹ We conclude that Clear Rate's actions violated the Commission's slamming rules, and we therefore grant Complainant's complaint.

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

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ In adopting the rules, the Commission stated that upon a finding of

¹ See Informal Complaint No. 6409797 (filed Aug. 18, 2023); *see also* 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

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

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

⁶ *Id.* § 64.1120(a)(1)(i)(A).

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

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.⁹ Complainant also stated that Clear Rate "lied and misrepresented the circumstances in switching over to them."¹⁰ Specifically, Complainant alleged that he received a call at his place of business "by someone saying they are from a subsidiary of CenturyLink. That CenturyLink (my then current provider) was wholesaling their small business accounts out. That I was more or less receiving a courtesy call notifying me of this happening."¹¹ In addition, Complainant stated that the Clear Rate representative told him that he "would have no changes to my service[,] as I would still get my bills from CenturyLink and would still be with CenturyLink as my provider."¹² Finally, Complainant said that [b]efore we hung up from the [sales] call I asked them many questions to verify that they were definitely with my carrier, Century[L]ink[,] and they continued to insist they were part of CenturyLink..."¹³

5. Pursuant to our rules, we notified Clear Rate of the complaint.¹⁴ Clear Rate responded, stating that Complainant completed a TPV recording and that Complainant was aware he was authorizing the switch of his telephone carrier to Clear Rate Communications.¹⁵ Clear Rate provided the TPV recording, along with a recording of a "quality assurance call" which it stated was completed in an "effort to ensure [Complainant] was fully aware of the changes being made to his telephone service as well as the package price including the taxes and surcharges."¹⁶ Clear Rate did not, however, provide a recording of its initial sales call, stating only that "[Complainant] insists that our sales team member told him he had no choice, but he definitely had a choice."¹⁷

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

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

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

⁹ See Informal Complaint No. 6409797.

¹⁰ *Id.*

¹¹ See E-mail from Complainant to Consumer Policy Division, Consumer and Governmental Affairs Bureau, FCC (Aug. 23, 2023).

¹² *Id.*

¹³ *Id.*

¹⁴ 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁵ See Clear Rate Response to Informal Complaint No. 6409797 (filed Aug. 23, 2023).

¹⁶ *Id.*

¹⁷ See Letter from Clear Rate to Consumer Policy Division, Consumer and Governmental Affairs Bureau, FCC, regarding Informal Complaint No. 6409797 (Aug. 24, 2023).

evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁸ We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.¹⁹

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.²⁰ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.²¹ Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.²²

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

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

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

FEDERAL COMMUNICATIONS COMMISSION

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

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

¹⁹ If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

²⁰ *See id.* § 64.1160(b).

²¹ *See id.* § 64.1160(d).

²² *See id.* § 64.1140, 64.1160.

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

In the Matter of)	
)	
Amendment of Section 73.622(j), Table of TV	)	MB Docket No. 23-296
Allotments, Television Broadcast Stations	)	RM-11964
(Des Moines, Iowa))	

NOTICE OF PROPOSED RULEMAKING

Adopted: August 29, 2023

Released: August 29, 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 has before it a petition for rulemaking filed by Iowa Public Broadcasting Board (Petitioner or IPB), the licensee of noncommercial educational television PBS member station KDIN-TV (KDIN-TV or Station), channel *11, Des Moines, Iowa.¹ The Petitioner requests the substitution of channel *34 in place of channel *11 at Des Moines, Iowa in the Table of TV Allotments,² and requests that we delete vacant channel *34, Ames, Iowa and substitute it with the allotment of vacant channel *21 to Ames, Iowa.

II. BACKGROUND

2. In support of its channel substitution request, the Petitioner asserts that allowing the Station to move from a VHF to a UHF channel would serve the public interest by resolving viewer reception challenges and significantly improving the Station's over-the-air-service to the viewers in its existing service area.³ Petitioner includes with its Petition a number of viewer complaints highlighting current reception problems.⁴ Petitioner 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.⁵ An engineering statement provided by the Petitioner confirms that the proposed channel *34 contour would provide full principal community coverage to Des Moines, Iowa.⁶ The proposed move from channel *11 to channel *34 is also not predicted to create a loss of service to any

¹ Petition of Iowa Public Broadcasting Board for Rulemaking, LMS File No. 0000210675 (filed Feb. 13, 2023), as amended Aug. 2, 2023 (Petition). Noncommercial educational television stations are identified in the Table of TV Allotments by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR § 73.622(a).

² 47 CFR § 73.622(j).

³ Petition at 2.

⁴ Petition at Exhibit B.

⁵ *Id.* at 3-4 (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)).

⁶ Petition at Exhibit A.

viewers⁷ and according to the engineering statement “will actually increase the area covered while serving the population with higher signal levels.”⁸

3. Petitioner acknowledges that the proposed channel substitution would not meet the distance separation requirements regarding the vacant channel *34 allotment at Ames, Iowa.⁹ As a result, Petitioner requests that simultaneously with the substitution of channel *34 at Des Moines, Iowa, we delete the vacant channel *34 allotment at Ames, Iowa and substitute it with the allotment of vacant channel *21 to Ames, Iowa.¹⁰ As stated in its supplemental engineering statement, the proposed channel *21 is described as meeting the distance criteria found in section 73.623(d) of the Commission’s rules (rules), and an analysis using the Commission’s *TVStudy* software is provided showing no interference to any other station or allotment.¹¹

III. DISCUSSION

4. We believe that the Petitioner’s channel substitution proposal warrants consideration. Channel *34 can be substituted in place of channel *11 at Des Moines, Iowa, as proposed, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,¹² at coordinates 41° 48’ 33.0” N and 93° 36’ 54.0” W. We also find that this proposed channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.¹³ The proposal also appears to not result in any loss of service to existing viewers. Thus, we propose to substitute channel *34 in place of channel *11 for KDIN-TV with the following specifications:

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>
Des Moines, Iowa	*34	1000	600

5. We also believe that the Petitioner’s request that we delete vacant channel *34, Ames, Iowa, and substitute it with the allotment of vacant channel *21 to Ames, Iowa warrants consideration. Channel *21 can be substituted in place of channel *34 at Ames, Iowa, as proposed, in compliance with the principal community coverage requirements of section 73.625(a)¹⁴ of the Commission’s rules, at coordinates 41° 58’ 49.0” N and 93° 44’ 24.0” W. We also find that this proposed channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules.¹⁵ Thus, we propose to allot vacant channel *21 in place of channel *34 with the following specifications:

⁷ *Id.* at Exhibit A and 2.

⁸ Petition at Exhibit A.

⁹ *Id.* at 3. See 47 CFR § 73.623(d)(2).

¹⁰ Petition at 3.

¹¹ *Id.*, Engineering Statement and Exhibits at 21-30. Petitioner also asserts that channel *21 is a suitable allotment substitution because it is technically superior since the proposed allotment could serve almost twice the area and almost two hundred thousand additional persons. In arriving at this conclusion, Petitioner compared the proposed channel *21 allotment to the last-licensed facilities on channel *34 at Ames, Iowa in Appendix B of the *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 (1998). See Petition at 3 and n.6. Notwithstanding that we generally consider that service to more persons than fewer is in the public interest and agree that the showing indicates this is the case for the proposed allotment, we tentatively conclude that no weight should be given to the Petitioner’s assertions that the allotment would serve more people as we cannot know at this time what a potential applicant would ultimately construct at the proposed allotment.

¹² 47 CFR § 73.625(a).

¹³ 47 CFR §§ 73.616, 73.623.

¹⁴ 47 CFR § 73.625(a).

¹⁵ 47 CFR §§ 73.616, 73.623.

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna HAAT (m)</u>
Ames, Iowa	*21	1000	365

6. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the rules,¹⁶ for the communities listed below, to read as follows:

<u>Channel No.</u>		
<u>City and State</u>	<u>Present</u>	<u>Proposed</u>
Ames, Iowa	5, 23, *34	5, *21, 23
Des Moines, Iowa	8, *11, 13, 16, 19	8, 13, 16, 19, *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.¹⁷ Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the rules.¹⁸

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.¹⁹
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.²⁰

9. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the rules,²¹ 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).²²

- **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,

¹⁶ 47 CFR § 73.622(j).

¹⁷ 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).

¹⁸ 47 CFR § 1.420(j).

¹⁹ 47 CFR § 1.420(d).

²⁰ 47 CFR § 1.420(g)(2).

²¹ 47 CFR §§ 1.415, 1.419, and 1.420.

²² See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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-19.²³
- 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.

10. *Service.* Pursuant section 1.420 of the rules,²⁴ 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.²⁵ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Derek Teslik
Gray Miller Persh LLP
2233 Wisconsin Ave., NW
Suite 226
Washington, D.C. 20007

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.²⁶ 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.²⁷ 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.²⁸ 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

²³ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

²⁴ 47 CFR § 1.420.

²⁵ See 47 CFR § 1.420(a), (b), and (c).

²⁶ 47 CFR §§ 1.1200 *et seq.*

²⁷ 47 CFR § 1.1208.

²⁸ 47 CFR § 1.1204(a)(10).

this service requirement.²⁹ 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,³⁰ do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the rules.³¹ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.³² 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 2002.³³

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 Emily Harrison, Video Division, Media Bureau, (202) 418-1665, Emily.Harrison@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 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. 23-296 and RM-11964 on or

²⁹ 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).

³⁰ 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).

³¹ 47 CFR § 73.622(j).

³² See 44 U.S.C. §§ 3501-3520.

³³ See 44 U.S.C. § 3506(c)(4).

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



PUBLIC NOTICE

Federal Communications Commission
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News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
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DA 23-775
Released: August 29, 2023

MEDIA BUREAU ANNOUNCES SEPTEMBER 28, 2023 EFFECTIVE DATE FOR CERTAIN FM6 LPTV STATION RULES

MB Docket No. 03-185

On July 20, 2023, the Commission released a *Report and Order* in MB Docket No. 03-185 adopting new rules to permit a limited number of 14 low power television stations operating on TV channel 6 (FM6 LPTV stations) to maintain their existing analog FM radio services on an ancillary or supplementary basis subject to specific operational rules and requirements.¹ On August 29, 2023, the Office of the Federal Register published a summary of the *Report and Order*.² Accordingly, the effective date for the rules adopted in the *Report and Order* is September 28, 2023, except for those that require approval from the Office of Management and Budget (OMB)³ including new sections 74.790(o)(9) and 74.790(o)(10) of the Commission's rules;⁴ the requirement for FM6 LPTV stations to maintain an online public inspection file;⁵ and the requirement that FM6 LPTV stations notify the Commission of their intent to continue FM6 operations, provide their FM6 operational parameters, and notify the Commission of any changes to their operational parameters.⁶

Until the Commission receives OMB approval on the remaining rules and requirements, FM6 LPTV stations should continue to seek extensions of their current FM6 engineering special temporary authorizations (STAs).⁷ We also remind Metro TV, Inc., that it has until December 22, 2023 (that is 85 days from the effective date of the *Report and Order*) for WVOA-LD, Westvale, New York, to commence ATSC 3.0 and FM6 operations by filing an application to convert the station to ATSC 3.0 and a request for engineering STA.⁸

¹ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket 03-182, Report and Order, FCC 23-58, para. 72 (July 20, 2023) (*Report and Order*).

² Federal Communications Commission, FM6 LPTV Stations, 88 Fed. Reg. 59455 (Aug. 29, 2023).

³ *Id.*; Federal Communications Commission, Information Collection Being Reviewed by the Federal Communications Commission, 88 Fed. Reg. 53893 (Aug. 9, 2023).

⁴ 47 CFR §§ 74.790(o)(9) and (10). See *Report and Order* at para. 52.

⁵ See *id.* at para. 56; 47 CFR § 74.790(11).

⁶ See *Report and Order* at para. 52.

⁷ FM6 LPTV stations must comply with all rules once effective. The Media Bureau will issue a subsequent Public Notice relating to compliance with any rules or requirements that require OMB approval prior to their effective date and when FM6 LPTV stations may stop seeking extensions of their current STAs.

⁸ *Report and Order* at para. 28. WVOA-LD must notify the Media Bureau no more than 10 days after it commences FM6

For further information, contact Shaun Maher, Attorney-Advisor, Media Bureau, Video Division at (202) 418-2324 or shaun.maher@fcc.gov.

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operations and, upon grant, its STA will be conditioned as set forth in the *Report and Order* by the Commission. *Id.*



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 23-276
Released: August 29, 2023

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE ACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR COMMUNICATIONS IMPACTED BY HURRICANE IDALIA IN FLORIDA

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

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

In DIRS, this activation will have the following name: HURRICANE IDALIA. Communications providers are reminded that for providers that participate in DIRS, the separate Network Outage Reporting System (NORS) obligations are suspended for the duration of the DIRS activation with respect to outages in the counties where DIRS has been activated. **Reports are requested at 9:00 a.m. (EDT) on Wednesday, August 30 and every day after that by 9:00 a.m. (EDT) until DIRS is deactivated.**

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

COUNTIES OF INTEREST FOR THIS ACTIVATION INCLUDE THE FOLLOWING COUNTIES IN FLORIDA:

Florida: Alachua, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Columbia, DeSoto, Dixie, Duval, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hardee, Hernando, Hillsborough, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia, and Wakulla.

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

For further information, please contact:

Michael Caiafa (202) 418-1311, (540) 834-7401 (cell), michael.caiafa@fcc.gov
David Ahn (571) 232-8487 (cell), (202) 418-0853, david.ahn@fcc.gov
John Healy (215) 847-8094 (cell), (202) 418-2448, john.healy@fcc.gov
FCC 24/7 Operations Center – 202-418-1122, fccoperationcenter@fcc.gov

For more information on the FCC's response to Hurricane Idalia in Florida, please go to
<https://www.fcc.gov/Idalia>

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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 23-777

Released: August 29, 2023

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 23-166, 23-167 & 23-168

Comments Due: September 13, 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 **September 29, 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

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

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

Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **September 13, 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,

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.*

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

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

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

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Appendix

- 1) **Applicant(s): CenturyLink Communications, LLC f/k/a Embarq Communications, LLC, f/k/a Qwest Communications, LLC d/b/a CenturyLink QCC**
WC Docket No. 23-166, Comp. Pol. File No. 1845
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-166%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-166%22)))
Affected Service(s) – various VOIP services operated on a VOIP platform known as Sylantrø⁸
Service Area(s) – in all 50 states and the District of Columbia
Authorized Date(s) – on or after September 29, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

- 2) **Applicant(s): Level 3 Telecom, a Lumen company, on behalf of its CLEC affiliates,⁹ subsidiaries of Lumen Technologies, Inc.**
WC Docket No. 23-167, Comp. Pol. File No. 1846
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-167%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-167%22)))
Affected Service(s) – the following VoIP services: Enterprise IP Trunking (grandfathered in 2020) and Converged Business Network
Service Area(s) – in all 50 states and the District of Columbia
Authorized Date(s) – on or after September 29, 2023
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

- 3) **Applicant(s): CenturyLink Communications, LLC (CenturyLink)**
WC Docket No. 23-168, Comp. Pol. File No. 1847
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-168%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-168%22)))
Affected Service(s) – the following VoIP services: Sonus SIP Trunk; SIP Trunk IAD Bundle/Core Connect Enterprise SIP IAD Bundle & Fiber+ Enterprise SIP IAD Package; Hosted Integrated Voice Response; and Interaction Routing services
Service Area(s) – in all 50 states, the District of Columbia and Puerto Rico
Authorized Date(s) – on or after September 29, 2023

⁸ Qwest OneFlex Hosted VoIP; Qwest OneFlex Integrated Access; Qwest Managed VoIP; Qwest Hosted VoIP; Qwest IQ Managed VoIP Bundle; IQ Integrated Access Packages; IQ Integrated Access Analog; IQ Integrated Access Digital; Core Connect Enterprise Integrated Access; Fiber+ Integrated Access; Fiber+ Enterprise Integrated Access; CenturyLink Managed VoIP; CenturyLink Integrated Access-Analog; and CenturyLink Hosted VoIP

⁹ Level 3 Telecom of Alabama, LLC; Level 3 Telecom of Arkansas, LLC; Level 3 Telecom of Arizona, LLC; Level 3 Telecom of California, LP; Level 3 Telecom of D.C., LLC; Level 3 Telecom of Florida, LP; Level 3 Telecom of Georgia, LP; Level 3 Telecom of Hawaii, LP; Level 3 Telecom of Idaho, LLC; Level 3 Telecom of Illinois, LLC; Level 3 Telecom of Indiana, LLC; Level 3 Telecom of Kansas City, LLC; Level 3 Telecom of Kentucky, LLC; Level 3 Telecom of Louisiana, LLC; Level 3 Telecom of Maryland, LLC; Level 3 Telecom of Minnesota, LLC; Level 3 Telecom of Mississippi, LLC; Level 3 Telecom of Nevada, LLC; Level 3 Telecom of New Jersey, LLC; Level 3 Telecom of New Mexico, LLC; Level 3 Telecom of New York, LP; Level 3 Telecom of North Carolina, LLC; Level 3 Telecom of Ohio, LLC; Level 3 Telecom of Oklahoma, LLC; Level 3 Telecom of Oregon, LLC; Level 3 Telecom of South Carolina, LLC; Level 3 Telecom of Tennessee, LLC; Level 3 Telecom of Texas, LLC; Level 3 Telecom of Utah, LLC; Level 3 Telecom of Virginia, LLC; Level 3 Telecom of Washington, LLC; Level 3 Telecom of Wisconsin, LP; and Level 3 Telecom Data Services, LLC

Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

Note: CenturyLink plans to grandfather the affected services in the affected service areas on or after September 29, 2023.

**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)	

ORDER

Adopted: August 30, 2023

Released: August 30, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On July 23, 2023, the Commission adopted the *Enhanced A-CAM Order*, establishing the Enhanced Alternative Connect America Cost Model (A-CAM) program as a voluntary path for supporting 100/20 Mbps broadband deployment throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by legacy rate-of-return support recipients.¹ In that *Order*, the Commission adopted requirements to ensure that the Enhanced A-CAM program would 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.²

2. In this Order, we act on the delegated authority set forth in the *Enhanced A-CAM Order* to establish: (1) the specific parameters for determining Enhanced A-CAM support offers; (2) a methodology for adjusting support when updated deployment obligations increase or reduce the number of locations a carrier is obligated to deploy to; and (3) further details regarding Enhanced A-CAM carriers' performance measures testing requirements.

II. BACKGROUND

3. Beginning with 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

¹ See generally *Connect America Fund*; *ETC Annual Reports and Certifications*; *Telecommunications Carriers Eligible to Receive Universal Service Support*; *Connect America Fund – Alaska Plan*; *Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60 (July 24, 2023) (*Enhanced A-CAM Order*).

² See *id.*

model-based high-cost universal service support (A-CAM I) tailored to reflect the specific characteristics of rate-of-return areas.³ 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.⁴ 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, subject to a budget set by the Commission.⁵ 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). Carriers that elected A-CAM I were required to elect for all affiliated study areas in the state.⁶

4. In the *December 2018 Rate-of-Return Reform Order*, the Commission adopted an additional offer for carriers that had previously elected A-CAM⁷ (Revised A-CAM I) increasing the funding cap to \$200 per location per month for all electing carriers and extending the term of support by two years, through 2028, in exchange for increased 25/3 Mbps deployment obligations. In the same 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.⁸ Consistent with Revised A-CAM I, the Commission set the per-location cap for A-CAM II at \$200.⁹

5. With the *Enhanced A-CAM Order*, the Commission extended the A-CAM program by 10 years for a total of 15 years, for electing carriers, 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.¹⁰ Using an updated version of the A-CAM, the Commission set a potential budget of no more

³ 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, 3094-3117, paras. 17-79 (2016) (*2016 Rate-of-Return Reform Order*). For aspects of the model tailored to the specific characteristics of rate-of-return areas, see *id.* at 3102-11, paras. 36-59.

⁴ *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.

⁵ *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. In the December 2016 *A-CAM Revised Offer Order*, faced with the substantial carrier interest in the offer and demand beyond the Commission-approved budget, the Commission allocated an additional \$50 million annually to the A-CAM 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. 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 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.*

⁶ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 65.

⁷ *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, 11898-903, paras. 14-30 (2018) (*December 2018 Rate-of-Return Reform Order*).

⁸ *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11903-15, paras. 31-69.

⁹ *Id.* at 11904-05, para. 37.

¹⁰ See *Enhanced A-CAM Order* at 9, para. 19.

than \$1.27 billion annually but delegated to the Wireline Competition Bureau (Bureau) “the ability to increase the budget up to an additional \$1 billion over the term of support,” or up to \$1.33 billion annually, “if it finds doing so will improve significantly the amount of deployment that would be expected to occur through Enhanced A-CAM.”¹¹ The Commission also permitted the Bureau to reserve a portion of such an increase in the Enhanced A-CAM budget to provide additional support in situations where updates to the National Broadband Map increase the number of locations to which an Enhanced A-CAM carrier must deploy.¹² Likewise, while outlining the overall methodology for determining support offers in the *Enhanced A-CAM Order*, the Commission delegated 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 the guidelines set below”—i.e., a funding cap for non-Tribal areas that is no higher than \$350 per location per month and an alternative funding percentage between 40% and 80%.¹³

6. The Commission defined the locations to which Enhanced A-CAM carriers must deploy 100/20 Mbps or faster broadband as “those locations for which voice and terrestrial broadband services of speeds 100/20 Mbps or faster are not yet available or lack an enforceable commitment for deployment”—in other words, the “Enhanced A-CAM required locations.”¹⁴ The Commission instructed 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” and explained that “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.”¹⁵

7. Enhanced A-CAM carriers must complete deployment by 2028, with an additional 12 months to come into compliance for the final deployment milestone, unless the Bureau acts on authority delegated by the Commission in the *Enhanced A-CAM Order* to provide a one-year extension in light of any BEAD Program delays.¹⁶ As required of other high-cost universal service recipients, Enhanced A-CAM carriers must report their deployment progress in the Universal Service Administrative Company (USAC)’s High Cost Universal Broadband (HUBB) portal, and the Commission directed 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.”¹⁷

¹¹ *Enhanced A-CAM Order* at 27, para. 60. The Commission explained that the Bureau may, for example, “increase the funding cap . . . 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.” *Id.* at 28, para. 64.

¹² *Id.* at 28, para. 64.

¹³ *Id.* at 31, para. 72 & n.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.”).

¹⁴ *Id.* at 18, para. 37. “In the context of Enhanced A-CAM,” the Commission explained, “an ‘enforceable commitment’ exists where a carrier commits to deploying broadband service as a condition of any federal or state grants or other funding.” *Id.* at n.131.

¹⁵ *Id.* at 16, para. 34. The Commission “direct[ed] the Bureau and Office of Economics and Analytics to adjust carriers’ lists of required deployment locations as more complete data become available,” as well as “to conduct a process, as necessary, to identify enforceable commitments not reflected in the National Broadband Funding Map.” *Id.* at 21, para. 43.

¹⁶ *See id.* at 22, para. 46. *See also* 47 CFR § 54.320(d)(2) (providing carriers an additional 12 months to come into compliance for their final milestones).

¹⁷ *Enhanced A-CAM Order* at 23 n.158.

8. Additionally, the Commission delegated to the Bureau the authority to implement the performance measures testing regime as it relates to Enhanced A-CAM carriers,¹⁸ a requirement that Enhanced A-CAM carriers participate in and certify regarding their participation in the Affordable Connectivity Program (ACP),¹⁹ and “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.”²⁰

III. DISCUSSION

A. Support Parameters

9. We act on the authority the Commission delegated to the Bureau to set the specific funding cap of \$350 per location per month and alternative funding percentage of 80% of the difference between the model-estimated cost of serving locations and the funding threshold, and we set 60% as the percentage of existing A-CAM support that an Enhanced A-CAM carrier will receive for locations where the carrier (i.e., the incumbent local exchange carrier or ILEC), but not an unsubsidized competitor, was already serving 100/20 Mbps or faster broadband service.²¹

10. In the *Enhanced A-CAM Order*, the Commission established that support amounts for required locations in carriers’ 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).”²² Previously, the Commission only used the first of these two methodologies to determine A-CAM offers. Using the latter methodology for Enhanced A-CAM effectively provides additional support for those locations with estimated costs exceeding the funding cap, which the Commission found appropriate in light of carriers’ obligation to deploy at least 100/20 Mbps broadband to all of their required locations.²³

11. Noting that the Commission is unable to determine funding caps or funding percentages that would produce support amounts within the budget adopted in the *Enhanced A-CAM Order* until updated model results are available, the Commission “direct[ed] to the Bureau to aim for a funding cap for non-Tribal areas that is no higher than \$300 per location per month, with an alternative funding percentage between 40% and 80%.”²⁴ The Commission further directed the Bureau to “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.”²⁵

¹⁸ See *Enhanced A-CAM Order* at 24, para. 51. In addition to potential withholding measures associated with carriers’ failure to meet their deployment obligations or the performance measures requirements, in situations where “an Enhanced A-CAM carrier does not have in place operational cybersecurity and supply chain risk management plans meeting the Commission’s requirements,” the Commission “direct[ed] 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.” *Id.* at 49, para. 112.

¹⁹ See *id.* at 26, para. 57.

²⁰ *Id.* at 42, para. 98.

²¹ See *id.* at 31, para. 72.

²² *Id.* at 30, para. 71.

²³ *Id.*

²⁴ *Id.* at 31, para. 72. Although the Bureau is directed “to aim for a funding cap for non-Tribal areas that is no higher than \$300 per location per month,” *id.*, the Commission set \$350 as the upper limit for this funding cap. See *id.* at 31, n.206.

²⁵ *Id.*

12. For such locations currently served with 100/20 Mbps or faster broadband by the ILEC but not by an unsubsidized competitor, i.e., existing ILEC-only served locations, the Commission decided that the carrier would receive at least 50% of the current A-CAM support associated with those locations.²⁶ The Commission “delegate[d] 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 they would have received under A-CAM I or A-CAM II.”²⁷ For locations that are currently served by the ILEC with 100/20 Mbps or faster broadband service but “either (1) are served by an unsubsidized competitor with [such service] 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,” the Enhanced A-CAM carrier would receive a lesser amount of support—33% of the existing A-CAM support associated with those locations, per month.²⁸ Loans and grants that an ILEC receives for providing broadband to locations that only it serves with 100/20 Mbps or faster broadband will not affect ILEC Enhanced A-CAM support.²⁹ As such, under Enhanced A-CAM, an ILEC would receive 60% of the current A-CAM support associated with existing ILEC-only served locations, even if the ILEC receives a loan or a grant to serve 100/20 Mbps or faster broadband to those locations. For locations served by neither an ILEC nor another provider, loans, but not grants, to an ILEC are complementary rather than duplicative; as the Commission found in the *Enhanced A-CAM Order*, “an ‘enforceable commitment’ exists where a carrier commits to deploying broadband service as a condition of any federal or state grants or other funding.”³⁰

13. We find that the funding cap of \$350 per location per month and alternative funding percentage of 80%, in combination with a 60% rate of support for ILEC-only served locations, strikes an appropriate balance, producing offers that we anticipate carriers to elect,³¹ within the budget limits set by the Commission in the *Enhanced A-CAM Order*.³² These support parameters maximize the amount of Enhanced A-CAM support we are able to offer, with support totaling \$1.24 billion, just below the \$1.27 billion per year budget adopted by the Commission, while allowing the remainder of the budget to be available for additional support in situations where updates to the National Broadband Map increase the

²⁶ *Id.* at 31-32, para 74.

²⁷ *Id.*

²⁸ *Id.* at 32-33, para. 75.

²⁹ *Id.* at 31-32, para. 74.

³⁰ *Id.* at 18 n.131. WTA argues that “Rural Utilities Service (‘RUS’) ReConnect grants should be deemed to be complementary to, rather than duplicative of, E-ACAM support because they are intended to deploy high-speed broadband in the most remote and very high-cost portions of the United States – that is, areas likely to otherwise remain unserved without both ReConnect funding and federal high-cost support.” Letter from Derrick B. Owens, Senior Vice President, and Gerard J. Duffy, Regulatory Counsel, WTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed August 21, 2023). The Commission explicitly found that federal and state grants constitute a binding federal commitment. *Enhanced A-CAM Order* at 18 n.131. However, in the context of calculating support associated with existing ILEC-only served locations, we agree that such grants are not duplicative of Enhanced A-CAM support, as discussed above. For those locations, the Commission “recognize[d] 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.” *Id.* at 31-32, para. 74.

³¹ See Letter from Michael Romano, Executive Vice President, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed Aug. 18, 2023) (“To the extent the Commission were to increase the percentage of support for currently served locations from 50% closer to or at the 75% level, this would help to assuage such concerns and should promote adoption of enhanced A-CAM – thereby increasing the amount of deployment that the program would facilitate.”).

³² See *Enhanced A-CAM Order* at 31-32, paras. 72, 74 & n.206.

number of locations to which Enhanced A-CAM carriers must deploy. Other combinations of these parameters produce support offers that either fall outside the established budget limits or are less likely to present offers attractive enough for a critical mass of carriers to accept. To ensure that there is adequate additional funding for carriers subject to location adjustments,³³ thereby decreasing the risk of future pitfalls for carriers electing Enhanced A-CAM, we also act on our delegated authority to increase the overall Enhanced A-CAM budget to \$1.33 billion per year.³⁴

B. Updating Support Amounts

14. In the *Enhanced A-CAM Order*, the Commission directed the Bureau to make adjustments, no later than the end of 2025, to ensure that Enhanced A-CAM carriers' deployment obligations properly reflect broadband serviceable locations identified by the Fabric, locations that were already served by an unsubsidized competitor at the time of the offers but were not yet reflected in the Broadband Data Collection, and locations that were subject to an enforceable commitment to deploy 100/20 Mbps or faster broadband service at the time of the offers.³⁵ The Commission further "direct[ed] the Bureau to provide . . . 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."³⁶ To prevent carriers from taking advantage of any material errors or deficiencies in the Fabric, the National Broadband Map, or the Broadband Funding Map, if location adjustments cause the number of locations to which an Enhanced A-CAM carrier is obligated to deploy to decrease beyond 85% of the obligated locations in the authorization, the carrier's support would be entirely recalculated.³⁷

15. The Commission also noted the potential for an increase in support in the opposite situation, i.e., that carriers' support may increase when updated deployment obligations increase the number of locations to which the carrier must deploy; however, such an increase in support "will be provided only to the extent that it would not cause the Enhanced A-CAM program to exceed the budget set forth" in the *Enhanced A-CAM Order*.³⁸ The Commission delegated to the Bureau the "authority to reserve some or all of the extra \$1 billion provided in the budget . . . to address increased deployment obligations" but also explained that it is likely that at least some of the budgeted Enhanced A-CAM funds would not ultimately be allocated.³⁹

16. Consistent with the Commission's direction,⁴⁰ we establish a methodology for gradually reducing support in situations where, after final location adjustments occur, an Enhanced A-CAM carrier's required number of locations is less than 95% but greater than 85% of the number of locations to

³³ See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Aug. 18, 2023) ("We urge the Bureau to exercise its discretion to utilize the entirety of the \$1.33 billion annual budget authorized by the Commission for the Enhanced ACAM program.").

³⁴ See *Enhanced A-CAM Order* at 28, para. 64 ("[T]he \$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[.]").

³⁵ See *id.* at 16, 21, paras. 34, 43.

³⁶ *Id.* at 34, para. 77.

³⁷ See *id.*

³⁸ See *id.* at 34, para. 78.

³⁹ *Id.* In this Order, we only adopt a methodology for adjusting support in cases where final adjustments produce location counts that are less than carriers' location counts in their initial Enhanced A-CAM offers.

⁴⁰ See *id.* at 34, para. 77.

which they were initially obligated and authorized to deploy under Enhanced A-CAM. In such situations, we will recalculate the amount of support associated with the decreased number of locations, and where the support amount decreases by more than 5%, the carrier's Enhanced A-CAM support will gradually, over a period of two years, decrease to the recalculated amount, trued-up such that the total amount of support the carrier would be receiving over the Enhanced A-CAM term reflects the final adjusted set of locations. Restated, the carrier's monthly support level will step down once before stepping down to the carrier's final monthly support level, which the carrier will then receive until the end of its Enhanced A-CAM support term. Once the Bureau has completed the location and support adjustments, it will determine how to distribute available support to those whose location build out obligations have increased.

C. Performance Measures

17. We also act on our delegated authority “to implement and clarify further details, including the specific schedule regarding the performance measures testing regime for Enhanced A-CAM.”⁴¹ First, we establish January 1, 2026 as the start date for Enhanced A-CAM carriers’ “pre-testing” period, in which carriers must test the speed and latency of their networks quarterly for a week-long period and submit the results within one week of the end of each quarter of pre-testing,⁴² and January 1, 2027 as the start date for Enhanced A-CAM performance testing, after which carriers may be subject to the performance measures non-compliance rules.⁴³ Second, we clarify that Enhanced A-CAM carriers’ test locations will include all locations to which they have deployed or will deploy 100/20 Mbps or faster broadband service within their Enhanced A-CAM service areas—not just the locations to which they must newly deploy 100/20 Mbps or faster broadband service, i.e., Enhanced A-CAM required locations.⁴⁴

IV. ORDERING CLAUSE

18. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 5(c), 201(b), 214, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 155(c), 201(b), 214, 254, 1302, sections 0.91 and 0.291 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and the delegations of authority in paragraphs 51, 60, 64, 72, 74, and 77 of the *Enhanced A-CAM Order*, FCC 23-60, this Order IS ADOPTED and SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

⁴¹ *Enhanced A-CAM Order* at 24, para. 51.

⁴² See *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10139, para. 78 (2019).

⁴³ See *id.* at 10133-38, paras. 65-75.

⁴⁴ Enhanced A-CAM carriers should report to the HUBB any locations to which they have deployed 100/20 Mbps or faster broadband, including locations where they were serving 100/20 Mbps or faster broadband prior to receiving the Enhanced A-CAM offers.



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WIRELINE COMPETITION BUREAU ANNOUNCES ENHANCED ALTERNATIVE CONNECT AMERICA COST MODEL SUPPORT AMOUNTS OFFERED TO RATE-OF-RETURN CARRIERS TO EXPAND RURAL BROADBAND

WC Docket No. 10-90

Today, the Wireline Competition Bureau (Bureau) announces the offers of model-based Enhanced A-CAM support based on a revised version of the Alternative Connect America Cost Model (A-CAM) 2.6.0 to existing A-CAM carriers and other carriers that are still receiving legacy support to fund the deployment of voice and broadband-capable networks in their service territories, and provides further guidance regarding Enhanced A-CAM processes and procedures.¹ Carriers have until **Friday, September 29, 2023** to indicate, on a state-by-state basis, whether they elect to receive Enhanced A-CAM support.²

Offers. The model results and offer amounts we release today are predicated upon carriers receiving support for Enhanced A-CAM required locations calculated using a monthly funding threshold of \$63.69, a funding cap per location of \$350, and an alternative funding percentage of 80%, except that required locations in Tribal lands are subject to a funding threshold of \$47.76 and a funding cap of \$365.93.

The offer amounts also include support based on what the carrier (i.e., the incumbent local exchange carrier, or ILEC) currently receives for locations to which it has already deployed 100/20 Mbps or faster broadband but which unsubsidized competitors neither already serve nor are subject to enforceable commitment to serve.³ Specifically, a carrier's offer includes 60% of the carrier's current A-CAM support level for existing ILEC-only served locations,⁴ including those locations for which the ILEC may have received a loan or grant to deploy broadband, but excluding locations for which an unsubsidized competitor is receiving funding (e.g., a loan or grant). The offer includes 33% of the carrier's current support level for (a) ILEC-only served locations for which a competitor is receiving

¹ See *Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, at 42, para. 98 (July 24, 2023) (*Enhanced A-CAM Order*).

² Carriers that decline the Enhanced A-CAM offer will continue to receive existing A-CAM or CAF BLS support and will continue to be subject to the same broadband deployment obligations.

³ See *Enhanced A-CAM Order* at 31-33, paras. 73-75. The offers also include support for locations served with 100/20 Mbps service by the ILEC only, but which were ineligible for prior A-CAM offers. *Id.* at 32, para. 74.

⁴ See *Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Order, DA 23-778, at 4-6, para. 9-13 (WCB Aug. 30, 2023) (*Enhanced A-CAM Implementation Order*).

funding to deploy 100/20 Mbps or faster broadband service, and (b) locations currently served by both the ILEC and a competitor with 100/20 Mbps or faster broadband.⁵ The locations included in the initial offers are based on location data from the Broadband Serviceable Location Fabric (Fabric) v.2 and account for broadband coverage data from the National Broadband Map, as well as federal broadband funding data from the Broadband Funding Map.⁶

The information released today includes four reports.⁷ Report 1.1 shows the state-level offer of model-based support for each carrier that is eligible to elect Enhanced A-CAM support, including the amount of annual support that would be provided over the 15-year term beginning January 1, 2024, subject to any transitional support amounts as discussed below. Report 1.1 also shows the total number of locations in the carrier service area covered by the offer of support, and the number of supported locations, which includes both required locations with estimated costs above the \$63.69 support threshold (\$47.76 for Tribal locations) and ILEC-served locations above the existing A-CAM support thresholds. Finally, Report 1.1 breaks out Enhanced A-CAM support amounts and supported locations by Tribal and Non-Tribal locations.

All carriers authorized to receive Enhanced A-CAM support will be subject to defined deployment obligations that must be met by the final deployment milestone in 2028, with an additional 12 months to come into compliance for the final deployment milestone,⁸ and with annual reporting of their progress. Report 1.2 shows the number of required locations – both above and below the support threshold – to which an electing carrier will be required to deploy 100/20 Mbps service, in total and by Tribal or Non-Tribal status. Report 1.2 also summarizes locations by ILEC- and competitor-served status. Carriers that elect Enhanced A-CAM will commit to maintaining at least existing levels of service to locations to which they currently provide 100/20 Mbps or faster service. For completeness, Report 1.2 also shows other categories of locations that do not factor into the support calculation, such as locations served with 100/20 Mbps that have estimated costs below the A-CAM I or II support thresholds, or locations served solely by an unsubsidized competitor or subject to an enforceable commitment to deploy.⁹ In addition to the summary information provided in Report 1.2, carriers considering electing Enhanced A-CAM can identify their required locations and the locations that they currently serve and to which they must maintain service on the ACAM website, <https://cacm.usac.org/>.¹⁰ Required locations

⁵ See *Enhanced A-CAM Order* at 32-33, para. 75.

⁶ See *id.* at 20, para. 42. To avoid unnecessarily duplicating federal broadband funding, the Bureau also uses data from other federal agencies to exclude from the set of Enhanced A-CAM required locations any locations that are subject to enforceable commitments to deploy 100/20 Mbps or faster broadband service. See *id.* As more complete data on federal and state commitments become available, the Bureau and the Office of Economics and Analytics will also adjust carriers' list of required locations, with all adjustments to be completed no later than December 31, 2025. See *id.* at 21, para. 43. "[T]he 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." See *id.* at 21 n.146. The support amounts associated with each Enhanced A-CAM carrier may also be adjusted pursuant to the methodologies outlined in the Order we concurrently adopt today. See *Enhanced A-CAM Implementation Order* at 6-7, paras. 14-16.

⁷ Available at <https://docs.fcc.gov/public/attachments/DOC-396477A1.xlsx>.

⁸ See 47 CFR § 54.320(d)(2) (providing carriers an additional 12 months to come into compliance for their final milestones). The Commission also delegated to the Bureau the authority to extend the final deployment milestone by an additional year. See *Enhanced A-CAM Order* at 22, para. 46.

⁹ In Report 1.2, locations that are currently unserved and also subject to an enforceable commit to deploy by the ILEC due to a grant from another federal agency are included with competitor-served locations, which also receive no support under Enhanced A-CAM.

¹⁰ Access to the A-CAM data are subject to the Third Supplemental Protective Order, a licensing agreement and a non-disclosure agreement (respectively Appendices B and C) available at <https://docs.fcc.gov/public/attachments/DA-12-1995A1.pdf>. Parties who have signed the licensing and non-

(continued....)

(i.e., locations 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) and ILEC-served locations (to which an electing carrier would be required to maintain existing 100/20 Mbps or faster service) are identified by location ID.

Report 1.3 shows the amount of support, by year, that a CAF BLS recipient electing Enhanced A-CAM will receive over the term of Enhanced A-CAM. As discussed in greater detail below, this includes all transitions provided by the Commission's rules.

Carriers will receive a single offer of support for all affiliates within a state.¹¹ If a carrier offer for a state either includes an unaffiliated entity or excludes an affiliated ILEC in that state, the ILEC should report this by sending an email to ConnectAmerica@fcc.gov notifying the Commission of this error prior to accepting an Enhanced A-CAM offer. If a carrier has multiple affiliates in a single state, some of which receive A-CAM support and some of which receive Connect America Fund Broadband Loop Support (CAF BLS) (mixed support carriers), Report 1.1 shows separately Enhanced A-CAM support amounts for A-CAM and CAF BLS affiliates. However, consistent with the transition payments adopted by the Commission for CAF BLS carriers, the actual amount of support received annually will be reflected in Report 1.3. Therefore, to understand the amount of support that would be authorized, mixed support carriers must review the transitional payments for the relevant state. Mixed support carriers that elect to participate in the Enhanced A-CAM mechanism, must elect for both their A-CAM and CAF BLS components. A list of known mixed support carriers is shown in Report 1.4.

Carriers considering electing Enhanced A-CAM need to evaluate on a state-level basis whether the support to be received is sufficient to serve all their required locations with 100/20 Mbps or faster broadband service. For administrative ease, compliance with the broadband deployment obligations will be validated at the state level.

Elections. Carriers shall submit their election letters to the Bureau at ConnectAmerica@fcc.gov.¹² To elect Enhanced A-CAM for a state or states, a carrier must submit a letter signed by an officer of the company confirming that the carrier elects the Enhanced A-CAM support amount as specified in Report 1.1 released today and commits to satisfy the specific service obligations associated with that amount of model support, including both the deployment of 100/20 Mbps or faster service to all required locations and the maintenance of 100/20 Mbps or faster service to currently served locations. Carriers are required to identify in their election letters the technologies they plan to use to meet their Enhanced A-CAM deployment obligations.¹³ Election letters filed by mixed support carriers should explicitly acknowledge that the election applies to both their A-CAM and CAF BLS study areas within a state. As directed by the Commission, the Bureau will publish Enhanced A-CAM offer acceptances "to inform, among other processes, the BEAD Program challenges conducted by states or 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."¹⁴

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disclosure agreements, can login to A-CAM, click on Posted Data Sets, and scroll down to Current Version Model Outputs. The E_ACAM_CBSummary Point File, developed for A-CAM 2.6.0 is a file containing FCC location_id, Census Block, Study Area Code, Tribal and Broadband Funding (bfm) indicators, and flags indicating whether the location is required or currently served by the incumbent carrier.

¹¹ See *Enhanced A-CAM Order* at 45, para. 98 ("Like with A-CAM II, elections will be voluntary, irrevocable, and made on a state-by-state basis.").

¹² Carriers are encouraged to submit their election letter prior to the deadline to the extent feasible.

¹³ See *Enhanced A-CAM Order* at 42-43, para. 100.

¹⁴ *Id.* at 43, para. 100.

We emphasize that carriers accepting the Enhanced A-CAM offer should therefore *not* include any confidential trade secrets or commercial information in their election letters.¹⁵

If a carrier fails to submit any final election letter by the **September 29, 2023** deadline, the carrier will be deemed to have declined the Enhanced A-CAM offer and will continue to receive support under its existing program and be subject to its existing A-CAM I, Revised A-CAM I, A-CAM II, or CAF BLS deployment obligations. Carriers submitting election letters will receive an e-mail confirming that their letters have been received and reviewed for completeness and should contact the Bureau no later than 4:00 p.m. Eastern Daylight Time on **October 2, 2023** if they do not receive such confirmation. Confirmation of receipt does not constitute authorization to receive Enhanced A-CAM support pursuant to the terms of the offer. Carriers electing the Enhanced A-CAM support will not begin receiving such support until the Bureau issues a public notice authorizing the Universal Service Administrative Company (USAC) to disburse the appropriate amounts.

Legacy rate-of-return carriers electing Enhanced A-CAM support must exit the National Exchange Carrier Association, Inc. (NECA) common line tariff pool before they will be authorized to receive model-based support.¹⁶ These carriers, however, may continue to tariff non-pool rates for common line and consumer broadband-only loops pursuant to NECA tariffs. NECA carriers electing Enhanced A-CAM support must notify NECA by the date specified in the public notice announcing Enhanced A-CAM authorizations that they will no longer participate in the NECA common line tariff pool.¹⁷ USAC may disburse Enhanced A-CAM support once it confirms that the electing Enhanced A-CAM carrier notified NECA that they will exit the NECA common line tariff pool.¹⁸

Enhanced A-CAM support recipients that have not already done so are also eligible to transition certain business data service (BDS) offerings to incentive regulation under section 61.50 of the Commission's rules.¹⁹ All rate-of-return carriers accepting Enhanced A-CAM support and electing BDS incentive regulation must notify the Bureau of their BDS election by May 1, 2024 to be effective concurrent with the July 2024 annual access charge tariff filing.²⁰ These carriers should file a letter in WC Docket No. 17-144 notifying the Bureau of their BDS election including the carrier, study area, state, and study area code.²¹ Enhanced A-CAM carriers that elect BDS incentive regulation may begin detariffing their BDS offerings after the effective date of their BDS election but must detariff their BDS offerings within 36 months after the effective date of their election of BDS incentive regulation.²²

¹⁵ See *id.*

¹⁶ *Id.* at 39, para. 91 (citing *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3159-60, paras. 194-96). NECA Tariff F.C.C. No. 5 covers the carrier common line tariff pool.

¹⁷ See 47 CFR § 69.3(e)(9).

¹⁸ *Enhanced A-CAM Order* at 39, para. 91.

¹⁹ 47 CFR § 61.50; *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 Rulemaking, 33 FCC Rcd 10403, 10421-22, para. 44 (2018) (*Rate-of-Return BDS Order*).

²⁰ 47 CFR § 61.50(l)(3); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10445, para. 119.

²¹ See *Wireline Competition Bureau Announces Rate-of-Return Carriers Electing Incentive Regulation for their Business Data Services*, WC Docket No. 17-144, Public Notice, 35 FCC Rcd 7037, 7037 (WCB 2020) (a total of 136 rate-of-return carriers serving 227 study areas in 40 states and one territory elected BDS incentive regulation).

²² 47 CFR § 61.50(k)(3) (“A rate-of-return carrier electing incentive regulation for its business data services must detariff: (i) All packet-based and time division multiplexed business data services above a DS3 bandwidth within thirty-six months after the effective date of its election of incentive regulation; and (ii) All time division multiplexed end user channel termination business data services at or below a DS3 bandwidth in any study area deemed competitive by the competitive market test within thirty-six months after such services shall be deemed competitive in a study area.”).

Additionally, NECA carriers accepting Enhanced A-CAM support and electing BDS incentive regulation must notify NECA by March 1, 2024 that they will not participate in the NECA traffic-sensitive tariff pool for their BDS offerings.²³ Such carriers may continue to participate in the NECA traffic sensitive pool and tariff for access services other than BDS.²⁴ In its notices to NECA and the Bureau, each carrier should specify whether it is choosing to update its separation category relationships.²⁵

Transitional Support for Legacy Carriers. The Commission in the *Enhanced A-CAM Order* adopted rules allowing for the extension of offers for Enhanced A-CAM support amounts to electing legacy carriers pursuant to a fixed support transition, or “glide path,” process.²⁶ The Enhanced A-CAM offers, and the methodology used to calculate the support amounts, reflect the transition process adopted by the Commission. We provide the following informational guidance for legacy carriers considering electing Enhanced A-CAM support.

- **Transitioning from Higher to Lower Support Amounts.** When transitioning from receiving higher to lower amounts of support, electing legacy carriers will receive frozen support equal to their year 2022 support claims for six years, beginning January 1, 2024.²⁷ Over the next five years, beginning January 1, 2030, their support will step down to 80% of their 2022 support amount, in 4% increments.²⁸ Finally, beginning January 1, 2035, and ending on December 31, 2038, electing carriers will then transition to model-based Enhanced A-CAM support, following the three-tiered transition schedule set forth in section 54.311(e)(1)-(3) of the Commission’s rules.²⁹

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.³⁰ As the Commission stated in the *Enhanced A-CAM Order*, “[f]or the purpose of calculating transitional support pursuant to this final stage, we adopt a base year support amount equal to 80% of 2022 claims.”³¹

²³ See 47 CFR § 69.3(i)(1); see also *id.* § 69.3(e)(6); *Rate-of-Return BDS Order*, 33 FCC Rcd at 10445, para. 119. The NECA traffic-sensitive pool is contained in NECA F.C.C. Tariff No. 5.

²⁴ 47 CFR § 61.50(d).

²⁵ *Rate-of-Return BDS Order*, 33 FCC Rcd at 10445, para. 119.

²⁶ *Enhanced A-CAM Order* at 35-38, paras. 79-87. While carriers that previously elected A-CAM I or II were required to elect for all affiliated study areas in the state, there may be cases where, due to intervening transactions, a legacy carrier is affiliated with an existing A-CAM participant that elects Enhanced A-CAM. If this situation arises, then the Bureau, for the purpose of calculating transitional support amounts, will assign to the legacy CAF BLS study area(s) the Enhanced A-CAM amount calculated for only the CAF BLS study areas and assign to the A-CAM study areas the difference between the amount calculated for all affiliated study areas in the state and the CAF BLS-only amount.

²⁷ *Id.* at para. 80. For reference, legacy carriers’ 2022 support claims are available at <https://www.fcc.gov/sites/default/files/Updated%20Claims%20for%20Web%202022%20%2804%202023%29.xlsx>.

²⁸ *Enhanced A-CAM Order* at 35-38, paras. 79-87 (codified at 47 CFR 54.311(e)(4)-(5)(i)).

²⁹ *Id.* (codified at 47 CFR § 54.311(e)(5)(ii)-(vi)).

³⁰ *Id.* (codified at 47 CFR § 54.311(e)(1)-(3)).

³¹ *Id.* at 35-36, para. 81.

While the transition process provided for in section 54.311(e)(1)-(3) envisions a ten-year transition period, there will only be a four-year period over which legacy carriers will transition pursuant to these subsections during years 2035-2038, i.e., over the last four years of the Enhanced A-CAM term of support.³² Accordingly, as the Commission stated, “[i]n those cases, [where] 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,” then “[w]e do not intend for such carriers to have a longer term of support than we adopt for Enhanced A-CAM generally.”³³ That is, the transition support amount in year 2038 would be the final year in the Enhanced A-CAM term of support so that the legacy carrier could conceivably never fully transition to the Enhanced A-CAM support amount by the end of the term.

As an illustrative example, assume an electing legacy carrier’s 2022 support claims total \$1,000,000 and the Enhanced A-CAM support amount is \$700,000. In this case, the transition path would be as follows:

Calendar Year	Support Amount	Explanation
2024-2029	\$1,000,000	2022 support claim amount
2030	\$960,000	$\$1,000,000 - (\$1,000,000 \times .04)$
2031	\$920,000	$\$1,000,000 - (\$1,000,000 \times .08)$
2032	\$880,000	$\$1,000,000 - (\$1,000,000 \times .12)$
2033	\$840,000	$\$1,000,000 - (\$1,000,000 \times .16)$
2034	\$800,000	$\$1,000,000 - (\$1,000,000 \times .20)$
2035	\$760,000	Per 47 CFR § 54.311(e)(3), reduction is the greater of either: a) $5\% \times \$800,000$ (i.e., the base period amount) = \$40,000, or b) $10\% \times \$100,000$ (i.e., the difference between the Enhanced ACAM amount, \$700,000 and the base period amount, \$800,000) = \$10,000.
2036	\$720,000	$\$40,000 > \$10,000$ and $\$760,000 - \$40,000 = \$720,000$
2037	\$700,000	As above except that $\$720,000 - \$40,000 = \$680,000$, which is less than \$700,000, the Enhanced A-CAM support amount, so the \$700,000 applies
2038	\$700,000	Enhanced A-CAM support amount

- **Transitioning from Lower to Higher Support Amounts.** For an electing legacy carrier whose 2022 claims are less than its Enhanced A-CAM support offer, the Commission provided a transition to the carrier’s full Enhanced A-CAM support over a five-year period after an initial six-year freeze.³⁴ In years 2024-2029, the electing legacy carrier will receive

³² See 47 CFR § 54.311(c).

³³ *Enhanced A-CAM Order* at 36, para. 81 n.236.

³⁴ See *id.* at 82, para. 82 (codified at 47 CFR § 54.311(f)).

its 2022 frozen base year support.³⁵ Support will then be increased by 20% of the difference between its base year support and its Enhanced A-CAM support, each year during the 2030-2033 period.³⁶ Starting in 2034 and throughout the remainder of the support term, i.e., until December 31, 2038, the legacy carrier will receive the Enhanced A-CAM support amount.³⁷

- **Carriers Currently Receiving A-CAM Transition Payments.** Some current A-CAM carriers are receiving transition payments from their previous legacy support to their model-based support. Pursuant to section 54.311(e)(6), this transitional support will not be adjusted to reflect Enhanced A-CAM support amounts.³⁸ Accordingly, A-CAM I and A-CAM II carriers that are currently transitioning from their legacy support amounts to A-CAM I, Revised A-CAM I, or A-CAM II support amounts will continue receiving transitional support on their current glide path until their transitional support is less than their authorized Enhanced A-CAM support amount.³⁹ If a carrier is currently receiving transitional support, and its authorized Enhanced A-CAM support is less than its authorized A-CAM I or A-CAM II support, it will receive the Enhanced A-CAM support amount in the first year after its current glide path ends.

Mutual Agreements to Forgo Support and Obligations in Tribal Areas. In situations where “a state awards BEAD funds to another service provider to serve locations subject to an Enhanced A-CAM authorization,” the Commission “permit[s] the Enhanced A-CAM carrier and the Tribal government to notify the Bureau that they mutually agree to forego the A-CAM deployment obligation,” after which the Bureau will adjust the Enhanced A-CAM recipient’s support and deployment obligations.⁴⁰ Any such adjustments will not be considered a default under the Enhanced A-CAM program.⁴¹

To streamline administrative processing of such mutual agreements, we require that any such notice of an agreement be submitted to the Bureau at ConnectAmerica@fcc.gov, and must include signatures by an officer of the Enhanced A-CAM carrier as well as a representative of the Tribal government.⁴² Such notices must also be submitted before July 1, 2025, to provide ample time for the Bureau and the Office of Economics and Analytics to account for the changes in obligations and support before December 31, 2025.⁴³

Comments Regarding Coverage by Unsubsidized Competitors. Given that the Commission has required that carriers accept offers before September 29, 2023, and that the Bureau will announce accepted offers to inform other programs’ challenge processes and help prevent duplicative funding, there

³⁵ *Id.* (codified at 47 CFR § 54.311(f)(1)(i)).

³⁶ *Id.* (codified at 47 CFR § 54.311(f)(1)(ii)-(v)).

³⁷ *Id.* (codified at 47 CFR § 54.311(c), (f)(1)(vi)).

³⁸ *Id.* (codified at 47 CFR § 54.311(e)(6)).

³⁹ See A-CAM Support Authorized April 29, 2019 – Revised Offers for Carriers That Elected Initial A-CAM Offer with Legacy Transition Payments, May 1, 2019, available at <https://www.usac.org/wp-content/uploads/high-cost/documents/spreadsheets/A-CAM-Support-Authorized-April-29-2019.xlsx>; ACAM II Support with Legacy Transition Payments, June 5, 2019, available at <https://www.usac.org/wp-content/uploads/high-cost/documents/spreadsheets/ACAM-II-Support-with-Legacy-Transition-Payments.xlsx>.

⁴⁰ *Enhanced A-CAM Order* at 45, para. 105.

⁴¹ *Id.* at 45 n.301.

⁴² See *id.* at 45 n.301 (“We direct the Bureau to specify the form, substance, and timing of such letters.”).

⁴³ See *id.* at 21, para. 43 (“We anticipate that the Bureau will make all adjustments to the required deployment locations no later than December 31, 2025.”).

will not be an opportunity to make changes to any offers prior to the Bureau's announcement.⁴⁴ Adjustments to support amounts and location counts will be made at a later date consistent with the *Enhanced A-CAM Order*.⁴⁵ Any concerns regarding the deployment areas or speed of unsubsidized competitors should be addressed through the Broadband Data Collection processes. To the extent that interested parties may have concerns about an unsubsidized competitor's usage or the provision of voice service, we will accept comments in this proceeding's docket, WC Docket No. 10-90, regarding whether particular unsubsidized competitors may not be providing the minimum amount of usage set forth in the Urban Rate Survey⁴⁶ or whether unsubsidized competitors may not be providing standalone voice service.⁴⁷

For additional information on this proceeding, please contact Stephen Wang (Stephen.Wang@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

- FCC -

⁴⁴ See *id.* at 43, para. 100.

⁴⁵ See *id.* at 16-17, para. 34; *supra* note 4.

⁴⁶ The 2023 Urban Rate Survey specifies a minimum usage amount of 600 GB. 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*, Public Notice, WC Docket No. 10-90, DA 22-1338 (WCB Dec. 16, 2022).

⁴⁷ See *Enhanced A-CAM Order* at 19, para. 39.



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-23-780

Released: August 29, 2023

FEDERAL COMMUNICATIONS COMMISSION ENCOURAGES DEBRIS REMOVAL AND UTILITY REPAIR TEAMS TO AVOID DAMAGING COMMUNICATIONS INFRASTRUCTURE IN AREAS AFFECTED BY HURRICANE IDALIA

The Federal Communications Commission (FCC) encourages all entities involved with debris clearing operations and utility repairs related to the effects of Hurricane Idalia to take all steps necessary to avoid damaging critical communications facilities and infrastructure.

Hurricane Idalia may cause widespread damage and significant impacts to communications services and infrastructure in Florida. Hurricanes and other natural disasters present numerous challenges for those working to restore essential phone and Internet services. For example, debris clearing operations to remove downed trees, replace damaged utility poles, and open roadways often result in significant, non-storm related damage to critical communications infrastructure. Such damage can disrupt communications that support the safety and life and property, including 911 calls and first responder communications.

The FCC encourages those entities working to clear debris, repair utility lines, and restore services to ensure their activities do not damage critical communications. Crews clearing downed trees and damaged utility poles should exercise caution to not cut or damage telephone or television cables that may be entangled in the debris. Similarly, entities conducting debris and restoration efforts that require digging are reminded to coordinate with appropriate authorities to ensure buried utilities can be located to avoid damage. Teams on the ground should take proactive steps to preserve and maintain critical communications and take immediate action, if necessary, to mitigate the effects of any damage that may occur to facilities or infrastructure.

For assistance, please contact the FCC Operations Center at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.



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-23-781
Released: August 29, 2023

FEDERAL COMMUNICATIONS COMMISSION REMINDS ENROLLED USERS ABOUT THE AVAILABILITY OF PRIORITY SERVICES IN AREAS IMPACTED BY HURRICANE IDALIA

The Federal Communications Commission (FCC) reminds enrolled users about the availability of priority services, which help support communications and continuity of operations. Current users should understand how to activate the priority treatment so they are prepared to use the services, if necessary, during emergency response activities related to Hurricane Idalia.

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency manages three programs that enable National Security and Emergency Preparedness (NSEP) personnel to effectively communicate when networks are damaged, degraded, or congested. These programs include:

- Government Emergency Telecommunications Service (GETS) for wireline voice communications;
- Wireless Priority Service (WPS) for wireless communications; and
- Telecommunications Service Priority (TSP) for prioritized restoration and provisioning of communications facilities.

The FCC reminds current users of the following information and best practices, which will increase the effectiveness of the programs:

- Make regular practice/test calls for GETS and WPS.
- Preprogram *272 for key numbers in your phone's contact list.
- Download the GETS/WPS dialer application for smartphones.
- Do not use GETS or WPS to dial 911.
- Test WPS after all phone changes.
- Keep your GETS card with you at all times.
- You may experience silence after entering your destination number.
- Using WPS and GETS together may help in certain circumstances.

For other helpful information, please see CISA's [Helpful Tips for Users of WPS and GETS](#).

The FCC also encourages other entities and organizations that are not currently enrolled, but that may qualify, to consider participating in the priority services programs. These programs are available to qualified personnel from both the public and private sectors that perform NSEP functions. Entities from the following categories may qualify to participate:

- All levels of government (federal, state, local, tribal, territorial);

- Non-governmental organizations; and
- Organizations within critical infrastructure sectors, including certain private sector entities.

For more information about the priority services programs, please visit:

<https://www.fcc.gov/general/public-safety-homeland-security-policy-areas-priority-services> and
<https://www.cisa.gov/priority-telecommunications-services>.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA-23-782
Released: August XX, 2023

FEDERAL COMMUNICATIONS COMMISSION PROVIDES 24/7 EMERGENCY CONTACT INFORMATION RELATED TO HURRICANE IDALIA

The Federal Communications Commission (FCC) is available to address emergency communications needs 24 hours a day, including throughout the weekend, especially relating to the effects of **Hurricane Idalia**.

The FCC reminds emergency communications providers, including broadcasters, cable service providers, wireless and wireline service providers, satellite service providers, emergency response managers and first responders, and others needing assistance to initiate, resume, or maintain communications operations to contact the FCC Operations Center for assistance at 202-418-1122 or by e-mail at FCCOPS@fcc.gov.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA-23-783

Released: August 29, 2023

FEDERAL COMMUNICATIONS COMMISSION ISSUES PROCEDURES FOR PROVIDING EMERGENCY COMMUNICATIONS IN AREAS IMPACTED BY HURRICANE IDALIA

The Federal Communications Commission (FCC) announces procedures to help communications service providers initiate, resume, and maintain operations in response to Hurricane Idalia. Bureau-specific guidance is provided below. For additional information, applicants should contact the appropriate Bureau-specific staff identified below.

Those seeking special temporary authority (STA) are reminded of the need to conform to the requirements of section 1.2002 of our rules implementing the Anti-Drug Abuse Act of 1988.¹ Specifically, requests must include the following certification: “Neither the applicant nor any party to this application is subject to a denial of federal benefits that includes FCC benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.” Presentations that directly relate to the emergency posed by Hurricane Idalia are exempt from the restrictions of the Commission’s *ex parte* rules, subject to the provisions of section 1.1204(a)(3) of those rules.²

- **Media Bureau Guidance**

- **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Idalia and filed pursuant to section 73.1635 of the Commission’s rules³ may be submitted by informal letter or email or, if necessary, by telephone. Licensees of AM & FM radio stations and TV stations may file requests electronically through the Licensing Management System (LMS). All requests must provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:

- **Media Bureau Contact During Business Hours:**

- **Part 73 (Radio Broadcast Services) Subparts A-H; J (as applicable):**
 - For Television Services, Kevin Harding, 202-418-7077, Kevin.Harding@fcc.gov
 - For FM Radio Services, Dale Bickel, 202-418-2706, Dale.Bickel@fcc.gov
 - For AM Radio Services, Jerome Manarchuck, 202-418-7226, Jerome.Manarchuck@fcc.gov
- **Part 76 (Multichannel Video and Cable Television Service):**
 - Sean Mirzadegan, 202-418-7111, Sean.Mirzadegan@fcc.gov

¹ 47 CFR § 1.2002.

² 47 CFR § 1.1204(a)(3).

³ 47 CFR § 73.1365.

- **Part 78 (Cable Television Relay Service):**
 - Jeffrey Neumann, 202-418-2046, Jeffrey.Neumann@fcc.gov
- **Media Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- Licensees are reminded that the Commission's rules address operations during periods of emergency for licensees authorized under each of the rule parts for Broadcast Television Services, Broadcast Radio Services, and Multichannel Video and Cable Services. These service-specific rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.⁴
- **Office of International Affairs Guidance**
 - **Special Temporary Authority (Submarine Cables, International 214s, and International High Frequency Broadcast Station):** Emergency requests for STA related to this event may be submitted by e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the ICFS at <http://licensing.fcc.gov/myibfs>. The Office will handle all STA requests as expeditiously as possible.
 - To ensure the Office has a complete record of the action, applicants who do not file through the ICFS should follow-up the initial request with an electronic version submitted through the ICFS as soon as possible. In this filing, operators shall note in the first description field on the electronic STA form that this is a Hurricane Idalia request and the date the initial request was granted.
 - **Office of International Affairs Contact During Business Hours:**
 - **Submarine Cables and International 214s:**
 - Stacey Wise-Ashton, 202-418-2214, Stacey.Ashton@fcc.gov
 - Gabrielle Kim, 202-418-0730, Gabrielle.Kim@fcc.gov
 - Karen Johnson, 202-418-7706, Karen.Johnson@fcc.gov
 - **International High Frequency Broadcast Station:**
 - James McLuckie, 202-418-2149, James.McLuckie@fcc.gov
 - Shawna Prebble, 202-418-0740, Shawna.Prebble@fcc.gov
 - **Office of International Affairs Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Public Safety and Homeland Security Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Idalia and filed pursuant to section 1.931 of the Commission's rules may be submitted by email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or to receive an oral STA during regular business hours, licensees may contact the following personnel: After business hours, contact the FCC Operations Center, below.

⁴ 47 CFR §§ 73.1250, 73.1680, 73.3542.

- **Public Safety and Homeland Security Bureau Contact During Business Hours:**
 - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
 - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
 - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
- **Public Safety and Homeland Security Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Space Bureau Guidance**
 - **Special Temporary Authority (Satellite Earth and Space Stations):** Emergency requests for STA related to this event may be submitted by letter, e-mail or, if necessary, by telephone. Applicants also may file requests electronically through the International Communications Filing System (ICFS) at <https://licensing.fcc.gov/myibfs>. All requests shall provide the technical parameters of the proposed operation and a point of contact. The Bureau will handle all STA requests on an expedited basis. Consistent with section 309(c)(2)(G) of the Communications Act, as amended, the Bureau may grant STA requests for up to 30 days.⁵
 - **Space Bureau Contact During Business Hours:**
 - **Satellite Space Stations and Earth Stations:**
 - Kathryn Medley, 202-418-1211, Kathryn.Medley@fcc.gov
 - Merissa Velez, 202-418-0751, Merissa.Velez@fcc.gov
 - Franco Hinojosa, 202-418-7274, Franco.Hinojosa@fcc.gov
 - **Space Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireline Competition Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for relief, including STA, prompted by the effects of Hurricane Idalia may be submitted by email or, if necessary, by telephone. Providers may file requests electronically through the Electronic Comment Filing System (ECFS) but should also provide copies of any submissions simultaneously via email to the appropriate FCC staff identified below. Requests shall include supporting details concerning the relief requested, including any technical parameters and contact information.
 - **Wireline Competition Bureau Contact During Business Hours:**
 - **Emergency Requests Pertaining to Discontinuance Under Section 214 of the Communications Act, or to Network Change Notification Requirements:**
 - Rodney McDonald, 202-418-7513, Rodney.McDonald@fcc.gov
 - **Emergency Requests Pertaining to Transfer of Control Under Section 214 of the Communications Act:**
 - Michele Berlove, 202-418-1477, Michele.Berlove@fcc.gov
 - **Emergency Requests Pertaining to Numbering Resources:**
 - Michelle Sclater, 202-418-0388, Michelle.Sclater@fcc.gov
 - **All Other Wireline Provider Requests:**

⁵ 47 USC § 309(c)(2)(G).

- FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireline Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov
- **Wireless Telecommunications Bureau Guidance**
 - **Special Temporary Authority:** Emergency requests for STA prompted by the effects of Hurricane Idalia filed pursuant to section 1.931 of the Commission's rules may be submitted by informal letter or email or, if necessary, by telephone. Licensees may file requests electronically through the Universal Licensing System (ULS). All requests shall provide the technical parameters of the proposed operation and a point of contact. These requests will be handled as expeditiously as possible. To file STA requests via email or fax, or to receive an oral STA during regular business hours, licensees may contact the following personnel:
 - **Wireless Telecommunications Bureau Contact During Business Hours:**
 - **Parts 22, 24, and 27 (excluding the Broadband Radio Service and Educational Broadband Service):**
 - Keith Harper, 202-418-2759, Keith.Harper@fcc.gov
 - **Parts 27 (Broadband Radio Service and Educational Broadband Service only), 74, and 101 (excluding Public Safety):**
 - Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov
 - **Parts 80, 87, 90 (excluding Public Safety), 95, and 97:**
 - Joshua Smith, 717-338-2502 or 202-436-6222, Joshua.Smith@fcc.gov
 - **Parts 90 (Public Safety only) and 101 (Public Safety only):**
 - Tracy Simmons, 717-338-2657 or 202-391-2363, Tracy.Simmons@fcc.gov
 - Troy Sieg, 717-338-2567, Troy.Sieg@fcc.gov
 - **Wireless Telecommunications Bureau Contact During Non-Business Hours:**
 - FCC Operations Center, 202-418-1122, FCCOPS@fcc.gov

Licensees are reminded that sections 22.307, 90.407, and 101.205 of the Commission's rules address operations during periods of emergency for licensees authorized under these rule parts. These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STA requests can call the FCC's Operations Center, which is open 24 hours a day, 7 days a week, at 202-418-1122 or by email at FCCOPS@fcc.gov. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Questions and information requests may be directed to the Commission's main telephone numbers:

- Voice (toll-free): 1-888-225-5322 (1-888-CALL-FCC)
- American Sign Language Videophone (toll-free): 1-844-432-2275

-FCC-

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

In the Matter of)
)
AMERICAN RADIO RELAY LEAGUE)
)
Emergency Request for a Temporary Waiver of)
Section 97.307(f) of the Commission's Rules)

ORDER

Adopted: August 30, 2023

Released: August 30, 2023

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

1. *Introduction.* We have before us a request filed by the American Radio Relay League (ARRL) for a temporary 60-day waiver to permit amateur data transmissions at a higher symbol rate than currently is permitted by section 97.307(f) of the Commission's rules, in order to facilitate hurricane relief communications within the United States and its territories.¹ For the reasons set forth below, we grant the waiver request.

2. *Background.* Section 97.307(f) limits the symbol rate (also known as the baud rate) – the rate at which the carrier waveform amplitude, frequency, and/or phase is varied to transmit information² – for high frequency (HF) amateur radioteletype (RTTY)/data transmissions as follows: to 300 bauds for frequencies below 28 MHz (except the 60 meter band), and 1200 bauds in the 10 meter (28–29.7 MHz) band.³ The digital code used to encode the signal being transmitted must be one of the codes specified in section 97.309(a) of the Commission's rules, but an amateur station transmitting a RTTY or data emission using one of the specified digital codes may use any technique whose technical characteristics have been publicly documented, such as CLOVER, G-TOR, or PACTOR.⁴

¹ E-mail from David Siddall, on behalf of the ARRL to Thomas Derenge and Roger Noel, FCC (August 29, 2023 10:52 EDT) (Waiver Request); *see* 47 CFR § 97.307(f).

² *Amendment of Part 97 of the Commission's Amateur Radio Service Rules to Permit Greater Flexibility in Data Communications*, Notice of Proposed Rulemaking, 31 FCC Rcd 8485, 8485, para. 1 (2016) (*Baud Rate NPRM*).

³ 47 CFR § 97.307(f)(3), (4). In the 60 meter (5.3305–5.4064 MHz) band, there is no maximum symbol rate, but bandwidth is limited to 2.8 kilohertz for data and 60 hertz for RTTY. *See* 47 CFR § 97.307(f)(14).

⁴ 47 CFR §§ 97.307(f)(3), (4), 97.309(a)(4). CLOVER, G-TOR, and PACTOR are different techniques used to increase the efficiency of digital communications. *Baud Rate NPRM*, 31 FCC Rcd at 8486, n.18.

3. ARRL seeks this waiver for those licensed radio amateurs who are directly involved with Amateur Radio Emergency Services (ARES) and other communication support groups working with Federal, state and local emergency management officials.⁵ They request a 60-day waiver, subject to extension. ARRL states that Section 97.307(f) of the Commission's Rules prevents the use of certain protocols capable of higher data rate emissions in the High Frequency (HF) bands and many Amateur stations active in emergency communications preparedness are capable of using. They also point out that the past FCC temporary waivers have allowed such protocols in similar events including Hurricanes Maria, Dorian, Laura, Ida, and Ian; Typhoon relief communications in Hawaii; and wildfires in the western areas of the country.

4. ARRL's request also states that trained amateur radio operators are working with emergency management officials and relief organizations to assist with disaster relief communications in anticipation of the arrival of Hurricane Idalia at the Florida coast. The equipment they plan to use exceeds the 300 baud symbol limit and the higher data rates are critical in sending relief communications.⁶ ARRL's request states these stations must be able to communicate with similar stations in the United States, possibly with Caribbean-based stations that are directly involved with hurricane relief efforts, and also with Federal stations on the five channels in the 5 MHz band involved with the SHARES network and other interoperability partners on those frequencies. ARRL proposes to limit the use of the higher-speed emissions to hurricane-related messages transmitted by radio amateurs in the United States and its territories that are directly involved with the relief efforts.

5. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁷ We conclude that ARRL's request should be granted.

6. ARRL is preparing to assist areas impacted by Hurricane Idalia to conduct disaster relief communications.⁸ While certain radio modems with higher data capabilities are downward-compatible with slower speed versions of modems operating under similar protocols, ARRL asserts that the higher data rates offered by the newer protocols are critical to sending hurricane relief communications.⁹

7. We conclude that granting the requested waiver is in the public interest. Florida is predicted to be hit by Hurricane Idalia which is forecast to cause significant damage, including disruption to electricity and communications services. Thus, to accommodate amateur radio operators assisting in the recovery efforts, we grant the ARRL's waiver request for the period of 60 days from the date of this *Order* to operate in any parts of the United States and its territories impacted by hurricane disasters. The waiver is limited to amateur radio operators in the United States and its territories using publicly documented data protocols that are compatible with FCC rules, with the exception of the data rate limit

⁵ See Waiver Request.

⁶ See Waiver Request.

⁷ 47 CFR §§ 1.925(b)(3).

⁸ See Waiver Request.


⁹ See *id.*

waived here, for those directly involved with HF hurricane relief communications if requested by Federal, state, and local emergency management officials.

8. Accordingly, IT IS ORDERED that pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the Emergency Request for a Temporary Waiver of Section 97.307(f) of the Commission's Rules filed by the American Radio Relay League on August 29, 2023, IS GRANTED as set forth above.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Tom Derenge', is written over a horizontal line.

Thomas Derenge
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

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

In the Matter of)	
)	
Federated Wireless Expedited Request for	)	GN Docket No. 15-319
Emergency Waiver of Citizens Broadband Radio)	
Service Incumbent Protection Rules)	

ORDER

Adopted: August 30, 2023**Released: August 30, 2023**

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (“Bureau”), Mobility Division, conditionally grants Federated Wireless¹ request for a precautionary, limited, and conditional emergency waiver of sections 96.67(c)(2) and (3) of the Commission’s rules governing the Citizens Broadband Radio Service.² Petitioner requests the Commission grant emergency waiver relief of sections 96.67(c)(2) and (3) to relieve Federated Wireless of the requirement for Environmental Sensing Capabilities (“ESC”) to detect and protect federal incumbent users in the 3550-3700 MHz band (“3.5 GHz band”) from harmful interference for Dynamic Protection Areas (“DPAs”) that may be impacted by Hurricane Idalia, including DPAs East 20, East 21, East 11, East 12, East 13, East 2, and Mayport (the DPAs, together with the affected ESCs in such DPAs, the “Impacted Systems”). Idalia strengthened to a hurricane on August 29, 2023 and is expected to hit the Gulf Coast of Florida at Category 3 strength. For the reasons discussed below, we grant Petitioner’s Waiver Request subject to the conditions described herein.

II. BACKGROUND

2. In 2015, the Commission adopted rules for shared commercial use of the 3.5 GHz band.³ The Commission established the Citizens Broadband Radio Service and created a three-tiered access and authorization framework to accommodate shared federal and non-federal use of the band.⁴ Access and operations are managed by a Commission-approved, automated frequency coordinator, known as a Spectrum Access System (“SAS”). SASs coordinate operations between federal and non-federal users by relying on ESCs in DPAs to detect and protect federal incumbent users in the 3.5 GHz band from harmful interference. When there are federal incumbent users operating in the band, ESCs detect their signals and activate the DPA. When the DPA is activated, federal incumbent users are given priority over the other two tiers of users: Priority Access Licensees (“PALs”) and General Authorized Access (“GAA”) users.

¹ See Expedited Request of Federated Wireless for Emergency Waiver of CBRS Incumbent Protection Rules, GN Docket No. 15-319 (filed Aug. 28, 2023) (Waiver Request), <https://www.fcc.gov/ecfs/document/10828302610366/1>.

² 47 CFR § 96.67(c)(2)-(3).

³ See *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 3975, paras. 44-45 (2015) (*2015 Report and Order*).

⁴ *Id.*

In the case that an ESC cannot accurately determine whether federal incumbents are active in the band, they must automatically activate the DPAs.⁵

3. Petitioner seeks a temporary conditional waiver of sections 96.67(c)(2) and (3) of the Commission's rules to relieve itself of the requirement to detect the presence of a signal from a federal system in the 3.5 GHz Band and adjacent frequencies and to communicate information about the presence of such a signal to one or more approved SASs.⁶ This waiver would allow Federated Wireless to treat the subject DPAs as "inactive" for the duration of the waiver authority and thus avoid the need for the ESCs to automatically activate the DPAs in areas affected by Hurricane Idalia. Petitioner seeks waiver of these requirements in the interest of providing uninterrupted service to over 16,000 Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to millions of customers in areas that may be impacted by Hurricane Idalia, including consumer, residential and enterprise users, schools, and oil and gas companies.⁷ Federated Wireless also requests that the relief be granted subject to conditions that are consistent with the ESC waiver orders that the Bureau issued in response to Hurricanes Ian and Fiona; Typhoon Mawar; and Tropical Storm Nicole.⁸

III. DISCUSSION

4. Section 1.925(b)(3) of the Commission's rules states that the Commission may grant a waiver when either (i) "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest," or (ii) "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁹ Further, section 1.3 allows the Commission, on its own motion, to waive rules for good cause shown.¹⁰

5. Here, we find that Petitioner's showing, when considered with the conditions established herein, meets the second prong of the Commission's waiver standard. Petitioner asserts that, Hurricane Idalia, which will bring intense winds and rainfall, is likely to cause widespread power outages. If such outages occur, the Impacted Systems will lose commercial power and will be unable to operate normally.¹¹ Petitioner also asserts that backhaul at the affected sites will likely be unreliable while carriers attempt to stabilize their operations and that these issues will persist until power is fully restored.¹² Petitioner contends that these power outages may cause DPAs in the affected areas to be activated, impacting over 16,000 CBSDs, potentially disconnecting millions of customers—including

⁵ See *Promoting Investment in the 3550-3700 MHz Band*, GN Docket Nos. 15-319, 17-258, Order, 33 FCC Rcd 4987, 4990-91, paras. 6, 9 (2018).

⁶ 47 CFR § 96.67(c)(2)-(3). Additionally, to the extent necessary, we also waive applicable sections of 96.15(a)(2), (a)(3), (b)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d).

⁷ See Waiver Request at 1-2.

⁸ *Id.* at 2. See *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-999 (rel. Sept. 22, 2022); *Federated Wireless, CommScope, Inc., and Google LLC's Expedited Requests for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-1042 (rel. Sept. 30, 2022); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-1165 (rel. Nov. 9, 2022); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 23-453 (rel. May 30, 2023).

⁹ 47 CFR § 1.925(b)(3).

¹⁰ 47 CFR § 1.3.

¹¹ See Waiver Request at 1.

¹² *Id.*

residential and enterprise customers, schools, and oil and gas companies—from critical broadband, voice, and data services.¹³ According to the Petitioner, “[m]any of these customers will be relying on these services to stay apprised about ongoing dangers in the aftermath of the storm, while others will leverage connectivity to aid in the restoration of critical services, such as water and electricity.”¹⁴ Accordingly, we grant a waiver of section 96.67(c)(2) and (3) of the Commission’s rules, subject to the conditions set forth herein, to allow the Federated Wireless SAS to treat the subject DPAs as “inactive” for the duration of this waiver and thereby obviate its ESC from its obligation to detect the presence of a signal from a federal system in the 3.5 GHz Band and adjacent frequencies and to communicate information about the presence of such a signal to one or more approved SASs.

6. Specifically, we find the following conditions are required: (1) this waiver only applies to periods where the subject ESC sensors are unable to communicate with the Federated Wireless SAS due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either September 13, 2023, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Petitioner must provide confirmation to the Commission, the Department of Defense (“DoD”), and the Navy within three business days of power restoration to the subject ESC sensors and restoration of backhaul service; (4) extension requests must be justified through demonstration of the specific steps taken to reactivate the subject ESC sensors and the remaining steps necessary to reactivate, and such requests must be filed no later than three business days before expiration of this waiver; and (5) the ESC operator must immediately activate the subject DPAs upon notification from the Commission, the National Telecommunications and Information Administration, or the DoD.

7. In consideration of the emergency presented by Hurricane Idalia, we find that these are unique circumstances that make application of the rules inequitable, unduly burdensome, and contrary to the public interest. For these reasons, we find it is in the public interest to conditionally grant Petitioner’s requests for an emergency waiver of sections 96.67(c)(2) and (3), on a time-limited basis and subject to conditions described herein.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission’s rules, 47 CFR §§ 1.3, 1.925, that the request filed by Federated Wireless for emergency waiver of sections 96.67(c)(2) and (3) of the Commission’s rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission’s rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission’s Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 2.

10. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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

In the Matter of)	
)	
BENT COUNTY	)	Facility ID Nos. 4783, 4784, 4785, 4786
	)	NAL/Acct. No. 202241420005
Licensee of Stations K29JL-D, Las Animas,	)	FRN: 001620426
Colorado; K25LE-D, Las Animas, Colorado;	)	LMS File No. 0000179464
K23KN-D, Las Animas, Colorado; K27KX-D,)	
Las Animas, Colorado)	

FORFEITURE ORDER

Adopted: August 30, 2023

Released: August 30, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000) to Bent County (Licensee), licensee of K29JL-D, Las Animas, Colorado; K25LE-D, Las Animas, Colorado; K23KN-D, Las Animas, Colorado; K27KX-D, Las Animas Colorado (Stations). We find that the Licensee willfully violated section 73.3539(a) of the Commission's rules (Rules) by failing to timely file a license renewal application for the Stations (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 Stations licenses should have been filed by December 1, 2021, the first day of the fourth full calendar month prior to the Stations' licenses expiration date of April 1, 2022.³ The Application was not filed until January 10, 2022. The Licensee provided no explanation for its untimely filing of the application.

3. On May 20, 2022, we issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* proposing a forfeiture in the amount of six thousand dollars (\$6,000) to Licensee for its apparent violation of section 73.3539(a) of the Rules.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

¹ See 47 CFR § 73.3539; Application of Bent County for Renewal of License, LMS File No. 0000179464 (filed Jan. 10, 2022). K29JL-D, K25LE-D, K23KN-D, K27KX-D are each television translators. In this case, as is permitted, the Licensee filed for renewal of the licenses of the Stations in a single renewal application.

² 47 CFR § 73.3539(a).

³ *Id.* §§ 73.1020, 73.3539(a).

⁴ *Bent County*, Notice of Apparent Liability for Forfeiture, DA 22-561 (Vid. Div. May. 20, 2022) (*NAL*).

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

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 Application was due on December 1, 2021, but was not filed until January 10, 2022 – over one month late. The Licensee was afforded an opportunity to either pay or 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 \$6,000 as proposed in the *NAL*.¹² This amounts to \$1,500 per station.¹³

IV. ORDERING CLAUSES

6. **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 0.283 and 1.80 of the Commission's rules, 47 CFR §§ 0.283 and 1.80, that Bent County, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for its apparent willful violation of section 73.3539(a) of the Commission's rules, 47 CFR § 73.3539(a).

7. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's CORES (the Commission's online payment system),¹⁴ 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

⁵ *Id.* at para. 9.

⁶ The *NAL* was by certified mail, return receipt requested. According to the certified mail receipt the *NAL* was delivered and retrieved from the post office on May 24, 2022. A copy of the receipt is available for viewing under LMS File No. 0000179464.

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 See e.g., *Tutt Media Group, Inc.*, Notice of Apparent Liability for Forfeiture, DA 21-617 (Vid Div. May 27, 2021) (Assessing a forfeiture of \$4,500 for a late filed renewal application that covered three stations, paid Jun. 4, 2021) *Full Gospel Outreach, Inc.*, Notice of Apparent Liability for Forfeiture, DA 22-559 (Vid. Div. May 20, 2022) (Assessing a forfeiture of \$6,000 for a late filed renewal application that covered four stations, paid Jun. 10, 2022).

¹⁴ Payments made using the Commission's CORES system do not require the submission of an FCC Form 159.

payment selected:¹⁵

- 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).¹⁶ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/core/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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 20554.¹⁷ 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 Bent County, County Courthouse 725 Bent

¹⁵ 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.

¹⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁷ See 47 CFR § 1.1914.

Avenue, P.O. Box 350, Las Animas, CO 81054. A copy shall also be sent to its contact representative, Susan Hansen by electronic mail to stcl@comcast.net.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-787

Released: September 1, 2023

DESIGNATED ENTITY LICENSEES MUST FILE ANNUAL REPORTS BY OCTOBER 2, 2023

WT Docket No. 14-170

The Wireless Telecommunications Bureau (WTB) reminds designated entity (DE) licensees of the upcoming deadline to file annual DE reports. Specifically, such licensees must submit an annual report reflecting the status of each license held as of August 31, 2023, that is subject to the Federal Communications Commission's (Commission) unjust enrichment requirements.¹ This year, the reports are due on **October 2, 2023**.²

We remind DE licensees that they must file all reports on the same date every calendar year during the applicable unjust enrichment period.³ The annual DE reporting requirement, along with all DE reporting requirements, applies to all DEs, including rural service providers.⁴ The *Competitive Bidding Update Report and Order* provides additional guidance on the particulars of these required filings and clarifies the parties responsible for filings in the case of transfers and assignments.⁵ The Commission expects DE licensees to comply fully with the annual reporting requirement as the information in these reports is critical for the administration of the DE program.⁶ Failure to comply with the annual reporting requirement may result in enforcement action by the Commission.

DE Reports must be filed electronically using Form 611-T via the Commission's website at <https://wireless2.fcc.gov/UlsEntry/licManager/login.jsp>. Please log in with your FRN and password, then click on the "My Licenses" link on the left side of the screen, then click on the "File Designated Entity Annual Report" link to begin your 611-T filing. If you need assistance, please contact FCC Licensing Support via the web or phone at the contact information available on the following page: <https://www.fcc.gov/wtbhelp>.

¹ *Updating Part 1 Competitive Bidding Rules*, WT Docket No. 14-170, Report and Order, 30 FCC Rcd 7493, 7562-63, paras. 162-167 (2015) (*Competitive Bidding Update Report and Order*); see 47 CFR § 1.2110(n).

² Section 1.2110(n) of the Commission's rules requires each designated entity licensee to file an annual report with the Commission no later than September 30th of each year for each license it holds that was acquired using designated entity benefits and that, as of August 31st of the year in which the report is due, remains subject to designated entity unjust enrichment requirements. September 30, 2023 is a Saturday. Therefore, pursuant to Section 1.4 of the Commission's rules, filings will be due by close of the next business day—Monday, October 2, 2023. See 47 CFR §§ 1.4, 1.2110(n).

³ *Competitive Bidding Update Report and Order*, 30 FCC Rcd at 7562-63, para. 164.

⁴ *Id.* at 7563, para. 166.

⁵ See *id.* at 7563, para. 167.

⁶ See *id.* at 7562, para. 162.

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

For further information regarding this Public Notice, please contact Halie Peacher of the Mobility Division, Wireless Telecommunications Bureau, at halie.peacher@fcc.gov or (202) 418-0514.

-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 23-788

Released: August 30, 2023

WTB AND PSHSB EXTEND FILING AND REGULATORY DEADLINES IN AREAS AFFECTED BY HURRICANE IDALIA

On August 27, 2023, Hurricane Idalia began off the coast of Florida as a tropical storm and has caused serious damage.¹ In recognition of these effects and those to come, President Biden issued an emergency declaration for 33 counties in the state of Florida.² Pursuant to our authority to waive rules for good cause³ and to alleviate any additional burden that may be caused by our filing requirements and regulatory deadlines, we hereby extend certain deadlines occurring from August 28, 2023, to September 28, 2023, for affected licensees and applicants in the affected areas.

For the purposes of the relief we grant today, we define “affected areas” as the Florida counties designated by the Federal Communications Commission’s Disaster Information Reporting System (DIRS).⁴ In this context, “affected” licensees and applicants include those licensees and applicants that operate facilities, or, in a significant manner essential to the business or public safety operation, rely on personnel, records, or financial institutions located in the affected areas to provide services or to conduct substantial business activities with the Commission.

(1) For affected licensees and applicants, we extend until September 29, 2023, any deadlines currently set within the period from August 28, 2023, to September 28, 2023, inclusive, with respect to Wireless Radio Service⁵ applications, notifications, and reports pursuant to Parts 1 (Subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding Subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission’s rules, including, but not limited to, filings regarding certain minor⁶ license modifications, license renewals, and notifications of construction. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines

¹ Press Release, FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Florida (Aug. 28, 2023), <https://www.fema.gov/press-release/20230828/president-joseph-r-biden-jr-approves-emergency-declaration-florida>.

² Press Release, The White House, President Joseph R. Biden, Jr. Approves Florida Emergency Declaration (Aug. 28, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/28/president-joseph-r-biden-jr-approves-florida-emergency-declaration-6/>.

³ 47 CFR § 1.3. In light of the significant damage caused by this hurricane and the associated impact on affected licensees and applicants, we find that it would be unduly burdensome to require affected licensees and applicants to continue to meet the filing requirements and regulatory deadlines extended herein, and that good cause exists to grant this extension.

⁴ *FCC Activates Disaster Reporting for Hurricane Idalia*, DA 23-776, Public Notice (PSHSB Aug. 29, 2023).

⁵ *Wireless Radio Services*. All radio services authorized in Parts 13, 20, 22, 24, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of the Commission’s rules, whether commercial, private, or public safety in nature.

⁶ See 47 CFR § 1.947(b). We waive the requirement to notify the Commission within 30 days of making a minor modification.

could not be met within the time otherwise provided in the Commission's rules because of Hurricane Idalia.⁷ extension requests, or to pay individual waiver fees.⁸

(2) For affected licensees and applicants, we extend until September 29, 2023, all construction deadlines and other regulatory deadlines currently set within the period from August 28, 2023, to September 28, 2023, inclusive, applicable to Wireless Radio Services pursuant to Parts 1 (Subpart F only), 13, 20, 22, 24, 27, 30, 74 (excluding Subparts G, and L), 80, 87, 90, 95, 96, 97, or 101 of the Commission's rules. Licensees and applicants making delayed filings in accordance with this extension must include with those filings a certification made under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of the hurricane.⁹ Pursuant to this Public Notice, licensees and applicants will not need to file individual waiver or extension requests, or to pay individual waiver fees.

Special Temporary Authority and Waiver Requests. We also waive Section 1.931(a) of the Commission's rules through September 28, 2023, to allow the filing of STA requests for Wireless Radio Services in manners other than electronically on FCC Form 601, *e.g.*, by requesting STAs by telephone call to Commission staff.¹⁰ Further, because the President has issued an emergency declaration for the affected region, all STA filings by affected licensees and applicants related to Hurricane Idalia will be considered "emergency filings" pursuant to Section 1.915(b) of the Commission's rules¹¹ and will be processed as expeditiously as possible. Affected licensees and applicants must include a certification that the STA or waiver request is in response to Hurricane Idalia. To file STA and waiver requests via email, or to request an STA orally, licensees and applicants may contact the following personnel:

- For Wireless Telecommunications Bureau Licensees and Applicants:
 - Parts 22, 24, 27 (excluding 600 MHz Service, Advanced Wireless Service, Broadband Radio Service and Educational Broadband Service), Keith Harper, 202-418-2759, Keith.Harper@fcc.gov.
 - Parts 80, 87, 90 (excluding Public Safety), 95, and 97, Joshua Smith, 717-338-2502 or 202-436-6222, Joshua.Smith@fcc.gov.
 - Parts 27 (600 MHz Service, Advanced Wireless Service, Broadband Radio Service and Educational Broadband Service); Part 30; Part 74 (excluding Subparts G and L); and Part 101 (excluding Public Safety): Paul Malmud, 202-418-0006, Paul.Malmud@fcc.gov.

⁷ To allow the Wireless Telecommunications Bureau (WTB) and Public Safety and Homeland Security Bureau (PSHSB) to process filings submitted through the Universal Licensing System (ULS) as expeditiously as possible, an "Attachment Type" has been created in ULS called "Hurricane/Wildfire Relief." This Attachment Type must be used to upload and attach to a filing a certification that states, "under penalty of perjury that the deadlines could not be met within the time otherwise provided in the Commission's rules because of the hurricane." To provide the required certification, licensees and applicants should upload a file with the certification, select Attachment Type "Hurricane/Wildfire Relief," and enter "Hurricane Relief Certification" in the File Description field on the Attachment Screen. Following this process will allow you to submit a filing without paying waiver fees. Normal application fees still apply.

⁸ The FCC does not assess filing fees for Public Safety applicants and licensees.

⁹ See *supra* note 7 for instructions to file this certification.

¹⁰ 47 CFR § 1.931(a).

¹¹ *Id.* § 1.915(b).

- For more information and instructions for filing emergency STA and waiver requests with the Wireless Telecommunications Bureau, please consult the WTB Special Temporary Authority and Waiver Request Filing Guide, available at <https://www.fcc.gov/research-reports/guides/wtb-special-temporary-authority-and-waiver-request-filing-guide>.
- For Public Safety and Homeland Security Bureau Licensees and Applicants:
 - Parts 90 & 101 (Public Safety): Tracy Simmons, (717) 338-2657, Tracy.Simmons@fcc.gov. In addition, during evening hours, weekends, and holidays, licensees needing FCC emergency assistance or STAs can call the FCC's Operation Center, which is open 24 hours a day, 7 days a week, at (202) 418-1122 or by email at FCCOPS@fcc.gov.

Operation During Emergencies. We remind licensees that Sections 22.307, 90.407, and 101.205 of the Commission's rules address operation during periods of emergency for licensees authorized under these rule parts.¹² These rules allow licensees to provide emergency communications during a period of emergency in a manner or configuration not specified in the station authorization or in the rules governing such stations.

We also remind applicants for Antenna Structure Registration (ASR) that facilities meeting the criteria for the replacement tower exception or temporary tower exception under the Commission's National Environmental Policy Act rules do not have to complete the environmental notification process prior to completing their ASR applications.¹³ For facilities not subject to an exception, the Commission may waive or postpone the environmental notification process at the request of the applicant and upon an appropriate showing of an emergency situation.¹⁴ Requests to waive or postpone the environmental notification process may be submitted with ASR applications by completing the waiver question in the ASR system to indicate that the applicant is requesting a waiver of the Commission's rules for environmental notice, and attaching a request for waiver that includes a showing of the emergency basis for the request, e.g., that the proposed tower will be used to restore service in an area affected by Hurricane Idalia.

Priority Review by WTB and PSHSB. Finally, we remind affected licensees and applicants that they can also file waiver requests for relief not covered by the Public Notice. To facilitate the rapid restoration of communications infrastructure and services, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau will give priority to the review of waiver filings by affected licensees and applicants related to Hurricane Idalia.

By the Chief, Wireless Telecommunications Bureau and the Chief, Public Safety and Homeland Security Bureau.

-FCC-

¹² *Id.* §§ 22.307, 90.407, 101.205.

¹³ *Id.* § 17.4(c)(1)(iv), (c)(1)(vii).

¹⁴ See *National Environmental Policy Act Compliance for Proposed Tower Registrations, Effects of Communications Towers on Migratory Birds*, WT Dockets Nos. 08-61, 03-187, Order on Remand, 26 FCC Rcd 16700, 16717, para. 43 n.117 (2011).

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

In the Matter of)	
)	
Google LLC Expedited Request for Emergency	)	GN Docket No. 15-319
Waiver of Citizens Broadband Radio Service)	
Incumbent Protection Rules)	

ORDER

Adopted: August 30, 2023

Released: August 30, 2023

By the Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Wireless Telecommunications Bureau (“Bureau”), Mobility Division, conditionally grants Google LLC’s (Google or Petitioner)¹ request for a precautionary, limited, and conditional emergency waiver of sections 96.67(c)(2) and (3) of the Commission’s rules governing the Citizens Broadband Radio Service.² Petitioner requests the Commission grant emergency waiver relief of sections 96.67(c)(2) and (3) to relieve Google of the requirement for Environmental Sensing Capabilities (“ESC”) to detect and protect federal incumbent users in the 3550-3700 MHz band (“3.5 GHz band”) from harmful interference for Dynamic Protection Areas (“DPAs”) that may be impacted by Hurricane Idalia, including DPAs Mayport, East 2, East 11, East 12, East 13, East 14, East 15, East 18, East 19, East 20, and East 21 (the DPAs, together with the affected ESCs in such DPAs, the “Impacted Systems”). Idalia made landfall in the Gulf Coast of Florida at Category 3 strength on August 30, 2023. For the reasons discussed below, we grant Petitioner’s Waiver Request subject to the conditions described herein.

II. BACKGROUND

2. In 2015, the Commission adopted rules for shared commercial use of the 3.5 GHz band.³ The Commission established the Citizens Broadband Radio Service and created a three-tiered access and authorization framework to accommodate shared federal and non-federal use of the band.⁴ Access and operations are managed by a Commission-approved, automated frequency coordinator, known as a Spectrum Access System (“SAS”). SASs coordinate operations between federal and non-federal users by relying on ESCs in DPAs to detect and protect federal incumbent users in the 3.5 GHz band from harmful interference. When there are federal incumbent users operating in the band, ESCs detect their signals and activate the DPA. When the DPA is activated, federal incumbent users are given priority over the other two tiers of users: Priority Access Licensees (“PALs”) and General Authorized Access (“GAA”) users.

¹ See Google LLC Expedited Request for Emergency Waiver of CBRS Incumbent Protection Rules Due to Hurricane Idalia, GN Docket No. 15-319 (filed Aug. 29, 2023) (Waiver Request), <https://www.fcc.gov/ecfs/document/1082961337297/1>.

² 47 CFR § 96.67(c)(2)-(3).

³ See *Amendment of the Commission’s Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 3975, paras. 44-45 (2015) (*2015 Report and Order*).

⁴ *Id.*

In the case that an ESC cannot accurately determine whether federal incumbents are active in the band, they must automatically activate the DPAs.⁵

3. Petitioner seeks a temporary conditional waiver of sections 96.67(c)(2) and (3) of the Commission's rules to relieve itself of the requirement to detect the presence of a signal from a federal system in the 3.5 GHz Band and adjacent frequencies and to communicate information about the presence of such a signal to one or more approved SASs.⁶ This waiver would allow Google to treat the subject DPAs as "inactive" for the duration of the waiver authority and thus avoid the need for the ESCs to automatically activate the DPAs in areas affected by Hurricane Idalia. Petitioner seeks waiver of these requirements in the interest of providing uninterrupted service to hundreds of Citizens Broadband Radio Service Devices (CBSDs) that provide critical broadband, voice, and data services to thousands or tens of thousands of customers in areas that may be impacted by Hurricane Idalia.⁷

III. DISCUSSION

4. Section 1.925(b)(3) of the Commission's rules states that the Commission may grant a waiver when either (i) "[t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest," or (ii) "[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁸ Further, section 1.3 allows the Commission, on its own motion, to waive rules for good cause shown.⁹

5. Here, we find that Petitioner's showing, when considered with the conditions established herein, meets the second prong of the Commission's waiver standard. Petitioner asserts that, Hurricane Idalia, which will bring intense winds and rainfall, is likely to cause extended power outages, "with the loss of commercial power lasting longer than the approximately 24-48 hours of available battery backup time for most sensors."¹⁰ If such outages occur, the Impacted Systems will lose commercial power and will be unable to operate normally.¹¹ Petitioner also asserts that the availability of backhaul may also be impacted.¹² Petitioner contends that these power outages may cause DPAs in the affected areas to be activated, impacting hundreds of CBSDs, potentially disconnecting tens of thousands of customers—including residential and enterprise customers—from critical broadband, voice, and data services.¹³ According to the Petitioner, "[m]any customers, including those who have electric service or electricity through the use of generators, rely on these services to receive updates about ongoing dangers and essential services."¹⁴ Accordingly, we grant a waiver of section 96.67(c)(2) and (3) of the Commission's rules, subject to the conditions set forth herein, and consistent with the ESC waiver orders that the Bureau issued in response to Hurricanes Ian and Fiona, Typhoon Mawar, and Tropical Storm

⁵ See *Promoting Investment in the 3550-3700 MHz Band*, GN Docket Nos. 15-319, 17-258, Order, 33 FCC Red 4987, 4990-91, paras. 6, 9 (2018).

⁶ 47 CFR § 96.67(c)(2)-(3). Additionally, to the extent necessary, we also waive applicable sections of 96.15(a)(2), (a)(3), (b)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d).

⁷ See Waiver Request at 2.

⁸ 47 CFR § 1.925(b)(3).

⁹ 47 CFR § 1.3.

¹⁰ See Waiver Request at 1.

¹¹ See *id.*

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ *Id.*

Nicole,¹⁵ to allow the Google SAS to treat the subject DPAs as “inactive” for the duration of this waiver and thereby obviate its ESC from its obligation to detect the presence of a signal from a federal system in the 3.5 GHz Band and adjacent frequencies and to communicate information about the presence of such a signal to one or more approved SASs.

6. Specifically, we find the following conditions are required: (1) this waiver only applies to periods where the subject ESC sensors are unable to communicate with the Google SAS due to a power outage or backhaul outage; (2) this waiver is limited to the earlier of either September 13, 2023, or when commercial power and backhaul service is restored to the subject ESC sensors; (3) Petitioner must provide confirmation to the Commission, the Department of Defense (“DoD”), and the Navy within three business days of power restoration to the subject ESC sensors and restoration of backhaul service; (4) extension requests must be justified through demonstration of the specific steps taken to reactivate the subject ESC sensors and the remaining steps necessary to reactivate, and such requests must be filed no later than three business days before expiration of this waiver; and (5) the ESC operator must immediately activate the subject DPAs upon notification from the Commission, the National Telecommunications and Information Administration, or the DoD.

7. In consideration of the emergency presented by Hurricane Idalia, we find that these are unique circumstances that make application of the rules inequitable, unduly burdensome, and contrary to the public interest. For these reasons, we find it is in the public interest to conditionally grant Petitioner’s requests for an emergency waiver of sections 96.67(c)(2) and (3), on a time-limited basis and subject to conditions described herein.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission’s rules, 47 CFR §§ 1.3, 1.925, that the request filed by Google for emergency waiver of sections 96.67(c)(2) and (3) of the Commission’s rules, 47 CFR §§ 96.67(c)(2) and (3) is GRANTED to the extent described, and with the conditions specified, herein.

9. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 1.3 and 1.925 of the Commission’s rules, 47 CFR §§ 1.3, 1.925, that the Wireless Telecommunications Bureau GRANTS ON ITS OWN MOTION a waiver of sections 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), and 96.57(d) of the Commission’s Rules, 47 CFR §§ 96.15(a)(2), (a)(3), 96.45(b), 96.53(a), (e)-(g), 96.57(d), to the extent described, and with the conditions specified, herein.

¹⁵ See *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-999 (rel. Sept. 22, 2022); *Federated Wireless, CommScope, Inc., and Google LLC’s Expedited Requests for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-1042 (rel. Sept. 30, 2022); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 22-1165 (rel. Nov. 9, 2022); *Federated Wireless Expedited Request for Emergency Waiver of Citizens Broadband Radio Service Incumbent Protection Rules*, GN Docket No. 15-319, Order, DA 23-453 (rel. May 30, 2023).

10. This action is taken under delegated authority pursuant to sections 0.131, and 0.331 of the Commission's rules, 47 CFR §§ 0.131, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau



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 23-790
Released: August 30, 2023

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE EXPANSION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR COMMUNICATIONS IMPACTED BY HURRICANE IDALIA IN SOUTH CAROLINA

The FCC is expanding its disaster data collection to counties in South Carolina impacted by Hurricane Idalia.

On August 29, 2023, the Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission), in coordination with the State of Florida, the Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Emergency Management Agency (FEMA), announced the activation of the Disaster Information Reporting System (DIRS) in response to Hurricane Idalia.¹ The State of Florida, CISA, and FEMA have asked the Commission to expand the data collection to include counties in South Carolina with phased dates for first reports aligned with the projected path of Hurricane Idalia.

DIRS is a voluntary, web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, and satellite providers can use to report communications infrastructure status and situational awareness information during times of crisis.

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

In DIRS, this activation has the following name: HURRICANE IDALIA. Communications providers are reminded that for providers that participate in DIRS, the separate Network Outage Reporting System (NORS) obligations are suspended for the duration of the DIRS activation with respect to outages in the municipalities where DIRS has been activated. **Reports are requested at 9:00 a.m. (EDT) on Thursday August 31, and every day after that by 9:00 a.m. (EDT) until DIRS is deactivated.**

Communications providers that serve an area listed below and that have already provided contact information in DIRS will be sent an e-mail requesting that they provide the above-referenced status

¹ *The Federal Communications Commission Announces the Activation of the Disaster Information Reporting System for Communications Impacted by Hurricane Idalia in Florida*, Public Notice, DA-23-776 (rel. August 29, 2023)

information through DIRS. For any communications providers that have not already logged onto DIRS to input their contact information, the Commission encourages them to do so as soon as possible.

ADDITIONAL COUNTIES OF INTEREST FOR THIS ACTIVATION INCLUDE:

South Carolina: Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Dorchester, Georgetown, Hampton, Horry, Jasper, Marion, and Orangeburg.

Please continue to provide information for the counties that are already in the disaster area.

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

For further information, please contact:

Michael Caiafa (202) 418-1311, (540) 834-7401 (cell), michael.caiafa@fcc.gov

David Ahn (202) 418-0853, david.ahn@fcc.gov

John Healy (215) 847-8094 (cell), (202) 418-2448, john.healy@fcc.gov

FCC 24/7 Operations Center – 202-418-1122, fccoperationcenter@fcc.gov

For more information on the FCC's response to Hurricane Idalia in Florida, please go to <https://www.fcc.gov/Idalia>

- FCC -



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-791

Released: August 30, 2023

E-RATE FUNDING YEAR 2024 TRIBAL LIBRARY PILOT PROGRAM LAUNCH WEBINAR

CC Docket Nos. 96-45, 97-21, 02-6

Washington, D.C. – On Thursday, September 7, starting at 2:00 p.m. EDT, the Federal Communications Commission (FCC) will host a virtual webinar to launch and provide additional information about the E-Rate program Funding Year 2024 [Tribal Library Pilot Program](#). This webinar will provide an overview of the Tribal Library Pilot Program and explain how you can join the Pilot. Participants will also have an opportunity to ask questions they may have during, or in advance, of the event.

Last year, the FCC launched the Tribal Library Pilot Program with the Universal Service Administrative Company (USAC) to provide one-on-one technical assistance for Tribal libraries through all phases of the E-Rate application and reimbursement processes for Funding Year 2023. Based upon the positive responses and feedback received from Pilot Program participants, the FCC has extended the Tribal Library Pilot Program to continue to provide support for Tribal libraries who want to participate in the E-Rate program and receive funding for the upcoming year. The Tribal Library Pilot Program will provide participants with assistance in all aspects of preparing, applying, and receiving E-Rate support for the upcoming year, Funding Year 2024. The Tribal Library Pilot Program participant form can be accessed at <https://tinyurl.com/TribalLibraryPilot>, and Tribal libraries are encouraged to submit their responses as soon as possible in order to participate in this year's Pilot.

Official registration is not required for this event, but recommended. Please send a message to tribal.events@fcc.gov stating "Sept. 7th E-Rate Pilot Webinar" in the subject line. Prior to this event, questions can be submitted by sending an email to tribal.events@fcc.gov. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for FCC staff to contact the requester if more information is needed to fill the request. Last minute requests will be accepted but it may not be possible to accommodate the request.

For additional information about the webinar, please contact Lloyd Collier at lloyd.collier@fcc.gov. Visit the event webpage: <https://www.fcc.gov/news-events/events/2023/09/e-rate-funding-year-2024-tribal-library-pilot-program-launch-webinar>

- FCC -



PUBLIC NOTICE

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

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
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DA 23-792
August 31, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 34 (OKLAHOMA) REGIONAL PLANNING COMMITTEES
TO HOLD 700 MHZ AND 800 MHZ MEETINGS

PR Docket No. 93-78 and WT Docket 02-378

The Region 34 (Oklahoma) Regional Planning Committees (RPCs) will hold two consecutive planning meetings on Monday, October 2, 2023. Beginning at 10:00 a.m., the 700MHz RPC will convene at the Marriott Tulsa Hotel Southern Hills, Silver Oak A conference room, 1902 East 71st Street, Tulsa, OK 74136. Immediately following the 700 MHz RPC meeting, the 800 MHz RPC will convene at the same location.

The agenda for both the 700 MHz and 800 MHz meetings include:

- Call to Order – Scott Walsh
- Old Business
- New Business
- Adjourn

Both Region 34 RPC meetings are open to the public. All eligible public safety providers in Region 34 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in the planning for the use of public safety spectrum in the 700 MHz, 800 MHz, and 4.9 GHz bands within Region 34 should plan to attend. For further information, please contact:

Scott Walsh
Chair, 700 and 800 MHz RPC/Communications Coordinator
City of Midwest City
100 N. Midwest Blvd
Midwest City, OK 73110
Office: 405-739-1372

- 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>)
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DA No. 23-793

Report No. TEL-02299

Thursday August 31, 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-ASG-20230719-00075	E	Hunter Communications & Technologies LLC
Assignment		
Grant of Authority		Date of Action: 08/25/2023

Current Licensee: Origin Networks, LLC

FROM: Origin Networks, LLC

TO: Hunter Communications & Technologies LLC

On July 19, 2023, Hunter Communications and Technologies LLC (Hunter Communications) filed an application for consent to assign assets and customers from Origin Networks, LLC d/b/a Infostructure (Infostructure) to Hunter Communications. Infostructure provides business and enterprise services primarily to customers in Oregon and to a limited number of customers in California and Washington. Pursuant to a June 5, 2023 assets purchase agreement, Hunter Communications will purchase various rights, property, and assets of Infostructure, including all existing business and enterprise customer contracts and customer relationship, located in California, Oregon, and Washington. Hunter Communications will provide international service to its newly acquired customers pursuant to its existing international section 214 authorization (ITC-214-20150615-00314). Infostructure will surrender its separate international section 214 authorization (ITC-214-20140619-00288) upon consummation of the transaction.

Hunter Communications is wholly owned by Hunter Communications Intermediate Holdings LLC, which in turn is wholly owned by Hunter Communications Holdings, LLC (Hunter Holdings), all Delaware limited liability companies. Grain Communications Opportunity Fund II, L.P. (GCO Fund II), a Delaware limited partnership, holds a 70.39% controlling interest in Hunter Holdings. RWR Hunter Holdco Inc. (RWR Hunter Holdco), a Delaware company, holds a 24.49% interest in Hunter Holdings. Richard W. Ryan, a U.S. citizen, is the sole owner of RWR Hunter Holdco.

GCO Fund II's limited partnership interests are held by passive financial investors, none of whom hold 10% or greater equity interests in GCO Fund II. Grain GP IV, LLC (Grain GP IV), a Delaware limited liability company, is the sole general partner of GCO Fund II. Grain GP IV is controlled by its sole managing member Grain Capital II, LLC (Grain Capital II), a Delaware limited liability company that holds 64.5% of the membership interests in Grain GP IV and less than 10% equity interest in GCO Fund II. Grain Capital, LLC (Grain Capital), a Delaware limited liability company, is sole member of Grain Capital II. David J. Grain, a U.S. citizen, is the sole owner of Grain Capital. Grain Management, LLC, a Delaware limited liability company that is ultimately controlled by David J. Grain, is the manager and an affiliate of GCO Fund II.

According to the Applicants, no other individual or entity holds a 10% or greater direct or indirect interest in Hunter Holdings or Hunter Communications.

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

ITC-ASG-20230802-00098	E	HKT (International) Limited
Assignment		
Grant of Authority		Date of Action: 08/30/2023

Current Licensee: BtN Access Limited

FROM: BtN Access Limited

TO: HKT (International) Limited

On August 2, 2023, HKT (International) Limited (HKT) filed a notification of the pro forma assignment of the international section 214 authorizations held by BtN Access Limited (BtN): ITC-214-19980303-00158, ITC-214-19980930-00689, ITC-214-19981218-00880, ITC-214-19990601-00305, ITC-214-19990601-00306, ITC-214-19990601-00307, ITC-214-19990601-00308, ITC-214-19991122-00725, ITC-214-19991122-00726, ITC-214-19991122-00727, ITC-214-20021024-00567, ITC-MOD-20020829-00511. BtN is an indirect wholly owned subsidiary of HKT, both British Virgin Islands entities. In a corporate reorganization, BtN assigned all of its international section 214 authorizations to HKT, effective August 2, 2023.

PCCW Global Inc. (PGI) and PCCW Global Limited (PGL), both direct wholly owned subsidiaries of BtN, provided international service under the international section 214 authority held by BtN pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h). PGI, a Delaware corporation, and PGL, a Hong Kong entity, are both indirect wholly owned subsidiaries of HKT and now provide international service under the international section 214 authority held by HKT pursuant to section 63.21(h). 47 CFR § 63.21(h).

ITC-ASG-20230818-00103 E Northeast Missouri Rural Telephone Company
Assignment
Grant of Authority Date of Action: 08/29/2023

Current Licensee: Northeast Missouri Long Distance, L.L.C.

FROM: Northeast Missouri Long Distance, L.L.C.

TO: Northeast Missouri Rural Telephone Company

On August 18, 2023, Northeast Missouri Rural Telephone Company (NEM RTC) filed a notification of the pro forma assignment of international section 214 authorization, ITC-214-19991001-00612, from Northeast Missouri Long Distance, L.L.C. (NEM LD) to NEM RTC, effective January 20, 2012. NEM LD was a wholly owned subsidiary of NEM RTC. On January 20, 2012, in a corporate reorganization, NEM LD was merged into NEM RTC with NEM RTC being the surviving entity. NEM RTC, a member-owned Missouri cooperative corporation, provides international service to its customers pursuant to ITC-214-19991001-00612.

Grant of this application is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

ITC-T/C-20230725-00077 E Intrado Communications, LLC
Transfer of Control
Grant of Authority Date of Action: 08/30/2023

Current Licensee: Intrado Communications, LLC

FROM: Intrado Communications Holdings, LLC

TO: Intrado Communications Holdings, LLC

On July 25, 2023, Intrado Communications LLC (Intrado), a Delaware limited liability company that holds an international section 214 (ITC-214-20050203-00058), filed a notification of the pro forma transfer of control of Intrado, effective June 29, 2023. Intrado is a wholly owned subsidiary of Intrado Communications Holdings LLC (ICH), a Delaware limited liability company.

Prior to the transaction, ICH was a direct wholly owned subsidiary of West Technology Group, LLC (WTG) and an indirect wholly owned subsidiary of West-Olympus, LLC (West-Olympus), both Delaware limited liability companies. Mount Olympus Parent, L.P. (Parent), a Delaware limited partnership, held 100% of the equity interests in West-Olympus, and APP VIII Olympus VoteCo, LLC (VoteCo), a Delaware limited liability company, held 100% of the voting interests in West-Olympus. Matthew Nord and Robert Kalsow-Ramos, both U.S. citizens, are both officers and managers of VoteCo, and each holds 45.05% equity and voting interests in VoteCo.

In a corporate reorganization, WTG, West-Olympus and the intermediate wholly owned companies between them, were removed from the ownership chain. The Parent now holds a direct 100% equity interest in ICH, and VoteCo holds a direct 100% voting interest in ICH.

ITC-T/C-20230815-00101 E Logical Telecom, LP d/b/a LN Prepaid
Transfer of Control
Grant of Authority Date of Action: 08/30/2023

Current Licensee: Logical Telecom, LP d/b/a LN Prepaid

FROM: Ricardo A Cardenas

TO: Raul A Cardenas

On August 15, 2023, Logical Telecom LP dba LN Prepaid (Logical Telecom), a Texas limited partnership that holds an international section 214 authorization (ITC-214-20050830-00356), filed a notification of the pro forma transfer of control of Logical Telecom from Ricardo A. Cardenas to Raul A. Cardenas, effective January 1, 2011. Prior to the transaction, Ricardo A. Cardenas and Raul A. Cardenas, each held a 49.5% interest in Logical Telecom. The remaining 1% interest was held by RAC Logical Management, LLC (RAC), a Texas limited liability company. Ricardo A. Cardenas and Raul A. Cardenas each held a 50% interest in RAC.

In 2011, a 5% interest in both Logical Telecom and RAC was transferred from Ricardo A. Cardenas, a U.S. citizen, to Raul A. Cardenas, a Mexican citizen. As a result, Raul A. Cardenas now holds a 54.5% direct interest in Logical Telecom and a 55% interest in RAC. Raul A. Cardenas now holds both de jure and de facto control of Logical Telecom.

Grant of this application is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

INFORMATIVE

ITC-214-20030808-00393

Consolidated Communications Holdings, Inc.

By letter filed August 21, 2023, Consolidated Communications Holdings Inc. notified the Commission that the following wholly-owned subsidiaries, Consolidated Communications of Northern New England Company, LLC and Consolidated Communications of Maine Company, may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

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: www.fcc.gov
TTY: 888-835-5322

DA 23-794

Released: August 31, 2023

BAS AND CARS LICENSEES MUST CERTIFY THE ACCURACY OF THE INFORMATION ON THEIR 12.7-13.25 GHz BAND LICENSES

Deadline to File Certifications or Modification Applications is November 29, 2023

GN Docket No. 22-352

On May 19, 2023, the Commission released a *Notice of Proposed Rulemaking and Order* in the above-referenced docket proposing to repurpose some or all of the 12.7-13.25 GHz band (12.7 GHz band) spectrum for mobile broadband or other expanded use.¹ To improve the data that the public and the Commission have to make informed comments and decisions about the proposals discussed in the *NPRM*, the Commission's *Order* directed non-exempt fixed and mobile Broadcast Auxiliary Services (BAS) and Cable Television Relay Services (CARS) licensees in the 12.7 GHz band to certify the accuracy of the information reflected on their licenses, including whether the facilities are operating as authorized.² In the *NPRM*, the Commission proposes to define certain incumbent operations entitled to protection or relocation during a transition period based on the Commission's licensing records.³

For non-exempt BAS and CARS licenses, the Commission proposes to limit eligibility for incumbent status to licenses for which the licensee has filed the required certification.

By this public notice, the Wireless Telecommunications Bureau (WTB), in coordination with the Media Bureau (MB), (1) provides detailed instructions for 12.7 GHz band BAS and CARS licensees to file certifications regarding existing information in the Universal Licensing System (ULS) and the Cable Operations & Licensing System (COALS), respectively; and, (2) establishes a window for the filing of these certifications.⁴

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, at *25-54, paras. 58-147 (May 19, 2023) (*NPRM and Order*). The *NPRM* and *Order* were subsequently published separately in the Federal Register. See *NPRM*, 88 FR 43938 (July 10, 2023) and *Order*, 88 FR 43460 (July 10, 2023).

² *NPRM and Order* at *53, para. 145. See generally *id.*

³ See *NPRM and Order* at *34, para. 83; see also *id.* at *54, para. 147.

⁴ See *NPRM and Order* at *53, para. 145. As noted in the *Order* portion of the item, the certification of accuracy is not an "information collection" for purposes of the Paperwork Reduction Act of 1995 (PRA) and not subject to approval from the Office of Management and Budget. See *id.* at n.430 (citing 5 CFR § 1320.3(h)(1)).

1. Exemption for New or Modified Licenses Applied-for On or After Jan. 1, 2021

A licensee that filed an application, on or after January 1, 2021, for a new or modified BAS or CARS license to operate in the 12.7 GHz band is exempt from this certification requirement as to the specific license (Call Sign) involved in that application filed on or after January 1, 2021.⁵ Such a licensee is nevertheless required to make corrections to its license if necessary to keep the license accurate and complete. We clarify that a licensee who files a modification application on or before November 29, 2023, as described in section 4 below, to correct or complete information in the Commission's licensing databases, does not need to file a certification for that particular license. A licensee is required to file a certification for any other 12.7 GHz band BAS or CARS licenses that it holds that are not exempt from the certification requirement.

2. Window for Filing of Certifications

Non-exempt 12.7 GHz band BAS and CARS licensees may file their required certifications beginning on or after the release date of this public notice. The deadline for filing required certifications is no later than **November 29, 2023**. If a licensee is unable to make the certification for a license because, e.g., required technical data are inaccurate, missing or incomplete, the license has terminated automatically, or the facilities are not operating as authorized, the licensee must cancel the license or file a modification application to correct the data reflected in the license no later than **November 29, 2023** (see section 4, below). If such a modification application is ultimately granted, the modified license will be considered timely certified. In general, certifications must be made as follows:

- BAS licensees must file their certifications in ULS.
- CARS licensees must file their certifications in COALS.
- Do not file certifications in the Electronic Comments Filing System (ECFS).

3. Certifications for BAS Licenses in ULS

For each non-exempt BAS license in the 12.7 GHz band, if the information reflected on the license in ULS is accurate and complete under the rules and application forms applicable to the BAS license, and the facilities are operating as authorized,⁶ the licensee must certify (1) the present accuracy of all information reflected in the license, and (2) that the facilities are operating as authorized. Each certification must include the relevant Call Sign, any relevant file number(s), the name of the licensee, and the signature, printed name, and title, if applicable, of the individual making the certification. See Attachment 1 to this Public Notice for an example.

How to file. BAS licensees must file their certifications in ULS using the online portal for non-docketed Pleadings, <https://wireless2.fcc.gov/UlsEntry/pleadings/pleadingsType.jsp>.

- On the first screen, select "Licensee Certification of Accuracy of License Data" for the Pleading Type, complete the Filer Information using the name of the Licensee as the Company, and the Contact Information.

⁵ See *id.* We clarify that the exemption for modification applications includes applications for both renewal and modification (but does not include renewal-only applications).

⁶ See 47 CFR §§ 74.600-74.690. See also FCC Form 601 Schedule I (Technical Data Schedule for the Fixed Microwave and Microwave Broadcast Auxiliary Services (Parts 101 and 74)).

- On the next screen, select “ULS Call Sign,” enter the Call Sign in the text box, and Submit. (If a licensee is uploading one certification file for multiple Call Signs, there is an option to add additional Call Signs.)
- The Call Sign will appear below the message: “Your Pleading will be associated with the following Call Sign(s)/File Number(s)/Registration Number(s).” Click the box next to the Call Sign(s) to checkmark it.
- On the next screen, you will attach your certification file. Select “Pleading” as the Type, click “Browse” to navigate to and select your file for attachment, and add a Description such as “Certification for Call Sign(s) _____.”
- Review the “Current Attachments” list to confirm that your file uploaded.

4. Certifications for CARS Licenses in COALS

For each non-exempt CARS license in the 12.7 GHz band, if the information reflected on the license in COALS is accurate and complete under the rules and application forms applicable to the CARS license, and the facilities are operating as authorized,⁷ the licensee must certify (1) the present accuracy of all information reflected in the license, and (2) that the facilities are operating as authorized. Each certification must include the relevant Call Sign, any relevant file number(s), the name of the licensee, and the signature, printed name, and title, if applicable, of the individual making the certification. See Attachment 2 for an example.

How to file. CARS licensees must file their certifications in COALS by accessing the COALS Portal at <https://fccprod.servicenowservices.com/coals>.

- After logging in with a CORES Username and Password, select the FRN of the business entity which holds the license.
- From the list of CARS licenses on the COALS dashboard, select each license for which a certification must be filed.
- The license will display an option to complete a certification form; selecting this option will present the certification with the relevant information pre-filled, similar to Attachment 2, and will allow the submission of the form.

5. Modification Applications

If a licensee is unable to make the certification for a license because, for example, the license’s required technical data are inaccurate, missing or incomplete; the license has terminated automatically; or the license facilities are not operating as authorized, the licensee must cancel the license or file a modification application no later than **November 29, 2023**, to correct the information reflected in the license in accordance with the Commission’s rules and the relevant application forms and instructions. If a licensee files a modification application, it does not need to file a certification for that license.

⁷ See *id.* §§ 78.1-78.115. See also FCC Form 327.

a. Exception or Waiver of Filing Freeze to File Modification Applications

A freeze is in effect on the filing of new or modification applications for licenses or other authorizations in the 12.7 GHz band.⁸ The purpose of this freeze is to preserve the current landscape of authorized operations in the 12.7 GHz band pending the Commission's consideration of actions in GN Docket No. 22-352. During the freeze, WTB and MB will dismiss applications received for new or major modifications to fixed or mobile BAS and CARS stations to operate in the 12.7 GHz band, respectively.⁹

The freeze does not extend to BAS and CARS applications for renewal, cancellation, or to minor modifications,¹⁰ if the licensee establishes in an exhibit attached to its application that the modification would not add to any relocation costs, if applicable in the future. The appropriate Bureau also will consider requests for waiver of this freeze on a case-by-case basis. Accordingly, BAS and CARS licensees filing modification applications must either establish in an exhibit uploaded as an attachment that the application is minor and would not add to any relocation costs, or they must request a waiver of the freeze (see details below).

b. BAS Modification Applications in ULS

BAS licensees must file modification applications in ULS.

- Access ULS through an Internet web browser by entering www.fcc.gov/uls. Under the "Filing" section of the ULS homepage, click the "File Online" hyperlink.
- On the "ULS License Manager Login" page, enter the applicant's FRN and password. Click "Submit." ULS will verify that you have entered a valid FRN or otherwise prompt you to obtain an FRN.
- After entering the FRN and password correctly, the "My Applications" page or the "My Licenses" page displays the applicant's existing applications (if any) and licenses and related information.
- To apply to modify an existing license, click the "My Licenses" link in the left-hand navigation menu. Click "Update Licenses" and then select the Call Sign to be modified. Click Continue.
- Select the appropriate update. Available options include "Technical Data," which covers locations, antennas, frequencies, etc.

⁸ See *180-Day Freeze on Applications for New or Modified Authorizations for the 12.7-13.25 GHz Band*, Public Notice, DA 22-974, 2022 WL 4358635 (IB/PSHSB/MB/WTB Sept. 19, 2022), 87 FR 63494 (Oct. 19, 2022) (*Freeze Public Notice*); *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, Notice of Inquiry and Order, FCC 22-80, 2022 WL 16634851, at *14, para. 44, (Oct. 28, 2022) (the Commission ordered the extension of the temporary freeze pending the outcome of GN Docket No. 22-352 and clarified that the Bureaus retain jurisdiction to modify the freeze notwithstanding this order) (*Freeze Extension Order*), 87 FR 67688 (Nov. 9, 2022).

⁹ See *Freeze Public Notice* at *1-2

¹⁰ See 47 CFR § 1.947(b) (licensees may make certain minor modifications to station authorizations, as defined in § 1.929 (Classification of filings as major minor). Section 1.929(d) discusses major actions in the microwave, aural broadcast auxiliary, and television broadcast auxiliary services and Section 1.929(k) states that any change not specifically listed as major is considered minor. See 47 CFR §§ 1.929(d) & (k); see also *id.* at §§ 78.109(c)-(d) (defining minor modifications for CARS licenses).

- Supply the information requested by FCC Form 601 and the Commission's rules. Complete the questions on the pages as they appear, following the onscreen prompts and instructions. Use the buttons at the bottom of each page to continue to the next page or go back to the previous page. Provide attachments as instructed by clicking the "Attachments" link at the top of the page. Be sure to use the standard attachment types (Word, Adobe Acrobat) and file descriptions.
- Unless you are attaching an exhibit that establishes that your application is excepted from the filing freeze (see paragraph 4.a. above), you must request a waiver of the filing freeze. Select "Yes" to the question "Does this application include a request for a Waiver of the Commission's Rule(s)?" Then upload an exhibit that demonstrates that waiving the filing freeze for your application would serve the public interest and not undermine the objectives of the freeze.¹¹ The request should be filed with the corresponding application. Upload the waiver request as a file, select Attachment Type "Waiver" and enter "Waiver Request" in the "Description" field on the "Attachments" page.

c. CARS Modification Applications in COALS

CARS licensees must file modifications in COALS by accessing the COALS Portal at <https://fccprod.servicenowservices.com/coals>.

- After logging in with a CORES Username and Password, select the FRN of the business entity which holds the license. From the list of CARS licenses on the COALS dashboard, select the license for which a modification is needed. COALS will display the option to complete a major or minor modification.
- Select the appropriate option.
 - In situations where online records reference paper filings (e.g., "See File" is displayed instead of paths, frequencies, or other information; or information available online is simply blank), the filing fee for the modification application as well as the freeze on the filing of modification applications will be waived to allow the licensee to enter data from paper filings to COALS. To request a waiver of the filing fee, select "Request Waiver of Filing Fee" for Major Modifications option and provide a short explanation of the reason the fee should be waived (e.g., that data in the online system references prior paper filings and the instant application is limited to entering accurate data from paper filings to COALS). Additionally, while helpful, where filers are providing missing information, Exhibit A-4, the "Result of a Frequency Coordination Study," is not required and a statement that the paper license that is being entered into COALS has been previously coordinated will suffice.¹²
 - Licenses which contain incorrect information as a result of subsequent changes to the operations of the CARS license are not eligible for a waiver

¹¹ See Freeze Public Notice at *2.

¹² Ordinarily, FCC Form 327, Schedule A, Item 7 requires the applicant "[f]or a new station or major change, (e.g., a change in azimuth or transmit antenna or an increase in power or frequency, etc.)" to attach as Exhibit A-4 a statement or showing detailing the results of a frequency coordination study performed pursuant to 47 CFR § 78.36.

of the application processing fee and the licensee must request a waiver of the filing freeze (see below) for the modification application necessary to make the license accurate and complete.

- All technical information must be entered into COALS for the CARS license to be eligible for incumbent status.
- Supply the information requested by FCC Form 327. To request a waiver of the filing freeze for applications where more than the mere completion of online records is taking place, append a short statement to Exhibit A-3, the “Statement of Eligibility,” establishing the reasoning for the waiver (i.e., that demonstrates that waiving the filing freeze for your application would serve the public interest and not undermine the objectives of the freeze).¹³ Complete the relevant certifications and submit the modification to complete the process.

6. License Cancellations

BAS licenses are subject to termination following a discontinuance of service or failure to meet construction or coverage requirements.¹⁴ If a BAS license has terminated automatically the licensee should cancel it in ULS. CARS licenses are forfeited in whole or in part upon the voluntary removal or alteration of their facilities so as to render them not operational for a period of 30 days or more.¹⁵ CARS licensee stations that have not operated for one year or more are considered to have been permanently discontinued and are required to cancel their license in COALS.¹⁶

7. For Further Information

BAS licensees: For technical assistance with filing a Certification or FCC Form 601, contact the ULS Support Hotline at 877-480-3201, option 2; or 717-338-2824 (TTY) or ASL Videophone: 844-432-2275. The ULS Support Hotline is available Monday through Friday from 8:00 a.m. to 6:00 p.m. ET. There are no weekend hours, and the hotline is closed on all Federal holidays. To provide quality service and ensure security, all telephone calls are recorded. Inquiries may also be submitted via the Internet at www.fcc.gov/support. For non-technical questions: contact Simon Banyai, Senior Attorney, Broadband Division, Wireless Telecommunications Bureau, at simon.banyai@fcc.gov or (202) 418-1443.

CARS licensees: For technical assistance with filing a Certification or FCC Form 327, form327@fcc.gov or COALS_Help@fcc.gov. For non-technical questions: contact Jeffrey Neumann, Chief Engineer, Media Bureau, at jeffrey.neumann@fcc.gov or (202) 418-2046.

By the Wireless Telecommunications Bureau in coordination with the Media Bureau.

- FCC -

¹³ See *Freeze Public Notice* at *2.

¹⁴ See 47 CFR §§ 74.5(a)(4), 1.946, 1.953, 1.955.

¹⁵ *Id.* § 78.30(a).

¹⁶ *Id.* § 78.30(b).

ATTACHMENT 1**EXAMPLE OF CERTIFICATION OF ACCURACY FOR BAS LICENSE****Certification of Accuracy by [Licensee Name] for
Call Sign _____**

Pursuant to the FCC's Order in FCC 23-36 and the Public Notice, DA 23-794, the undersigned authorized agent of the licensee, individually and for the licensee, hereby certifies that all information reflected in this license in the FCC's Universal Licensing System, including any attachments or exhibits, is true, complete and correct. The facilities authorized by this license are operated as authorized and the license is not subject to automatic termination in whole or in part. *See* 47 CFR §§ 1.946(c), 1.953, 1.955 (automatic termination based on expiration without renewal, failure to timely construct, permanent discontinuance of operations). This certification is made under penalty of perjury to the best of my knowledge and belief, and is made in good faith.

LICENSEE NAME by

/s/ Name of Individual

Printed name of individual

Title (if applicable)

ATTACHMENT 2

EXAMPLE OF CERTIFICATION OF ACCURACY FOR CARS LICENSE

**Certification of Accuracy by (Licensee Name) for
Call Sign _____**

Pursuant to the FCC's Order in FCC 23-36 and the Public Notice, DA 23-794, the undersigned authorized agent of the licensee, individually and for the licensee, hereby certifies that all information reflected in this license in the Cable Operations and Licensing System, including any attachments or exhibits, is true, complete and correct. The facilities authorized by this license are constructed and operational as authorized and the license is not subject to automatic termination in whole or in part due to voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more, *see* 47 CFR § 78.30(a), or for permanent discontinuance of operations, *see* 47 CFR § 78.30(b). This certification is made under penalty of perjury to the best of my knowledge and belief, and is made in good faith.

LICENSEE NAME by

*/s/ Name of Individual*Printed name of individual
Title (if applicable)



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 23-795
Released: August 31, 2023

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-251

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 Origin Networks, LLC d/b/a Infostructure by Hunter Communications & Technologies LLC,
WC Docket No. 23-251, Public Notice, DA 23-651 (WCB 2023).

Effective Grant Date: August 31, 2023

For further information, please contact Myrva Charles at (202) 418-1506 or Gregory Kwan at (202) 418-1191, Competition Policy Division, Wireline Competition Bureau.

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

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



PUBLIC NOTICE

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

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

DA 23-796
Released: August 31, 2023

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF INDIRECT CONTROL OF SIUSLAW BROADBAND, LLC D/B/A HYAK TO CONCEPT COMMUNICATIONS, LLC

WC Docket No. 23-222

By this Public Notice, the Wireline Competition Bureau grants an application filed by Siuslaw Broadband, LLC d/b/a Hyak (Hyak) and Concept Communications, LLC (Concept) (collectively, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act), 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

On July 27, 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.

Applicants and Description of Transaction

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.⁴ Hyak provides fiber internet services, wireless internet services, Voice over Internet Protocol services, and managed services to residential and business customers. In addition, Hyak receives high-cost universal service support through the Rural Digital

¹ See 47 U.S.C. § 214(a); 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 supplements to the Application on July 13, 2023 and August 2, 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) (July Supplement); 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 Aug. 2, 2023) (August 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 *Domestic Section 214 Application Filed for the Transfer of Control of Siuslaw Broadband, LLC d/b/a Hyak Communications, LLC to Concept Communications, LLC*, WC Docket No. 23-222, Public Notice, DA 23-643 (WCB 2023).

⁴ Application at 2.

Opportunity Fund (RDOF) Phase 1 (Auction 904) support mechanism.⁵ 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.

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.⁶ 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%).⁷ 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.⁸ Juan Carlos Serrano, an Ecuadorian citizen, indirectly holds a 19.99% interest in MiFiber Holding through interests in 2 PS Investments II, LLC and MFB Investment, LLC.⁹

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.¹⁰ 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.¹¹

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.¹² 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.¹³ 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.¹⁴

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.¹⁵

⁵ *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”); *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34, WC Docket Nos 19-126, 10-90, Public Notice, 37 FCC Red 4897 (WCB 2022) (authorizing Hyak to receive \$1,611,684.90 over 10 years to serve 554 locations in Oregon) (*RDOF Public Notice*). Hyak also offers Lifeline and Oregon Telephone Assistance Program services to its customers. Application at 2. Hyak does participate in the Affordable Connectivity Program, but not in the E-Rate or Rural Health Care funding programs. *Id.* at 11; August Supplement at 1.

⁶ Neither Concept nor any of its affiliates receives USF high cost support. Application at 10.

⁷ *Id.* at Exh. B.

⁸ *Id.* at 3, Exh. B.

⁹ *Id.*

¹⁰ *Id.* at 1, Exh. B.

¹¹ July Supplement at 1.

¹² Application at 3.

¹³ *Id.*

¹⁴ *Id.* at 5-6.

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.¹⁶ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.¹⁷ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.¹⁸

We find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a significant reduction of competition. Neither Concept nor any of its affiliates or subsidiaries provides telecommunications services in Oregon.¹⁹ Thus, there will be no physical overlap or reduction in service providers in any markets as a result of the transaction. Applicants state further that Concept “will seek to optimize Hyak’s existing assets to support investment in new infrastructure and continue offering innovative and high-quality services to Hyak’s business and residential customers,”²⁰ and we thus expect no potential harm to existing customers to result from the transaction.

Second, Concept remains financially, managerially, and technically obligated to meet all public interest and performance obligations associated with the receipt of RDOF funding in accordance with the Commission’s pre-transaction approval of its qualifications, and we expect that the proposed transaction will not negatively impact these obligations. Indeed, Applicants assert the transaction will actually “enhance Hyak’s ability to meet its RDOF support and public interest obligations” by providing access to additional capital and “financial, technical, and operational expertise to support and accelerate” Hyak’s RDOF service obligations.²¹ Applicants confirm that the proposed transaction does not involve any changes to Hyak that will compromise its ability to meet its service obligations.²²

¹⁵ *Id.*

¹⁶ See, e.g., *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V. for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 16999, para. 21 (2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al.*, MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

¹⁷ See *Verizon-TracFone Order* at 16999, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

¹⁸ See *Verizon-TracFone Order* at 16999, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

¹⁹ July Supplement at 1. Additionally, neither Concept nor any of its affiliates or subsidiaries hold any domestic or international section 214(a) authorization or have a 10% or greater ownership interest in any other providers of domestic telecommunications services. *Id.*

²⁰ *Id.* at 5-6.

²¹ *Id.* at 6, 10.

Specifically, the proposed transaction will not affect Hyak's deployment plans, existing technology, or management of Hyak following completion of the transition.²³ Applicants state that Hyak's existing debt, other than its USDA Reconnect loan obtained in the second half of 2022, will be paid off at closing.²⁴ Applicants also confirm that all RDOF funding and any related assets "will remain with Hyak following completion of the proposed transaction" and "are, and will continue to be, used for the provision of covered services by Hyak."²⁵ Applicants further state that Hyak is expected to meet its buildout obligations under RDOF and that if "Hyak fails to satisfy any support recovery obligations imposed by a final, non-appealable order, [Concept] will be Hyak's direct parent and will ensure those obligations are met, conditional upon any required regulatory approvals."²⁶ Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.²⁷ Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.²⁸ Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.²⁹

Applicants claim that the proposed transaction will provide additional capital and managerial resources that "will support investment in new infrastructure" and ensure that "innovative and high-quality services" continue to be offered to Hyak's business and residential customers.³⁰ Applicants expect that the infusion of new financial, technical, and operational support resulting from the transaction will enhance and accelerate "Hyak's ability to meet its RDOF support and public interest obligations."³¹ Further, Applicants aver that, following the proposed transaction, "the management team that demonstrated the necessary industry expertise to qualify to obtain RDOF funding will remain in place."³² With the addition of Concept's capital following the proposed transaction, Applicants state that Hyak will meet its buildout obligations under RDOF, and Concept will ensure that those obligations are met.³³

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,³⁴ and accelerating private sector deployment of advanced services is one of the aims of the Act.³⁵ In light of the Applicants' commitments to meet all of Hyak's federal high cost funding obligations³⁶ and the fact that Applicants are prepared to devote additional capital to

²² *Id.* at 10.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See *AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

²⁸ See *id.* at 9237-38, paras. 275-76.

²⁹ See *id.*

³⁰ *Id.* at 5-6.

³¹ *Id.* at 6, 10.

³² *Id.* at 10.

³³ *Id.*

³⁴ See, e.g., *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

³⁵ See *Verizon-TracFone Order* at 9, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services")).

accelerate facilities-based service offerings,³⁷ we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

Therefore, pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a), and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants' compliance with all applicable obligations.³⁸

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.³⁹ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

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

-FCC-

³⁶ Application at 10.

³⁷ *Id.*

³⁸ See *RDOF Public Notice* at 4897-4905 (listing obligations of authorized support recipients).

³⁹ We direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 23-222 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

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

In the Matter of

ICEYE US, Inc.

Application to deploy and operate space stations
filed under the FCC streamlined small satellite
licensing process, 47 CFR § 25.122

ICFS File No. SAT-LOA-20230404-00070
Call Sign: S3165

ORDER

Adopted: August 31, 2023

Released: August 31, 2023

By the Chief, Satellite Programs and Policy Division, Space Bureau:

I. INTRODUCTION

1. In this Order, we address the request of Space Exploration Technologies Corp. (SpaceX), filed in an *ex parte* letter, that the Commission impose certain conditions on a license requested by ICEYE US, Inc. (ICEYE) for its second tranche of U.S.-licensed satellites, consisting of up to eight satellites (ICEYE Second Tranche).¹ We grant in part SpaceX's request that we impose conditions on this license, but deny that request insofar as it involves conditions that are not germane to the facts presented in this case. The grant of ICEYE's request for a license to launch and operate eight satellites, the ICEYE Second Tranche, is contained in the attached grant stamp and includes relevant license conditions.

II. BACKGROUND

2. On April 24, 2023, SpaceX filed a letter requesting that certain conditions that have been imposed on SpaceX's license to construct, deploy, and operate up to 7,500 satellites in its Second Generation (Gen2) constellation also be imposed on the ICEYE Second Tranche application.² In support

¹ See *Satellite Licensing Division and Satellite Programs and Policy Division Information, Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01738 (June 30, 2023). See also Letter from David Goldman, Senior Director of Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC at 1 (dated Apr. 24, 2023) (SpaceX Letter). This letter was filed two months prior to the start of the public notice period. ICEYE was previously granted a license, pursuant to the Commission's small satellite procedures, to deploy and operate six satellites in non-geostationary satellite orbit, as part of the ICEYE US system. See ICFS File Nos. SAT-LOA-20210212-00021, SAT-AMD-20210831-00119.

² See SpaceX Letter at 1; see also *Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, FCC 22-91 (2022) (SpaceX Gen2 Order). The SpaceX Letter requests that the FCC impose the following license conditions: (1) file semi-annual reports on collision avoidance maneuvers and satellite disposal, including any difficulties or failures related thereto; (2) apply a new performance-based method for assessing disposal failures that accounts for both the number of failed satellites and their entire passive decay time; (3) take all possible steps to assess and mitigate collision risk after receiving a conjunction warning from the 18th Space Defense Squadron or other source; (4) communicate and

(continued....)

of its request, SpaceX cites concerns raised by the National Aeronautics and Space Administration (NASA) and the National Science Foundation (NSF) in its own licensing proceeding, as well as “space sustainability requirements” from its 7,500 satellite license. SpaceX argues, among other things, that concerns expressed by NASA in connection with the Commission’s orbital debris proceeding suggest that any constellation of 25 or more satellites should be subject to additional debris mitigation requirements.”³ In addition, SpaceX requested that ICEYE clarify that it will maintain station-keeping and active collision avoidance until its satellites are safely below inhabited spacecraft and clarify its total passive decay deorbit time.⁴ ICEYE filed a responsive *ex parte* letter on June 6, 2023.⁵

III. DISCUSSION

3. We conclude that some adoption of conditions analogous to the conditions specified in the SpaceX grant, but suited for the specific and distinct factual scenario presented by the ICEYE satellite system is appropriate in this instance. In the prior license grant to ICEYE for U.S. licensed satellites under the small satellite process, we declined to adopt additional conditions,⁶ but based on the additional operations contemplated under this license, which will become part of the larger ICEYE constellation, we conclude that at this time the adoption of certain additional conditions tailored to the ICEYE operations would serve the public interest. The ICEYE Second Tranche satellites are planned to operate at an altitude of 550 km (\pm 50 km). ICEYE has clarified that its satellites use propulsion, and it will maintain station-keeping and active collision avoidance until its satellites are below inhabited spacecraft.⁷ After the satellites have been brought to decaying orbit below the International Space Station and Chinese space station, the satellites will be disposed of using the atmospheric reentry method, depending solely on atmospheric drag.⁸ Based on this plan, we expect that the ICEYE Second Tranche satellites will be capable of being maneuvered using the propulsion system until the satellites are close to or below 350 km altitude. At that point we expect that the satellites would decay from orbit in a relatively short amount of time. In considering SpaceX’s first generation satellite system, the Commission defined a disposal failure as any case in which control of a satellite is lost at an altitude of 350 kilometers or greater.⁹ Under the circumstances, we adopt a condition that ICEYE report any loss of control of ICEYE Second Tranche satellites at altitudes above 350 km, where it would normally expect that its satellites would have the capability to maneuver using propulsion.¹⁰ Based on the information reported, the license may be subject

(Continued from previous page) _____
collaborate with NASA to promote space safety and sustainability; and (5) coordinate with NSF to reach a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy, with associated annual reporting requirements). SpaceX Letter at 2.

³ *Id.* at 3.

⁴ *Id.* at 1.

⁵ See Letter from Robert S. Koppel, Counsel, ICEYE, to Marlene H. Dortch, Secretary, FCC (dated June 26, 2023) (ICEYE Letter).

⁶ See ICFS File Nos. SAT-LOA-20210212-00021; SAT-AMD-20210831-00119, condition 2 n.11 (granted Mar. 6, 2023).

⁷ ICEYE Letter at 2.

⁸ *Id.*

⁹ As the Commission observed in its authorization of the SpaceX Gen2 system, “SpaceX’s practice of testing its satellites at injection altitude, before orbit-raising, allows it to deorbit any non-functional satellites in a matter of days or weeks, helping to ensure that non-maneuverable satellites do not reach operational orbit.” *Request for Orbital Deployment and Operating Authority for SpaceX Gen2 NGSO Satellite System*, Order and Authorization, FCC 22-91, at 91 (Nov. 29, 2022).

¹⁰ See attached grant stamp at condition 17.

to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk.¹¹ Inclusion of a 100 post-failure object years metric in this instance, as with the Commission's SpaceX's Second Generation grant, identifies a relevant metric where additional Commission action would be necessary before deployment of additional ICEYE Second Tranche satellite following a certain level of failure.

4. We also condition ICEYE to provide information regarding potential conjunction events during the reporting period for its satellites, particularly with respect to any difficulties encountered in the collision avoidance process. We believe that such information can help identify potential issues in operator-to-operator coordination.

5. There have been no concerns raised in this proceeding by NASA, NSF, or any other party except SpaceX regarding the instant application. We are including conditions requiring coordination with NASA, including operator-to-operator coordination of physical operations. Additionally, we condition this grant to require ICEYE to coordinate with NSF as well.¹² We conclude that it is in the public interest for ICEYE to bear the responsibility of ensuring that these coordinations, which are separate from coordination of spectrum use, have been completed with these potentially interested federal agencies.

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that the ICEYE US, Inc. request for a license to deploy and operate eight satellites is GRANTED,¹³ pursuant to section 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 303(r), and sections 0.51 and 0.261 of the Federal Communication Commission's rules, 47 CFR §§ 0.51 and 0.261.

7. IT IS FURTHER ORDERED that petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's Rules, 47 CFR §§ 1.106 and 1.115, may be filed within 30 days of the date of the public notice of this action taken.

FEDERAL COMMUNICATIONS COMMISSION

Merissa L. Velez
Chief, Satellite Programs and Policy Division
Space Bureau

¹¹ There are potentially material differences between the ICEYE constellation and the Starlink constellation that may warrant differing treatment of the two constellations. These include smaller satellite size, and consequent lower collision risk when comparing non-maneuverable satellites and a smaller number of satellites. There is also no indication that the ICEYE Second Tranche satellites will be "checked out" at lower altitudes, so immediate identification of any issues with effective maneuverability, rather than periodic reporting, is warranted.


¹² See condition 19 in the attached grant stamp.

¹³ See conditions in the attached grant stamp.

ATTACHMENT TO GRANT

ICEYE US, Inc.

ICFS File No. SAT-LOA-20230404-00070

ICFS File No(s):	SAT-LOA-20230404-00070 ¹	GRANTED -- With Conditions  Space Bureau Satellite Programs and Policy Division
Licensee/Grantee:	ICEYE US, Inc. (ICEYE)	
Call Sign:	S3165	
Satellite Name:	ICEYE Second Tranche	
Orbital Location: (required station-keeping tolerance)	Non-geostationary satellite orbit (NGSO), initial deployment to ~550 km altitude (± 50 km), 97.7 degrees inclination (± 1 degree).	
Administration:	United States of America	
Nature of Service:	Earth Exploration Satellite Service (EESS)	
Scope of Grant:	Authority to construct, deploy, and operate eight NGSO satellites. ²	
Service Area(s):	Global, subject to limitations in specific frequency bands.	
Frequencies:	8025-8400 MHz (center frequency 8212.5 MHz, bandwidth 375 MHz; and center frequency 8300.0 MHz, bandwidth 150 MHz) (space-to-Earth) Synthetic Aperture Radar (SAR): 9300-9900 MHz (center frequency 9600 MHz, bandwidth 600 MHz; 9650.0 MHz, bandwidths 150 MHz, 200 MHz, and 300 MHz) (space-to-Earth) Telemetry, Tracking and Command frequencies: 2200-2290 MHz (center frequency 2277.3 MHz, bandwidth 6 MHz) (space-to-Earth) (outside U.S. only)	

¹ The application was placed on public notice on June 30, 2023. *Satellite Licensing Division and Satellite Programs and Policy Division Information, Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01738 (June 30, 2023). This proceeding has also been designated as “permit but disclose.” *Satellite Licensing Division and Satellite Programs and Policy Division Information, Space Station Actions Taken*, Public Notice, Report No. SAT-01737 (June 30, 2023); see 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

² On April 24, 2023, Space Exploration Technologies Corp. (SpaceX) filed an *ex parte* letter. Letter from David Goldman, Senior Director of Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC (dated Apr. 24, 2023). These issues are fully addressed in the accompanying Order.

	2025-2110 MHz (center frequency 2086.9 MHz, bandwidth 1.2 MHz) (Earth-to-space)
<p>Operations under this grant must comport with the legal and technical specifications set forth by the applicant or petitioner and with the Federal Communications Commission’s rules not waived herein. This grant is also subject to the following conditions:</p> <ol style="list-style-type: none"> 1. ICEYE must timely provide the Commission with the information required for Advance Publication, Coordination, and Notification of the frequency assignment(s) for this constellation, including due diligence information, pursuant to Articles 9 and 11 of the ITU Radio Regulations. This authorization may be modified, without prior notice, consistent with the coordination of the frequency assignment(s) with other Administrations. See 47 CFR § 25.111(b). ICEYE is responsible for all cost-recovery fees associated with the ITU filings. 47 CFR § 25.111(d). 2. ICEYE’s request for its application to be processed under the rules for streamlined licensing of small satellites is GRANTED. We find that the operations requested in this application, meet the criteria listed in section 25.122 of the Commission’s rules, 47 CFR § 25.122, for streamlined small satellite applicants.³ We conclude that the ICEYE operations are compatible with existing operations in the requested frequency bands and will not materially constrain future space station entrants from using the requested frequency bands.⁴ 3. In connection with the provision of service in any particular country, ICEYE is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country. 4. ICEYE is required to successfully coordinate with NTIA prior to submitting any ITU filing involving any ground stations outside of the United States and Possessions (US&P) that operate in the frequency band 2200-2290 MHz. The 2200-2290 MHz band is allocated to Space Operations (space-to-Earth) and EESS (space-to-Earth) in all ITU Regions, but in the United States the band is only allocated for Federal use (except as provided for in 47 CFR section 2.106(c)(96), (303) (footnotes US96 and US303), which are not applicable here). Operations in the 2200-2290 MHz frequency band are permitted for use only outside of the US&P. NTIA will consider the request by ICEYE for access to the 2200-2290 MHz for ground stations located outside of US&P on a case-by-case coordinated basis⁵ with appropriate EMC analysis to NTIA (ravery@ntia.gov), AFSMO (jimmy.nguyen@us.af.mil), NASA (travis.j.ingram@nasa.gov) and DOC (edna.prado@noaa.gov) to ensure compatibility of operations with the Federal government. 5. Operations pursuant to this authorization must not cause harmful interference to stations operating in the 2025-2110 MHz band in accordance with the U.S. Table of Frequency Allocations. See 47 CFR § 2.106(a), (c)(347). 6. Earth station transmissions to the ICEYE Second Tranche space stations in the 2025-2110 MHz band 	

³ See 47 CFR § 25.122; see also Legal Narrative at 6-7 (specifying compliance with the qualifying criteria in 47 CFR § 25.122(c)).

⁴ See 47 CFR § 25.122(c)(9), (d)(3). Operations in the 8025-8400 MHz (space-to-Earth), 2200-2290 (space-to-Earth), and 2025-2110 (Earth-to-space) frequency bands will be coordinated with Federal operators. ICEYE states that it will share up-to-date orbital characteristics, transmitting windows, and any other information required to ensure ICEYE’s successful sharing of spectrum with other services, and that the ICEYE Mission Operations Center will be capable of defining “dark zones” in which the satellites will not transmit. For SAR operations in the 9300-9900 MHz band, the duration of transmissions will be short, with a maximum imaging time for each satellite of 2700 seconds per day. The 3 dB beamwidth of the SAR antenna is 0.4 x 1.0 degree.

⁵ See Appendix A for a list of coordinated earth station locations.

must be coordinated with the SBE (Society of Broadcast Engineers).

7. ICEYE transmissions in the 2025-2110, 2200-2290, and 8025-8400 MHz frequency bands may only be made to/from Federal earth stations or non-Federal earth stations coordinated with the National Aeronautics and Space Administration (NASA), the Air Force Spectrum Management Office (AFSMO), DOC/NOAA, and the Department of the Navy (DON). A list of coordinated non-Federal earth stations is attached in Appendix A. ICEYE shall provide the FCC with an updated list of coordinated non-Federal earth stations within ten business days following any changes to this list.⁶ Use of Federal ground stations shall be coordinated by ICEYE's federal government customers with AFSMO (jimmy.nguyen@us.af.mil), NASA (travis.j.ingram@nasa.gov) and DOC (edna.prado@noaa.gov).
8. Power flux-density limits from operation in the 8025-8400 MHz band must not exceed the limits in No. 22.5 and Table 21-4 of the ITU Radio Regulations, the limits/protection criteria in Recommendation ITU-R SA.1157-1 must be met, and the guidelines in Recommendation ITU-R SA. 1810 must be followed.
9. For ICEYE's 8025-8400 MHz downlink to Inuvik and Svalbard earth stations, transmissions must cease when any of the ICEYE US, Inc. satellites come within a 3-degree conjunction angle of the Suomi-NPP satellite when it is transmitting to its NOAA earth stations in Fairbanks and Svalbard. The conjunction angle is measured from the boresight of the NOAA earth station antenna.
10. For ICEYE's downlink in the 2200-2290 MHz frequency band, ICEYE must limit the duty cycle for transmissions to ICEYE's ground stations to 15% (1 of every 7 passes per satellite per earth station).
11. For ICEYE's downlinks in the 8025-8400 MHz frequency band, ICEYE will limit the duty cycle for transmissions to ICEYE's ground stations to 15% (1 of every 7 passes per satellite per earth station). Additional ICEYE satellites or ground stations will require establishing a Memorandum of Agreement (MOA) with NASA.
12. For the ICEYE's uplink in the 2025-2110 MHz band, ICEYE shall limit the uplink 2086.9 MHz emission power to no more than 14 dBW and shall cease uplink emissions when the International Space Station (ISS), NORAD ID 25544, is within 20° of ICEYE's ground stations antenna boresight.
13. Earth exploration-satellite service (EESS) (active) operations in the 9300-9900 MHz frequency band are allocated on a secondary basis for non-Federal use, and on a primary basis for Federal use in the 9300-9800 MHz band and on a secondary basis for Federal use in the 9800-9900 MHz band in the U.S. Table of Allocations, 47 CFR § 2.106(a). The 9300-9900 MHz band, *inter alia*, is also allocated to the radiolocation service on primary basis for Federal use. Accordingly, ICEYE must accept interference from and not cause interference to any services, including Federal operations, operating on a primary basis in the 9300-9900 MHz band. The 9300-9500 MHz band is allocated on a primary basis to non-Federal radionavigation as well, and ICEYE must accept interference from and not cause interference to that service. The ICEYE satellites SAR operations will transmit a pulsed signal and will only transmit over specific areas of the Earth and for short bursts. The pulse width and repetition frequency of the ICEYE satellite SAR transmission are variable. Additionally, the antenna gain is variable and can be adjusted as required to further mitigate interference.
14. ICEYE must maintain for any satellite in sun synchronous orbit, the LTDNs of 10:00, 13:30, 14:00, 9:00, 10:30, 9:30, and 14:30 time values to not be in-phase with Federal agencies' satellite systems. In the event any changes to the LTDN are required, ICEYE must coordinate in advance with DOC/NOAA, AFSMO, and NASA, and upon completion of the coordination notify the FCC of the update within five business days.

⁶ See Exh. F.

15. ICEYE must coordinate physical operations of spacecraft with any operator using similar orbits, for the purpose of eliminating collision risk and minimizing operational impacts. The orbital parameters specified in this grant are subject to change based on such coordination.
16. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other source, ICEYE must review and take all possible steps to assess the collision risk, and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; and modifying spacecraft attitude and/or operations.
17. ICEYE must provide a semi-annual report, by January 1 and July 1 each year, covering the preceding six month period, respectively, from June 1 to November 30 and December 1 to May 31. The report should include the following:
 - a. Number of conjunction events identified for any ICEYE system satellites during the reporting period, and the number of events that resulted in an action (maneuver or coordination with another operator), as well as any difficulties encountered in connection with the collision avoidance process and any measures taken to address those difficulties.
 - b. Any loss of control of ICEYE Second Tranche satellites at altitudes above 350 km.

Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk. In the event of ICEYE Second Tranche satellite failures resulting in more than 100 post-failure object years, ICEYE may not deploy any additional ICEYE Second Tranche satellites until the Commission has approved a license modification that includes an updated orbital debris mitigation plan addressing reduction in the failure rate or mitigation of the risk of satellite failures.

18. ICEYE must communicate and collaborate with NASA to support safety of both ICEYE and NASA assets and to preserve long-term sustainable space-based communications services. ICEYE must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition 17, above. ICEYE must coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy.
19. ICEYE must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites (call sign S3165) on optical ground-based astronomy. ICEYE must submit an annual report to the Commission, by January 1st each year covering the preceding year (1) describing whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps ICEYE has taken to reduce the impact of its satellites on optical astronomy. If ICEYE provides a statement in the record that NSF has no concerns within 45 days following arrival of the ICEYE Second Tranche satellites at 550 km, no further reporting will be required.
20. Unless extended by the Commission for good cause shown, this authorization will become null and void in the event the ICEYE Second Tranche space stations are not constructed and launched in accordance with the schedule set forth in section 25.164 of the Commission's rules, as follows:
 - a. In the event that four ICEYE Second Tranche space stations have not been launched, placed into the assigned orbit, and begun operations in accordance with this grant by **August 31, 2024**,⁷

⁷ We note that since this application is being processed under the rules for streamlined licensing of small satellites, the requirement for ICEYE to post a surety bond in accordance with 47 CFR § 25.165(a)(1) & (b) is deferred by one year following the date of grant in accordance with the grace period adopted in FCC 19-81. See 47 CFR 25.165(a).

<p>ICEYE must post a surety bond in satisfaction of 47 CFR §§ 25.165(a)(1) & (b) no later than September 30, 2024, thereafter maintain on file a surety bond requiring payment in the event of a default in an amount, at minimum, determined according to the formula set forth in 47 CFR § 25.165(a)(1); and</p> <p>b. ICEYE must launch all eight ICEYE Second Tranche space stations, place them into the assigned orbit, and operate the space stations in accordance with this grant no later than August 31, 2029. 47 CFR § 25.164(b).</p> <p>21. The license term is six years and begins at 3 a.m. EST on the date that ICEYE certifies to the Commission that the first ICEYE Second Tranche space station is successfully placed into orbit and the operations fully conform to the terms and conditions of this authorization. ICEYE must also file a certification within five business days of placing the each of the ICEYE Second Tranche space stations into operation.</p>		
<p>Licensee/grantee is afforded thirty (30) days from the date of release of this action to decline the grant as conditioned. Failure to respond within this period will constitute formal acceptance of the grant as conditioned.</p> <p>This action is taken pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 CFR § 0.261, and is effective upon release.</p> <p>Station licenses are subject to the conditions specified in Section 309(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(h).</p>		
Action Date:	August 31, 2023	
Term Dates	From: see conditions	To: see conditions
<p>Approved:</p> <p>Merissa L. Velez Chief, Satellite Programs and Policy Division</p>		

ATTACHMENT TO GRANT
ICEYE US, Inc.
ICFS File No. SAT-LOA-20230404-00070

Appendix A:
Earth Station Locations¹
Coordinated with Federal Agencies

1. Svalbard, Norway
2. TrollSat, Antarctica
3. Hartebeesthoek, South Africa
4. Arwaua, New Zealand
5. Punta Arenas, Chile
6. Puertollano, Spain
7. Mingenew, West Australia
8. Inuvik, Canada
9. Stockholm, Sweden
10. Dublin, Ireland
11. Guildford, United Kingdom
12. Athens, Greece
13. Bahrain
14. Accra, Ghana
15. Seoul, South Korea
16. Jeju Island, South Korea
17. Cape Town, South Africa
18. Alice Springs, Australia
19. Sydney, Australia
20. Cordoba, Argentina
21. Hawaii, United States
22. Oregon, United States
23. Ohio, United States
24. Georgia, United States
25. California, United States

¹ See Exh. F.



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 23-798

Released: August 31, 2023

FCC TASK FORCE TO PREVENT DIGITAL DISCRIMINATION ANNOUNCES LISTENING SESSION IN WASHINGTON, DC AT GALLAUDET UNIVERSITY

GN Docket No. 22-69

On September 14, 2023, the FCC's Task Force to Prevent Digital Discrimination will host a listening session in Washington, DC to gain additional information and understanding from affected communities, state, local, and Tribal governments, public interest advocates, and academia about broadband access experiences unique to persons with disabilities – including challenges, barriers, and potential solutions – as they work to ensure all people of the United States benefit from equal access to broadband. The purpose of this listening session is to continue the Commission's outreach in support of its ongoing efforts to promote equal access to broadband for everyone.

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

The listening session will take place from 9:30 a.m. – 12:00 p.m. Eastern Daylight Time at Gallaudet University, 800 Florida Ave NE, Washington, DC 20002. The program agenda will include presentations from the Task Force, local leaders, and disability community stakeholders, and advocates, providing the Commission with first-hand knowledge it needs to further its goals to create a framework for addressing digital discrimination. The listening session will be recorded and archived on the FCC's website.

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

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

-FCC-

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

In the Matter of

Planet Labs PBC

Application for Modification of License

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ICFS File No. SAT-MOD-20220421-00042
Call Sign: S2912

ORDER

Adopted: August 31, 2023

Released: August 31, 2023

By the Chief, Satellite Programs and Policy Division, Space Bureau:

I. INTRODUCTION

1. In this Order, we address the request of Space Exploration Technologies Corp. (SpaceX), filed in an *ex parte* letter, that the Commission impose certain conditions on a license modification requested by Planet Labs PBC (Planet Labs).¹ We grant in part SpaceX's request that we impose conditions on this license, but deny that request insofar as it involves conditions that are not germane to the facts presented in this case.² The grant of Planet Lab's request for a license modification for additional satellites, as part of what it calls the Pelican system, is contained in the attached grant stamp and includes relevant license conditions.

II. BACKGROUND

2. On January 17, 2023, SpaceX filed a letter requesting that certain conditions that have been imposed on SpaceX's license to construct, deploy, and operate up to 7,500 satellites in its Second Generation (Gen2) constellation also be imposed on several pending non-geostationary satellite applications and petitions, including the instant Planet Labs modification application.³ In support of its

¹ See *Policy Branch Information, Applications Accepted for Filing*, Public Notice, Report No. SAT-01648 (July 15, 2022). See also Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023) (SpaceX Letter). This letter was filed nearly six months after the conclusion of the public notice period. Therefore we classify the letter, and SpaceX's subsequent response letter as an informal objections pursuant to section 25.154(b) of the Commission's rules. 47 CFR § 25.154(b). We find it is in the public interest in this case to address the relevant issues raised in the informal objections.

² For additional discussion of the deferred portion of the request, see attached grant stamp.

³ See SpaceX Letter at 1; see also *Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, FCC 22-91 (2022) (SpaceX Gen2 Order). The SpaceX Letter requests that the FCC impose the following license conditions: (1) file semi-annual reports on collision avoidance maneuvers and satellite disposal, including any difficulties or failures related thereto;

request, SpaceX cites concerns raised by the National Aeronautics and Space Administration (NASA) and the National Science Foundation (NSF) in its own licensing proceeding, as well as “space sustainability requirements” from its 7,500 satellite license. SpaceX argues, among other things, that concerns expressed by NASA in connection with the Commission’s orbital debris proceeding suggest that any constellation of 25 or more satellites should be subject to additional debris mitigation requirements.⁴ Planet Labs filed a responsive *ex parte* letter on February 16, 2023,⁵ and SpaceX filed a further consolidated response directed to several of the NGSO applicants on March 31, 2023.⁶

III. DISCUSSION

3. We conclude that some adoption of conditions analogous to the conditions specified in the SpaceX grant, but suited for the specific and distinct factual scenario presented by the Planet Labs Pelican satellites, would serve the public interest.

4. The Pelican satellites are planned to operate at an altitude of 325 km (\pm 25 km). If an issue should arise with a Planet Labs satellite at this altitude, the satellite would decay from orbit in a relatively short amount of time. This particular altitude is in the same general range as the altitude SpaceX’s utilizes for initial deployment its satellites, i.e., below 350 km, and in considering SpaceX’s first generation satellite system we defined a disposal failure as any case in which control of a satellite is lost at an altitude of 350 kilometers or greater.⁷ Similarly, once a Planet Pelican satellite is maneuvered to its operational orbit at 325 km, we would not treat a loss of control of the satellite as a matter of substantial concern with respect to long-term collision risk, given a short expected residual orbital lifetime. Under the circumstances, we adopt a condition that Planet Labs report any loss of control of Pelican satellites at altitudes above 350 km.⁸ Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk.⁹ Inclusion of a 100 post-failure object years metric in this instance, as

(2) apply an object-years metric for assessing disposal failures that accounts for both the number of failed satellites and their entire passive decay time; (3) communicate and collaborate with NASA to promote space safety and sustainability; (4) take all possible steps to assess and mitigate collision risk after receiving a conjunction warning from the 19th Space Defense Squadron or other source; and (5) coordinate with NSF to reach a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy, with associated annual reporting requirements). *Id.*

⁴ SpaceX Letter at 2.

⁵ See Letter from Danielle Piñeres, Vice President of Regulatory Affairs & Compliance, Planet Labs PBC, to Marlene H. Dortch, Secretary, FCC (filed Apr. 13, 2023) (Planet Response Letter).

⁶ See Letter from David Goldman, Senior Director of Satellite Policy, to Marlene H. Dortch, Secretary, FCC at 2 (filed Mar. 31, 2023) (SpaceX Omnibus Response).

⁷ As the Commission observed in its authorization of the SpaceX Gen2 system, “SpaceX’s practice of testing its satellites at injection altitude, before orbit-raising, allows it to deorbit any non-functional satellites in a matter of days or weeks, helping to ensure that non-maneuverable satellites do not reach operational orbit.” *Request for Orbital Deployment and Operating Authority for SpaceX Gen2 NGSO Satellite System*, Order and Authorization, FCC 22-91, at 91 (Nov. 29, 2022).

⁸ See attached grant stamp at condition 19.

⁹ There are potentially material differences between the Planet Labs constellation and the Starlink constellation that may warrant differing treatment of the two constellations. These include smaller satellite size, and consequent lower collision risk when comparing non-maneuverable satellites and a smaller number of satellites. There is also no

with SpaceX's Second Generation grant, identifies a relevant metric where additional Commission action would be necessary before deployment of additional Planet Pelican satellite following a certain level of failure.

5. We also condition Planet Labs to provide information regarding potential conjunction events during the reporting period for its satellites, particularly with respect to any difficulties encountered in the collision avoidance process. We believe that such information can help identify potential issues in operator-to-operator coordination.

6. There have been no concerns raised in this proceeding by NASA, NSF, or any other party except SpaceX regarding the instant application. While Planet Labs has indicated that it coordinates with the NASA CARA,¹⁰ we are including conditions requiring continued coordination with NASA, including operator-to-operator coordination of physical operations. Additionally, we note that Planet Labs has not provided any information regarding whether it has coordinated with NSF, we condition this grant to require Planet Labs to coordinate with NSF as well.¹¹ We conclude that it is in the public interest for Planet Labs to bear the responsibility of ensuring that these coordinations, which are separate from coordination of spectrum use, have been completed with these potentially interested federal agencies.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that the Planet Labs PBC request for license modification is GRANTED-IN-PART and DEFERRED-IN-PART,¹² pursuant to section 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 303(r), and sections 0.51 and 0.261 of the Federal Communication Commission's rules, 47 CFR §§ 0.51 and 0.261).

8. IT IS FURTHER ORDERED that petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's Rules, 47 CFR §§ 1.106 and 1.115, may be filed within 30 days of the date of the public notice of this action taken.

FEDERAL COMMUNICATIONS COMMISSION

Merissa L. Velez
Chief, Satellite Programs and Policy Division
Space Bureau

indication that the Planet Pelican satellites will be "checked out" at lower altitudes, so immediate identification of any issues with effective maneuverability, rather than periodic reporting, is warranted.

¹⁰ Letter from Danielle Piñeres, Vice President of Regulatory Affairs & Compliance, Planet Labs PBC, to Marlene H. Dortch, Secretary, FCC (filed Aug. 11, 2023).


¹¹ See condition 21 in the attached grant stamp.

¹² See conditions in the attached grant stamp.

ATTACHMENT TO GRANT

Planet Labs Inc.

ICFS File No. SAT-MOD-20220421-00042

ICFS File No(s):	SAT-MOD-20220421-00042	GRANT IN PART / DEFER IN PART – With Conditions  Satellite Programs and Policy Division Space Bureau
Licensee/Grantee:	Planet Labs PBC	
Call Sign:	S2912 ¹	
Satellite Name:	Flock/SkySat/Pelican constellation	
Orbital Location: (required station-keeping tolerance)	Non-geostationary satellite orbit (NGSO) at altitudes between 350 km and 720 km (Flock); NGSO at altitudes between 400 km and 630 km and inclinations between 85 and 100 degrees (SkySat 1 and 2); 97.0 and 97.9 degrees (SkySat 3-21); approximately 400 km to 420 km between 40.0 and 60.0 degrees (SkySat 16-21 alternative orbit); NGSO deployed to and commissioning at altitudes between 250 km and 550 km, with operations in sun-synchronous orbits at altitudes of 325 km (± 25 km), and inclinations of 96.7 degrees (Pelican).	
Administration:	United States of America	
Nature of Service:	Earth Exploration Satellite Service	
Scope of Grant:	Authority to deploy, and operate up to 7 technically-identical, ² NGSO satellites to be known as the Pelican satellites. ³	
Previous Grant(s):	Authority to construct, deploy, and operate a constellation of up to 544 technically identical non-geostationary satellites as follows: ⁴ <ul style="list-style-type: none">• 12 Flock 2p satellites deployed at 505 km with an inclination of 97.51° by the PSLV launch vehicle;• 529 Flock satellites initially deployed to orbital apogee altitudes of no greater than 660 kilometers, including up to 3 satellites with an Automatic Identification System (AIS) receiver system to demonstrate the capability of the satellites receive AIS 1 (161.9625 MHz-161.9875 MHz) and AIS 2 (162.0125-162.0375 MHz) channels;	

¹ See *Policy Branch Information, Applications Accepted for Filing*, Public Notice, Report No. SAT-01648 (July 15, 2022).

² Planet's modification application is deferred with respect to the requests for an additional 25 Pelican satellites and replacement satellites, and with respect to certain operations in the 6225-6425 MHz band. See conditions 8 and 14.

³ On January 17, 2023, Space Exploration Technologies Corp. (SpaceX) filed an *ex parte* letter. Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023) (*SpaceX Letter*). These issues are fully addressed in the accompanying Order.

⁴ See ICFS File Nos. SAT-MOD-20170713-00103 (granted in part, deferred in part May 24, 2018); SAT-AMD-20171106-00151 (granted May 24, 2018); SAT-AMD-20171025-a00144 (granted Dec. 8, 2017); SAT-MOD-20150802-00053 (granted in part, deferred in part Sept. 15, 2016; granted in part, deferred in part Dec. 8, 2017); SAT-MOD-20140912-00100 (granted Oct. 23, 2014); SAT-MOD-20140321-00032 (granted June 18, 2014); SAT-LOA-20130626-00087 (granted Dec. 3, 2013); ICFS File No. SAT-MOD-20170713-00103 (granted Jul. 19, 2018).

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ICFS File No. SAT-MOD-20220421-00042

	<ul style="list-style-type: none"> 3 satellites for purposes of a propulsion demonstration, deployed to orbital apogee altitudes of approximately 550 kilometers. <p>Authority to allow no more than 120 Flock satellites to be deployed to orbits that exceed an apogee altitude of 550 kilometers, rather than 500 kilometers.⁵</p> <p>Authority to construct, deploy and operate two satellites, SkySat-1 and SkySat-2, in high-inclination circular orbits.⁶</p> <p>Authority to construct, deploy, and operate SkySat-3.⁷</p> <p>Authority to construct, deploy and operate 12 additional satellites, SkySat-4 through SkySat-15, in circular orbits with altitudes from 400 to 630 km, depending on the launch vehicle used, and with inclination ranging between 97 and 97.9 degrees.⁸</p> <p>Authorization to deploy and operate up to six additional non-geostationary orbit remote-sensing satellites, SkySat-16 through SkySat-21, in circular orbits with altitudes from 400 to 630 km, depending on the launch vehicle used, and with inclination ranging between 97 and 97.9 degrees.⁹</p> <p>Modification of the specified operational orbital altitude range for SkySat-16 and SkySat-21 satellites to include the inclination range of 40.0 to 60.0 degrees in addition to the inclination range of 97.0 degrees and 97.9 degrees. Modification of the specified operational orbital range for SkySat-3 to include altitudes down to 400 km.¹⁰</p> <p>Consolidation of the SkySat satellites (Call Sign S2862) and the Flock satellites (Call Sign S2912) under one call sign (Call Sign S2912).¹¹</p>
Service Area(s):	Global. <i>See</i> Schedule S Tech Report at Item S6 (SAT-MOD-20170713-00103); Schedule S Tech Report and Exhibit 43 at 39-74 (SAT-MOD-20191217-00148).
Frequencies:	<p>8025-8400 (space-to-Earth) (remote sensing data and telemetry)</p> <p>2025-2110 MHz (Earth-to-space) (command)</p> <p>25.5-27.0 GHz (space-to-Earth) (data downlink) (Pelican satellites only)</p> <p>401-402 MHz (space-to-Earth) and 449.75-450.25 MHz (Earth-to-space) (early-phase and emergency-backup, as well as ranging and orbit determination on a non-emergency basis) (Flock satellites only)</p>

⁵ *See* ICFS File No. SAT-MOD-20170713-00103 (granted in part, deferred in part May 24, 2018) (noting also that the total number of simultaneously operational satellites refers specifically to those satellites providing EESS and does not include non-operational satellites that continue to operate in TT&C frequency bands as part of approved post-mission disposal plans).

⁶ *See* ICFS File No. SAT-LOA-20120322-00058 (granted Sept. 20, 2012).

⁷ *See* ICFS File No. SAT-MOD-20150408-00019 (granted in part and deferred in part June 10, 2016).

⁸ *See* ICFS File No. SAT-MOD-20150408-00019 (granted Aug. 31, 2016).

⁹ *See* ICFS File No. SAT-MOD-20170317-00053 (granted June 29, 2017).

¹⁰ *See* ICFS File No. SAT-MOD-20191217-00148 (granted March 16, 2020).

¹¹ *See* ICFS File No. SAT-MOD-20200615-00076 (granted March 18, 2021).

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	<p>161.9625-161.9875 MHz (AIS 1) and 162.0125-162.0375 MHz (AIS 2) (up to 3 demonstration satellites) (Flock satellites only)</p> <p><u>Inter-satellite links:</u>¹²</p> <p>4000-4200 MHz (space-to-space) (inter-satellite link) (reception by Pelican satellites only)</p> <p>6225-6425 MHz (space-to-space) (inter-satellite link) (transmission by one Pelican satellite)¹³</p>
<p>Unless otherwise specified herein, operations under this grant must comport with the legal and technical specifications set forth by the applicant or petitioner and with the Federal Communications Commission's rules not waived herein. This grant is also subject to the following conditions:</p> <p>1. Planet Labs must prepare the necessary information, as may be required, for submission to the International Telecommunication Union (ITU) to initiate and complete the advance publication, coordination, due diligence, and notification process for these space stations, in accordance with the ITU Radio Regulations. Planet Labs shall be held responsible for all cost-recovery fees associated with ITU filings. No protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination with the frequency assignments of other administrations. <i>See</i> 47 CFR § 25.111(b).</p> <p>2. Operations pursuant to this authorization must be in compliance with the terms of the Memoranda of Agreement between Planet Labs and the National Aeronautics and Space Administration (NASA) pertaining to operations in the frequency band 8025-8400 MHz.¹⁴ Transmissions of remote-sensing and telemetry data in the 8025-8400 MHz frequency band may only be made to earth stations coordinated with the National Aeronautics</p>	

¹² Planet's Pelican satellites would communicate with certain non-U.S. licensed SES satellites operating in geostationary satellite orbit (GSO). *See* Letter from Daniel C.H. Mah, Vice President, Legal & Regulatory Affairs, New Skies Satellites B.V. (SES), to Marlene H. Dortch, Secretary, FCC (filed Feb. 1, 2023) in ICFS File No. SAT-MOD-20220421-00042). SES states that it has made arrangements with Planet for its Pelican constellation to communicate with the following SES C-band satellites, all of which are Netherlands licensed and have been granted U.S. market access: (1) NSS-9 at 177° W.L. (Call Sign S2756); (2) SES-4 at 22° W.L. (Call Sign S2828); and (3) SES-6 at 40.5° W.L. (Call Sign S2870). *Id.* Pelican will also communicate with another Netherlands-licensed SES spacecraft, NSS-12 at 57° E.L. *Id.*

¹³ Operations in this frequency band are limited to one Pelican satellite for certain time-limited demonstration operations. Planet's request to transmit inter-satellite links in the direction of the geostationary arc using the 6225-6425 MHz band using additional Pelican satellites is deferred. *See* condition 14.

¹⁴ This includes, for the Flock satellites, transmissions in the 8025-8400 MHz band to the Maddock, ND, and Keflavik, Iceland, earth stations. *See* ICFS File No. SAT-MOD-20170713-00103, grant in part May 24, 2018, at para. 8.

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and Space Administration (NASA).¹⁵ Planet shall provide the FCC with a list of coordinated earth stations, and shall provide the FCC with an updated list within ten business days following any changes to the list.

3. Power flux-density from operation in the 8025-8400 MHz band must not exceed the limits in No. 22.5 and Table 21-4 of the International Telecommunication Union's Radio Regulations, the limits/protection criteria in Recommendation ITU-R SA.1157-1 must be met, and the guidelines in Recommendation ITU-R SA.1810 must be followed.

4. Operations pursuant to this authorization must not cause harmful interference to stations operating in the 2025-2110 MHz band in accordance with the U.S. Table of Frequency Allocations. *See* 47 CFR § 2.106, Footnote US347. Additionally, use of the 2025-2110 MHz band (Earth-to-space) will be limited to 3.12% duty cycle per satellite, per earth station and no emissions on 2086.1 MHz when the NASA International Space Station (ISS), NORAD ID 25544, is within 5° of any active Pelican ground station antenna boresight.

5. Planet Labs shall tune Flock satellite TT&C UHF links to an agreed frequency range with NOAA as soon as possible to minimize interference to NOAA GOES Data Collection System (DCS), and radiosonde operations and continue to work closely with NOAA to identify and implement any further measures needed to avoid RFI to the systems mentioned earlier. This initial tuning would be an interim frequency range for Planet Labs to use for upcoming launches. For future mission planning, transition out of 401-406 MHz to avoid interference to DCS and radiosondes is recommended. Planet Labs and NOAA shall work jointly to explore future mitigation strategies to avoid interference to NOAA missions.

6. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other sources, Planet Labs must review and take all possible steps to assess the collision risk, and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; and modifying spacecraft attitude and/or operations.

7. Planet must coordinate physical operations of spacecraft with any operator using similar orbits, for the purpose of eliminating collision risk and minimizing operational impacts. The orbital parameters specified in this grant are subject to change based on such coordination.

8. Planet Labs is authorized to deploy up to seven Pelican satellites. We defer action with respect to the additional Pelican satellites, pending filing and approval by the Commission of a modification to the application with an updated orbital debris mitigation demonstration addressing the re-entry casualty risk associated with the deployment of future Pelican satellites.

9. The number of simultaneously operational Flock satellites must not exceed 200.¹⁶

10. No more than 120 Flock satellites may be deployed to orbits that exceed an apogee altitude of 550

¹⁵ Planet Labs has executed written coordination agreements with NASA, which include identification of the earth stations with which Planet Labs may communicate in the 8025-8400 MHz band and specification of a process by which to remove and add earth stations. *See* ICFS File No. SAT-MOD-20170713-00103, Narrative Exhibit 43 at 1. Planet Labs has filed a list of coordinated earth stations for the Flock satellites with the Commission in accordance with a condition on the Flock satellite authorization. *See* Letter from Craig Scheffler, Spectrum Manager, Planet Labs, Inc. to Marlene H. Dortch, Secretary, FCC (filed Aug. 1, 2018 in ICFS File No. SAT-MOD-20170713-00103); *see also* ICFS File No. SAT-MOD-20170713-00103, Narrative Exhibit 43 at 1.

¹⁶ The total number of simultaneously operational Flock satellites refers specifically to those satellites providing EESS and does not include satellites that continue to operate in TT&C frequency bands as part of an approved post-mission disposal plan.

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kilometers.

11. Deployment of a Flock satellite into an orbit with an inclination of 51.6 degrees, plus or minus 0.1 degree, at an altitude above the ISS, is not authorized by this grant.

12. This authorization includes the previously-granted waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106, to allow non-conforming use of the 2025-2110 MHz band and the 8025-8400 MHz band in support of Planet Labs' limited demonstration of propulsion technology, subject to the condition that Planet Labs accepts any interference from authorized services in these bands in connection with its limited propulsion demonstration and that transmissions in the 8025-8400 MHz band are subject to the agreement regarding the Flock satellites reached between Planet Labs and NASA in this band.¹⁷

13. Planet was previously granted waiver of the modified processing round requirements of 47 CFR §§ 25.156 and 25.157. Given the opportunity for additional entrants to operate in the 25.5-27.0 GHz band, we also grant Planet Lab's request for waiver of the modified processing round requirements with respect to this additional frequency band for its Pelican satellites. *See DigitalGlobe, Inc.*, Order and Authorization, 20 FCC Red 15696 (Sat. Div., Int'l Bur. 2005), at paragraph 8. For the same reasons, we waive the modified processing round requirements for Planet Lab's requested inter-satellite operations with its Pelican satellites in the 4000-4200 MHz (space-to-space) and 6225-6425 MHz (space-to-space) frequency bands, specifically, we grant waiver with respect to reception on an unprotected basis of signals from certain GSO satellites and with respect to the inter-satellite link transmissions from a single satellite to certain GSO satellites for limited periods of time. *See* condition 14.

14. Planet Lab's request for waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106, for communications between its Pelican satellites and certain satellites operating in the GSO arc (i.e., communications in the space-to-space direction) is GRANTED IN PART. As the 4000-4200 MHz and 6225-6425 MHz bands are not allocated internationally for operations in the space-to-space direction, we also GRANT IN PART waiver of section 25.112(a)(3) of the Commission's rules, 47 CFR § 25.112(a)(3) for Planet's Pelican satellites.¹⁸ While the C-band frequencies are not allocated for inter-satellite operations, in this particular case, given the nature of Planet Lab's operations, and Planet Lab's willingness to accept a frequency assignment on a non-interference, unprotected basis, we conclude that grant of waiver in part to permit these operations is in the public interest. Planet plans to utilize the C-band to improve the image tasking responsiveness of the Pelican satellites.¹⁹ In making this determination, we note that the signals that would be received in low-Earth orbit by the Planet Lab's satellites from the GSO satellites in the 4000-4200 MHz band would normally be received by earth stations on the surface of the Earth in any case, and Planet's reception of the signals would not change or increase the potential for interference of those operations. With respect to the transmissions from the Planet Pelican satellite(s) in the 6225-6425 MHz band, we grant waiver in part at this time to permit limited duration operations using a single Pelican satellite for one period of up to 60 days to demonstrate the C-band hardware, and for up to four additional periods of up to 60 days each using a single Pelican satellite for demonstration testing to support the NASA Communications Service Project.²⁰ We conclude at this time that authorizing the

¹⁷ See Condition 2. *See also* ICFS File No. SAT-MOD-20200615-00076 (granted March 18, 2021).

¹⁸ See Letter from Tony Lin, Counsel to Planet Labs PBC, to Marlene H. Dortch, Secretary, FCC (Sept. 16, 2022) (requesting waiver of 47 CFR § 25.112(a)(3)).

¹⁹ See Letter from Danielle Piñeres, Planet Labs PBC, to Marlene H. Dortch, Secretary, FCC, at 1 (Dec. 12, 2022).

²⁰ See *id.* at 2. Planet Labs clarified the scope of the demonstration and testing operations in a subsequent letter. *See* Letter from Danielle Piñeres, Vice President of Regulatory Affairs & Compliance, Planet Labs PBC, to Marlene H. Dortch, Secretary, FCC (filed Jan. 31, 2023).

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Planet Labs Inc.

ICFS File No. SAT-MOD-20220421-00042

non-conforming operations with one satellite on a non-interference basis, for a limited period of time is in the public interest. This grant is without prejudice to any determination we may make in the future regarding Planet Lab's request to operate with its full Pelican system using the 6225-6425 MHz band, which is DEFERRED at this time.

15. In the 25.25-27.5 GHz band, power flux density operations must not exceed limits from 47 CFR § 25.208, ITU Radio Regulations, Article 21, Table 21-4, and the limits and guidelines in Recommendation ITU-R SA.1862 must be followed.

16. Because Planet Labs must comply with technical requirements in Part 2 of the Commission's rules and the above-referenced power flux-density limits, which should prevent harmful interference to other operations in the relevant frequency bands, we continue to grant Planet Lab's request for a waiver of the default service rules in 47 CFR § 25.217(b), including for the additional operations authorized here for its Pelican satellites. See *DigitalGlobe, Inc., supra*, at paragraph 13.

17. In connection with the provision of service in any particular country, Planet Labs is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.

18. Planet Lab's request for a limited waiver of section 25.114(c) of the Commission's rules, which requires certain information to be filed in the Form 312, Schedule S, is GRANTED. Planet Labs notes that it has provided placeholder data in the form in some places, since some of the categories (e.g., max/min saturation flux density, antenna pointing error, and antenna rotational error) are inapplicable and/or do not permit the entry of correct values. We grant waiver on the basis that Planet Labs has implemented workarounds where necessary to provide the information to the Commission necessary to evaluate the application.

19. Planet Labs must provide a semi-annual report, by January 1 and July 1 each year, covering the preceding six month period, respectively, from June 1 to November 30 and December 1 to May 31. The report should include the following:

- a. number of conjunction events identified for Planet Labs satellites during the reporting period, and the number of events that resulted in an action (maneuver or coordination with another operator), as well as any difficulties encountered in connection with the collision avoidance process and any measures taken to address those difficulties.
- b. Any loss of control of Pelican satellites at altitudes above 350 km.²¹

Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk. In the event of Pelican satellite failures resulting in more than 100 post-failure object years, Planet Labs may not deploy any additional Pelican satellites until the Commission has approved a license modification that includes an updated orbital debris mitigation plan addressing reduction in the failure rate or mitigation of the risk of satellite failures.

20. Planet Labs must communicate and collaborate with NASA to support safety of both Planet Labs and NASA assets and to preserve long-term sustainable space-based communications services. Planet Labs must report

²¹ The first Pelican satellite will operate in SSO at an inclination of 96.7 degrees, with an expected commissioning altitude of 525 km +/- 25 km, and then enter its operational altitude of 325 km +/- 25 km, within approximately six to twelve months; and the next six Pelican satellites, with an expected commissioning altitude between 250 km and 550 km, and then an approximately three-month transfer to their final operational altitude of 325 km +/- 25 km. See Planet Tech. App. at 1-2.

ATTACHMENT TO GRANT

Planet Labs Inc.

ICFS File No. SAT-MOD-20220421-00042

on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition 19, above. Planet Labs must coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy.

21. Planet Labs must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites (call sign S2912) on optical ground-based astronomy. Planet Labs must submit an annual report to the Commission, by January 1st each year covering the preceding year (1) describing whether it has reached a coordination agreement with NSF addressing optical astronomy, and (2) any steps Planet Labs has taken to reduce the impact of its satellites on optical astronomy. If Planet Labs provides a statement in the record that NSF has no concerns within 45 days following arrival of the Pelican satellites at 325 km, no further reporting will be required.

22. This authorization will become null and void regarding Flock satellites if, at any time during the license term, there are no Flock satellites operating; with regard to SkySat satellites, if there are no SkySat satellites operating; and with regard to the Pelican satellites, if there are no Pelican satellites operating. This authorization may be subject to additional conditions, or a reduction in the number of authorized Flock satellites, in the event future deployment rates do not justify an authorization for 200 operational satellites.

23. Planet Labs has fulfilled milestone and bond obligations imposed as conditions to a previous grant of authority to operate up to 28 NGSO Flock satellites in the 8025-8400 MHz band. *See* ICFS File No. SAT-MOD-20140321-00032 (grant stamp dated June 18, 2014), as well as a previous grant of authority for SkySat to operate the SkySat-3 satellite in the 2020-2025 MHz band (*see* ICFS File No. SAT-MOD-20150408-00019). However, as this license is for Planet Labs' Pelican constellation, we will need to impose additional milestones or bond conditions in connection with this license modification.²²

24. This grant is subject to the following requirements:

- a. Planet Labs must post a surety bond in satisfaction of 47 CFR §§ 25.165(a)(1) & (b) no later than **October 1, 2023**, and thereafter maintain on file a surety bond requiring payment in the event of a default in an amount, at minimum, determined according to the formula set forth in 47 CFR § 25.165(a)(1); and
- b. Planet Labs must launch 50 percent of the maximum number of proposed Pelican space stations, place them in the assigned orbits, and operate them in accordance with this grant no later than **August 31, 2029**, and must launch the remaining Pelican space stations necessary to complete its authorized service constellation, place them in their assigned orbits, and operate them in accordance with the authorization no later than **August 31, 2032**. 47 CFR § 25.164(b).

Failure to post and maintain a surety bond will render this grant null and void automatically, without further Commission action. Failure to meet the milestone requirements of 47 CFR § 25.164(b) may result in Planet Labs's authorization being reduced to the number of satellites in use at the milestone date. Failure to comply with the milestone requirements of 47 CFR § 25.164(b) will also result in forfeiture of Planet Labs's surety bond. By **August 21, 2029**, Planet Labs must either demonstrate compliance with this milestone requirement or notify the Commission in writing that the requirement was not met. 47 CFR § 25.164(f).

25. Within 30 days after deployment of each satellite pursuant to this authorization, Planet Labs must file a notification with the Commission specifying its apogee and perigee altitudes and orbital inclination.

²² We note that several of the milestone conditions extend beyond the current license term. Such milestone dates would become applicable in the event of a license extension.

ICFS File No. SAT-MOD-20220421-00042

Station licenses are subject to the conditions specified in Section 309(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(h).

Merissa L. Velez
Chief, Satellite Programs and Policy Division

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

In the Matter of)	
)	
Domestic Section 214 Applications Granted,	)	WC Docket Nos. 22-421 and 23-29
Subject to Condition, for the Transfer of Control of)	
Germantown Telephone Company, Inc. and)	
Valstar, Inc. to Archtop Fiber LLC and Hancock)	
Telephone, Inc. and Hancock Long Distance, Inc.)	
to Archtop Fiber LLC)	

ORDER ON RECONSIDERATION

Adopted: September 1, 2023

Released: September 1, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, the Wireline Competition Bureau (Bureau) *sua sponte* reconsiders one aspect of its decision to grant, as conditioned, two domestic section 214 transfer of control applications related to the same transferee, Archtop Fiber LLC (Archtop), pursuant to section 214(a) of the Communications Act of 1934, as amended (Act), and sections 63.03-63.04 of the Commission's rules.¹ Pursuant to section 1.113(a) of the Commission's rules, the Bureau may, on its own motion, reconsider any action made or taken within 30 days from the date of public notice of such action.²

¹ See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. 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, with GTel, the GTel Licensees), and Archtop, requested consent to transfer control of the GTel Licensees from the GTel Transferors to Archtop. See 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). The second application, filed by RCW Family, LLC, the Margaret J.B. Reese Credit Shelter Trust, Suzanne B. Feehan, Maureen L. Mackin, and June B. Nolan (collectively, the Hancock Transferors), the Hancock Telephone Company, Inc., Hancock Long Distance, Inc. (together, the Hancock Licensees), and Archtop, requested consent to transfer control of the Hancock Licensees from the Hancock Transferors to Archtop. See 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). On February 24, 2023, the Bureau released a public notice seeking comment on the GTel Application and the Hancock Application (together, the Applications). *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 Nos. 22-421 and 23-29, DA 23-147 (WCB 2023) (*Archtop Accepted-for-Filing Public Notice*). The Bureau did not receive any comments or petitions in opposition to the Applications. On August 3, 2023, the Bureau released a public notice granting the Applications. See *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 Nos. 22-421 and 23-29, DA 23-657 (WCB 2023) (*Archtop Grant Public Notice*). Archtop is also the transferee in a pending transfer of control application with the Commission. See *Domestic Section 214 Application Filed for the Transfer of Control of Alteva of Warwick LLC to Archtop Fiber LLC*, WC Docket No. 23-178, Public Notice, DA 23-683 (WCB 2023).

² 47 CFR § 1.113(a).

In doing so, the Bureau may take any action it could take in acting on a petition for reconsideration, including reversing or modifying the original order.³

2. On our own motion, we modify our August 3, 2023 *Archtop Grant Public Notice* as it pertains to the entities to which we applied the “mixed support condition” that the Commission adopted in the *Hargray/ComSouth Order*.⁴ Specifically, we exclude from the scope of the mixed support condition Lavaca Telephone Company of Arkansas (Lavaca Arkansas) and Lavaca Telephone Company of Oklahoma (Lavaca Oklahoma), which are subsidiaries of Dobson Fiber, LLC (Dobson; Lavaca Arkansas and Lavaca Oklahoma, together, Dobson Subsidiaries). The Dobson Subsidiaries are owned in part by a disclosable interest holder of Archtop. As stated in the *Archtop Grant Public Notice*, the condition will remain in place for all other “post-consummation company’s rate-of-return affiliates receiving cost-based support,” including Germantown Telephone Company, Inc. (GTel) and Hancock Telephone Company Inc. (Hancock, together, the Archtop Subsidiaries).⁵

II. BACKGROUND

3. On August 3, 2023, the Bureau released the *Archtop Grant Public Notice*.⁶ To mitigate the potential for cost shifting arising as a result of the proposed transactions, we applied the mixed support condition to the grant of the Applications. Because Archtop sought to acquire control of GTel, which receives cost-based universal service support, and Hancock, which receives model-based universal service support, we referred to this as a “mixed support” transaction and identified a risk that the combined companies could have an economic incentive to shift certain shared or common costs from the model-based support company to the cost-based support company.⁷ Pursuant to established precedent in the *Hargray/ComSouth Order*, we stated that the combined operating expenses of each post-consummation company’s rate-of-return affiliates receiving cost-based support 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.⁸ We also explained that a disclosable interest holder of Archtop, OPSEU Pension Plan Trust Fund (OPTrust), through affiliates holds a greater than 10% interest in Dobson Technologies, Inc. d/b/a Dobson Fiber, which in turn wholly owns several incumbent LECs, including Lavaca Arkansas and Lavaca Oklahoma, which both receive cost-based support.⁹ We concluded with regard to the Applications that “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

³ 47 CFR §§ 1.106(k)(1), 1.113(a).

⁴ *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*), recon., *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 Reconsideration Order*).

⁵ See *Archtop Grant Public Notice* at 4-5 and n. 28.

⁶ *Archtop Grant Public Notice* at 1-7.

⁷ *Archtop Grant Public Notice* at 4-5. GTel wholly owns Valstar, a telecommunications entity that receives fixed Auction 903 universal support. *Id.* at 3-5.

⁸ *Archtop Grant Public Notice* at 5.

⁹ *Archtop Grant Public Notice* at 2, n.7, 4-5; *Archtop Accepted-for-Filing Public Notice*, at 2, n.6.

affiliates that it may acquire during the time in which the condition is in effect (together, covered entities).”¹⁰

4. Applicants had identified the fixed and model-based support entities described above in the record and acknowledged that the Applications “separately, and when considered together, present mixed support scenarios.”¹¹ On August 23, 2023, Applicants filed a supplement clarifying that the common disclosable interest holder Archtop and Dobson share, OPTrust, “is simply an institutional investor that holds disclosable interests in several different FCC licensees who happens to have operating subsidiaries that receive cost-based and model support,” and does not exert control over Archtop and Dobson.¹² Applicants assert that the Dobson Subsidiaries are not within the scope of Archtop’s operations and have no direct relation to the Archtop Subsidiaries.¹³ Applicants state that Archtop has no ability to control the operating expenses of Dobson or its subsidiaries, and Dobson has no ability to control the operating expenses of Archtop or its subsidiaries.¹⁴ Overall, Applicants state that the Archtop Subsidiaries do not share operations or common costs with the Dobson Subsidiaries, that the companies’ books and accounts are entirely unrelated and separate, and the companies operate in different states.¹⁵

III. DISCUSSION

5. We find that Applicants have demonstrated that there is likely no risk of cost shifting that would result from Archtop’s investor’s ownership of the Dobson Subsidiaries, and thus we do not find it “necessary” to apply a condition capping support to the Dobson Subsidiaries.¹⁶ In the *Hargray/ComSouth*

¹⁰ *Id.* at n.28. As we noted in the *Archtop Grant Public Notice*, in authorizing certain previous transactions, the Bureau applied the mixed support condition to Lavaca Telephone Company, Inc. d/b/a Pinnacle Communications (Lavaca), which is the parent company of Lavaca Arkansas and Lavaca Oklahoma. *Archtop Grant Public Notice* at 4 and n.22 (“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*.”); see *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) (*2021 Dobson/Lavaca Grant Public Notice*); *Domestic 214 Application Granted for the Transfer of Control of Hargray Acquisition Holdings, LLC and its Subsidiaries to Cable One, Inc.*, WC Docket No. 21-69, 36 FCC Rcd 7647, n.28; *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 21-378, DA 21-1430, n.4 (WCB 2021); *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 21-378, Public Notice, DA 21-1430, n.4 (WCB 2022); *Domestic Section 214 Application Granted Subject to Condition*, WC Docket No. 22-110, Public Notice, DA 22-1092, n.4 (WCB 2022); *Dobson Reconsideration Order*, 36 FCC Rcd at 8860, para. 5, 8862, para. 10 (excluding an entity, Fort Mojave Telecommunications, Inc., from the Dobson mixed support condition, based on information from Dobson that the entity shared no costs with any Dobson affiliates and maintained separate financial counting). The *Archtop Grant Public Notice* would have reset, or started again from year one, the seven year sunset date that we previously imposed on Lavaca and the Dobson Subsidiaries, as well as requiring an update to the averaged combined operating expenses of the three calendar years preceding the transactions’ closing date. *Archtop Grant Public Notice* at n.28

¹¹ Letter from Keith J. Roland, Counsel to Transferors and Licensees, and K.C. Halm, Counsel to Transferee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-421, at 2 (filed Feb. 13, 2023).

¹² Letter from K.C. Halm, Paul B. Hudson, John C. Nelson, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 22-421, at 3 (filed Aug. 23, 2023) (*August 23 Supplement*).

¹³ *Id.* at 2-3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Dobson Reconsideration Order*, 36 FCC Rcd at 8864, para. 14 (reaffirming the Commission’s delegation of authority to the Bureau to “continue to apply the condition where necessary 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. We also direct the Bureau to exclude specific affiliates in a mixed support transaction from the condition if no potential public interest harm could occur (continued....)

Order, the Commission sought to prevent cost shifting and to protect the finite resources of the high-cost universal service fund by imposing in certain transactions a limited condition that capped high-cost universal service support based on the operating expenses of the entity receiving cost-based support.¹⁷ Because the cost shifting incentive remediated through the mixed support condition is directly tied to “shared or common costs,”¹⁸ the Commission has found that there could be an exception to the risk of cost shifting and thus no harm to remedy in cases where there are no common costs, cost sharing, or consolidation of corporate books between the post-consummation companies in a transaction.¹⁹ In such cases, the Commission allows the Bureau to exclude transaction entities from the mixed support condition.²⁰

6. In the specific circumstances in these transactions and based on the information in the *August 23 Supplement*, we agree with Applicants that the cost shifting that the mixed support condition was designed to address is likely not possible between the Dobson Subsidiaries and Archtop.²¹ The Applicants attest to the fact that the Dobson Subsidiaries are not within Archtop’s ownership or control.²² Applicants demonstrate that, although OPTrust has a disclosable interest in Archtop, it does not share common control nor is it a parent company of Archtop.²³ The Commission has stated that the cost shifting incentive remediated through the mixed support condition is directly tied to “shared or common costs.”²⁴ Applicants attest to the fact that Archtop and Dobson do not share any common costs; lack the ability to control the operating expenses of each other; and that the Archtop Subsidiaries do not share operations with the Dobson Subsidiaries.²⁵ Additionally, the Applicants assert that the companies’ books and accounts are entirely unrelated and separate, and the companies operate in different states.²⁶ We find

(Continued from previous page)

because of the lack of majority control and common costs, cost sharing, and/or consolidation of financial accounts.”).

¹⁷ *Hargray/ComSouth Order*, 33 FCC Rcd at 4788-90, paras. 26-31. 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. *Id.* at 4789, para. 27, n.72; *Dobson Reconsideration Order*, 36 FCC Rcd at 8864, para. 14.

¹⁸ *Dobson Reconsideration Order*, 36 FCC Rcd at 8863, para. 11.

¹⁹ *Id.* at 8859 and 8863-64. For example, in the context of the *Dobson Reconsideration Order*, the Commission found cost-shifting to be unlikely there because (1) there was no connection between the companies other than a single director on the board of an affiliate in which Dobson’s upstream ownership had a non-controlling minority interest, and (2) Dobson has affirmed that it had no control over the costs, business decisions, or management of that affiliate. *Id.* at 8862-64, paras. 8-14.

²⁰ *Dobson Reconsideration Order*, 36 FCC Rcd at 8864, para. 14.

²¹ *August 23 Supplement* at 1-3.

²² *Id.* at 2.

²³ *Id.*

²⁴ *Hargray/ComSouth Order*, 33 FCC Rcd at 4785-86, para. 20. In the *Hargray/ComSouth Order*, the Commission contemplated the presence of a common control relationship in order to shift costs, citing an example in which a company receiving model-based support rents a headquarters building, and after merging with a legacy cost-based company, allocates a share of the rental costs to the cost-based company, thereby making the cost-based company eligible for higher universal service support even though neither company had increased investment. *Id.* at 4787-88, para. 25.

²⁵ *August 23 Supplement* at 2.

²⁶ *Id.* By contrast, in cases where there are common costs, cost sharing, or consolidation of corporate books, it would be difficult for parties holding partial interests in a legacy cost-based entity to show that there is no possibility of the type of cost shifting that the mixed support condition is designed to address. For example, the Commission has stated that a minority interest holder can have control when it possesses the ability to “dominate the

(continued....)

Applicants' arguments convincing and hold that, based on these facts, we will modify the application of the mixed support condition in the *Archtop Grant Public Notice* to exclude the Dobson Subsidiaries.

7. Therefore, on our own motion, we modify the *Archtop Grant Public Notice* to exclude the Dobson Subsidiaries from the application of the mixed support condition. The Dobson Subsidiaries will be subject to the continued application of the mixed support condition that we previously applied to Lavaca and the Dobson Subsidiaries.²⁷ We uphold our decision in the *Archtop Grant Public Notice* to apply the mixed support condition to the Archtop Subsidiaries, and the condition will remain in place for all other "post-consummation company's rate-of-return affiliates receiving cost-based support."²⁸ All other findings in the *Archtop Grant Public Notice* remain as stated.

8. The relief granted herein is dependent upon Archtop and Dobson continuing to have non-controlling interests in each other, as well as sharing no costs and maintaining separate financial accounting. If any of these factors cease to apply, Applicants must notify the Commission within 30 days so that the Bureau can re-apply the mixed support condition, if warranted, to the Dobson Subsidiaries in accordance with the Commission's directive in the *Hargray/ComSouth Order*.

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, 1.1, 1.3, and 1.113 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.1, 1.3, and 1.113, that this Order on Reconsideration IS ADOPTED.

10. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.1.02(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

(Continued from previous page) —————
corporation's affairs" through board influence or management factors in spite of holding a small ownership interest. See *News Corporation and DirectTV Group, Inc. and Liberty Media Corporation for Authority to Transfer Control*, MB Docket No. 07-18, Memorandum Opinion and Order, 23 FCC Rcd 3264, 3284-86, paras. 42-43 (2008). Factors such as the authority to appoint directors, make management decisions, pay financial obligations, including expenses arising out of operations, and unfettered use of equipment and facilities are relevant to a determination of whether an entity has control over another entity. 47 CFR § 63.24(d), n.1 (specifying factors relevant to company control in international assignments and transfers of control).

²⁷ See *Archtop Grant Public Notice* at 4 and n.22.

²⁸ *Archtop Grant Public Notice* at 5-6 and n.28.

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

In the Matter of)	
)	
Telecommunications Relay Services and Speech-	)	CG Docket No. 03-123
to-Speech Services for Individuals with Hearing)	
and Speech Disabilities)	
)	
Structure and Practices of the Video Relay Service	)	CG Docket No. 10-51
Program)	

ORDER

Adopted: August 31, 2023

Released: August 31, 2023

By the Chief, Consumer and Governmental Affairs Bureau:

1. In this Order, the Consumer and Governmental Affairs Bureau (Bureau) of the Federal Communications Commission (FCC or Commission), on its own motion, extends the limited temporary waiver of the expiration of the Telecommunications Relay Service (TRS) Fund compensation formulas for Video Relay Service (VRS).¹ In a June 2023 Order, the Bureau waived the expiration date of the VRS compensation formulas until either August 31, 2023, or the effective date of Commission action establishing new compensation formulas, whichever is earlier.

2. *Background.* The current tiered compensation formulas for VRS, adopted by the Commission in 2017, were initially set to expire on June 30, 2021.² In a Notice of Proposed Rulemaking adopted in March 2021, the Commission sought comment on setting VRS compensation for the next period.³ To allow time for the completion of this rulemaking, the Commission waived the June 30, 2021 expiration date, extending the compensation plan through December 31, 2021.⁴ On November 12, 2021, the Bureau found good cause to grant a further waiver, extending the current VRS compensation plan through June 30, 2022,⁵ and, in a subsequent order, through June 30, 2023.⁶ The *2023 VRS Compensation Formula Waiver Order* then further extended the compensation plan through August 31, 2023.⁷

¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 23-577 (CGB June 30, 2023) (*2023 VRS Compensation Formula Waiver Order*).

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Report and Order and Order, 32 FCC Rcd 5891 (2017) (*2017 VRS Compensation Order*).

³ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Notice of Proposed Rulemaking and Order, 36 FCC Rcd 8802 (2021).

⁴ *Id.* at 8817, para. 40.

⁵ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 36 FCC Rcd 15798 (CGB Nov. 12, 2021).

3. *Waiver Standard.* A Commission rule may be waived for “good cause shown.”⁸ In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹¹

4. *Discussion.* We find good cause to waive the VRS compensation formula expiration date. As we acknowledged in the *2023 VRS Compensation Formula Waiver Order*, establishing an equitable methodology and compensation levels for VRS is inherently complex.¹² The Commission has made significant progress toward completion of a revised VRS compensation structure that would support investment in VRS. However, the revised plans may not be finalized by the current August 31, 2023, expiration date. Accordingly, it is appropriate to extend the existing compensation formulas to provide certainty and stability to VRS providers pending final Commission action. To do otherwise could deprive consumers with disabilities of the services they need to enjoy functionally equivalent telecommunications.

5. Regarding the duration of this extension, we anticipate that the Commission will be able to adopt a decision in the near future, but it is difficult to predict a specific date by which that will occur. Out of an abundance of caution, and to ensure that recently filed ex parte submissions can be given due consideration,¹³ we direct the TRS Fund administrator to continue compensating eligible VRS providers under the current compensation formulas through the earlier of September 30, 2023, or the effective date of Commission action revising the applicable compensation formulas. This action does not preclude a true-up of compensation for VRS, should the Commission deem that necessary after determining the applicable compensation formulas. Accordingly, until the expiration of this waiver, the current

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, DA 22-699 (CGB June 30, 2022).

⁷ *2023 VRS Compensation Formula Waiver Order*, paras. 14-17.

⁸ 47 CFR § 1.3.

⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *Northeast Cellular*, 897 F.2d at 1166.

¹² *2023 VRS Compensation Formula Waiver Order* at para. 16. *See also*, *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 26 FCC Rcd 9972, 9980-81, paras. 22-23 (2011) (adopting interim VRS compensation levels pending Commission completion of a proceeding addressing VRS market structure and compensation methodology issues).

¹³ *See e.g.*, Letter from Angela E. Giancarlo, Sorenson Communications, LLC (Sorenson), to Marlene H. Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed Aug. 23, 2023); Letter from Scott D. Delacourt, ZP Better Together, LLC (ZP), to Marlene H. Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed Aug. 22, 2023); Letter from Jeff Rosen, Convo Communications, LLC (Convo), to Marlene H. Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed Aug. 22, 2023); Letter from John T. Nakahata, Sorenson, to Marlene H. Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed Aug. 21, 2023); Letter from Amanda Montgomery, Convo, to Marlene H. Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed Aug. 18, 2023); Letter from Scott D. Delacourt, ZP, to Marlene H. Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed Aug. 16, 2023); Letter from Scott D. Delacourt, ZP, to Marlene H. Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed Aug. 11, 2023); Letter from Scott D. Delacourt, ZP, to Marlene H. Dortch, FCC, CG Docket No. 03-123 and 10-51 (filed Aug. 10, 2023).

compensation formulas for VRS remain effective. VRS providers with more than 500,000 monthly minutes as of July 1, 2017, shall be paid \$4.82 per minute for a provider's first 1,000,000 monthly minutes (Tier I); \$3.97 per minute for monthly minutes between 1,000,001 and 2,500,000 (Tier II); and \$2.63 per minute for monthly minutes exceeding 2,500,000 (Tier III).¹⁴ VRS providers with 500,000 or fewer monthly minutes as of July 1, 2017, shall be paid \$5.29 per minute (Emergent Tier) for the provider's first 500,000 minutes, and according to the otherwise applicable tiered formulas, stated above, for monthly minutes exceeding 500,000.¹⁵

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

7. *Additional Information.* For further information regarding this item, please contact Michael Scott, Disability Rights Office, Consumer and Governmental Affairs Bureau, 202-418-1264, or Michael.Scott@fcc.gov.

8. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 225, and sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, this Order IS ADOPTED.

9. IT IS FURTHER ORDERED that the TRS Fund administrator shall compensate eligible providers of VRS in accordance with the formulas applicable on August 31, 2023, for the period through the earlier of September 30, 2023, or the effective date of Commission action establishing revised compensation formulas for that service.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

¹⁴ 2017 VRS Compensation Order, 32 FCC Rcd at 5934, Appx A.

¹⁵ *Id.* at 5916-17, paras. 49-50.

**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 31, 2023

Released: August 31, 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 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)*, 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* were filed on August 9, 2023, while reply comments are due on September 8, 2023. On August 8, the Wireless Telecommunications Bureau (WTB) denied a prior joint request² to extend by 45 days the comment and reply period in this proceeding.³

2. On August 23, 2023, Intelsat License LLC, SES Americom, Inc., Hispasat, S.A., Eutelsat S.A., and Ovzon LLC (collectively, the “Satellite Operators”) filed a joint request to extend the reply comment deadline by 30-days—from September 8, 2023, to October 10, 2023.⁴ The Satellite Operators argue additional time would benefit all parties by enabling closer review of several technical studies and

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) (*2023 12 GHz Item*). 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); *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, 88 Fed. Reg. 43938 (July 10, 2023).

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) (First Joint Request).

³ *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, Order, DA 23-671, 2023 WL 5125009 (Aug. 8, 2023) (Denial of the First Joint Request).

⁴ Joint Request for Extension of Reply Comment Deadline of Intelsat License LLC, SES Americom, Inc., Hispasat, S.A., Eutelsat S.A., and Ovzon LLC (collectively, the “Satellite Operators”), WT Docket No. 20-443, GN Docket No. 22-352 (filed Aug. 23, 2023) (Second Joint Request).

analyses filed with the comments in the proceeding.⁵ The Satellite Operators assert they plan to use the extension to prepare and submit a technical study that responds to the various technical arguments raised by commenters.⁶ They argue the Commission has previously found extensions to be justified when technically complex issues were raised in a proceeding like this one.⁷

3. We deny the Satellite Operators' joint request for extension of the reply comment deadline in this proceeding. As set forth in section 1.46 of the Commission's rules, it is the Commission's policy that extensions of time shall not be routinely granted.⁸ In this proceeding, the deadline for comments was set for 30 days after publication of a summary of the item in the Federal Register, with reply comments due 30 days after the comment date.⁹ These are not unusual timeframes for comment and reply cycles in a Commission rulemaking proceeding. Moreover, the issues present in Commission rulemakings are often technically complex in nature; the presence of complex technical issues alone does not provide justification for an extension. Furthermore, we find that the Satellite Operators have neither identified specific technical issues that require additional time for analysis nor explained with particularity why such analysis cannot be completed by the current reply comment deadline. In addition, we note that this proceeding has been designated permit-but-disclose,¹⁰ and parties may subsequently submit additional analyses in accordance with the Commission's *ex parte* rules.¹¹ For these reasons, we deny this Second Joint Request. Reply comments in the proceeding will continue to be due September 8, 2023.

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 Reply Comment Deadline filed by Intelsat License LLC, SES Americom, Inc., Hispasat, S.A., Eutelsat S.A., and Ovzon LLC **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

⁵ *Id.* at 1 & n.2 (citing comments attaching technical analyses filed by NTIA, Nokia, DIRECTV, LLC, WorldVu Satellites Limited, and DISH Network Corp.).

⁶ *Id.* at 2.

⁷ *Id.* at 2-3.

⁸ 47 CFR § 1.46(a).

⁹ See 2023 12 GHz Item at *1. As noted in the Bureau's Denial of the First Joint Request, commenters had access to the underlying rulemaking document for almost three months prior to the initial comment deadline. See Denial of the First Joint Request at *2, para. 3.

¹⁰ 2023 12 GHz Item at *54, para. 148.

¹¹ See 47 CFR §1.200 *et seq.*



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. 23-803

Report No. SAT-01755

Friday September 1, 2023

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-LOA-20230404-00070	E S3165	ICEYE US, Inc.	
Launch and Operating Authority			
Grant of Authority			Effective Date: 08/31/2023

Nature of Service: Earth Exploration Satellite Service

On August 31, 2023, the Satellite Programs and Policy Division granted, with conditions, authority to ICEYE US, Inc. to deploy and operate eight low-Earth orbit, non-geostationary satellites that would operate in the earth-exploration satellite service, conducting synthetic aperture radar (SAR) imaging at an altitude of approximately 550 kilometers. See DA 23-797. ICEYE will operate in the following frequency bands: 9300-9900 MHz for SAR imaging; 8025-8400 MHz (space-to-Earth) for the EESS downlink; and 2025-2110 MHz (Earth-to-space) and 2200-2290 MHz (space-to-Earth) for space operations (tracking, telemetry, and command). Specifically, ICEYE will operate using center frequencies of 9600 MHz with a bandwidth of 600 MHz and 9650.0 MHz with bandwidths of 150 MHz, 200 MHz, 300 MHz for SAR imaging; center frequencies of 8212.5 MHz with a bandwidth of 375 MHz and 8300.0 MHz with a bandwidth of 150 MHz for its EESS downlink; a center frequency of 2086.9 MHz with a bandwidth of 1.2 MHz for its space operations uplink; and a center frequency of 2277.3 MHz with a bandwidth of 6 MHz for its space operations downlink. This application was granted under the streamlined small satellite procedures, 47 CFR § 25.122.

SAT-LOA-20230612-00136	E S3174	Outpost Technologies Corporation	
Launch and Operating Authority			
Grant of Authority			Effective Date: 08/31/2023

Nature of Service: Other

On August 31, 2023, the Satellite Programs and Policy Division granted authority, with conditions, to Outpost Technologies Corporation to construct, deploy, and operate one low-Earth orbit, non-geostationary orbit satellite, to be known as Outpost Mission 2, to operate in the space operations service at an altitude of approximately 525 kilometers and inclination of 97.5 degrees (± 0.1 degrees). Outpost is authorized to operate using a downlink using center frequencies of 401.25 MHz or 401.5 MHz and a bandwidth of 3.5 kHz, 7 kHz, or 14 kHz, and an uplink using the 449.75-450.25 MHz band with a bandwidth of 3.5 kHz, 7 kHz, or 14 kHz. This application was granted under the streamlined small satellite procedures, 47 CFR § 25.122.

SAT-LOA-20230626-00147	E S3176	Odyssey SpaceWorks	
Launch and Operating Authority			
Grant of Authority			Effective Date: 08/31/2023

Nature of Service: Other

On August 31, 2023, the Satellite Programs and Policy Division granted, with conditions, authority to Odyssey SpaceWorks to deploy and operate one satellite, to be known as the OSW Cazorla, in low-Earth, non-geostationary orbit. The satellite will be deployed at an altitude of 505-545 kilometers at an inclination of 97.5 degrees (± 0.1 degrees). Odyssey SpaceWorks will conduct space operations and space research using the following frequency bands: 2200-2290 MHz (space-to-Earth) for data downlink and telemetry operations outside the United States and 2025-2110 MHz (Earth-to-space) for space research uplink and command operations. Specifically, Odyssey SpaceWorks is authorized to operate with a center frequency of 2220.0 MHz and bandwidth of 1.0 MHz (space-to-Earth), and center frequency of 2049.0 MHz and bandwidth of 1.0 MHz (Earth-to-space). This application was granted under the streamlined small satellite procedures, 47 CFR § 25.122.

SAT-MOD-20220421-00042 E S2912 Planet Labs PBC

Modification

Granted in Part/ Deferred in Part

Effective Date: 08/31/2023

Nature of Service: Earth Exploration Satellite Service

On August 31, 2023, the Satellite Programs and Policy Division granted-in-part and deferred-in-part, with conditions, the request of Planet Labs PBC for modification of its license in order to deploy and operate additional satellites to be known as the Pelican system. See DA 23-799. Specifically, Planet was authorized to deploy and operate up to seven satellites in non-geostationary orbit for operations in the earth-exploration satellite service, deployed to altitudes between 250 km and 550 km, with operations at altitudes of 325 km (± 25 km). The Planet Pelican satellites are authorized to operate in the 8025-8400 MHz (space-to-Earth), 2025-2110 MHz (Earth-to-space), 25.5-27.0 GHz (space-to-Earth) bands. Additionally, Planet Pelican satellites are authorized to receive inter-satellite links in the 4000-4200 MHz band, and Planet may transmit inter-satellite links using one Pelican satellite in the 6225-6425 MHz band.

SAT-STA-20230627-00149 E S3066 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 08/30/2023

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

SAT-STA-20230719-00180 E S2237 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 08/31/2023

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

SAT-STA-20230726-00185 E S3066 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 08/30/2023

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

SAT-STA-20230824-00209 E S3066 Intelsat License LLC

Special Temporary Authority

Grant of Authority

Effective Date: 08/30/2023

On August 30, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC, for special temporary authority for a period of up to 30 days for the Intelsat 40e space station to provide fixed-satellite service in the 18.8-19.3 GHz (space-to-Earth) and 28.6-29.1 GHz (Earth-to-space) frequency bands from the 91.0° W.L. orbital location.

INFORMATIVE

SAT-LOA-20181221-00094 S3041 Swarm Technologies, Inc.

The Satellite Programs and Policy Division has determined that Swarm Technologies, Inc. has met the launch and begin operations milestone set forth in its grant of authority to construct, deploy, and operate a constellation of up to 150 non-geostationary orbit space stations (Call Sign S3041), and may release the bond associated with this authorization. See 47 CFR §§ 25.164(b)(1) and (f) and 25.165(d).

SAT-MOD-20230804-00192 S2115 Globalstar Licensee 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 September 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 23-804

Released: September 1, 2023

THE OFFICE OF THE MANAGING DIRECTOR ANNOUNCES OCTOBER 1, 2023 TRANSITION TO NEW ONLINE FREEDOM OF INFORMATION ACT AND PRIVACY ACT CASE MANAGEMENT SOLUTION

The Federal Communications Commission (Commission) takes very seriously its responsibilities for public disclosure and engagement under the Freedom of Information Act (FOIA) and the Privacy Act.¹ To administer these statutes, the Commission currently relies simultaneously on two online case management solutions: FOIA.gov available at <https://www.foia.gov> and FOIAonline.gov, available at <https://foiaonline.gov/foiaonline/action/public/home>. With the planned retirement of FOIAonline.gov by its host agency, the Commission will transition from FOIAonline to a new online case management solution beginning October 1, 2023. Although there will be a new look, we expect the transition to be seamless.

Members of the public will continue to have the ability to submit requests for records through the new portal under both the FOIA and Privacy Act. In addition, the public will continue to have the ability to submit these requests via FOIA.gov or by mail to the Federal Communications Commission, at 45 L Street, NE, Washington, DC 20554. Access to the new case management solution portal will be available from our website at <https://www.fcc.gov/foia> under “File a Request for FCC Records.”

Current account holders who have records saved in FOIAonline will be able to access those records in the new solution portal if they create their new account using the same email address used in FOIAonline. Account holders who no longer have access to the email address used to create their FOIAonline account should archive any records they wish to retain on or before September 30, 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 & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Additional Information. For further information, please contact Stephanie Kost, FOIA Public Liaison, at FOIA-Public-Liaison@fcc.gov or 202-418-0440. Any press inquiries about this transition can be directed to MediaRelations@fcc.gov.

- FCC -

¹ 5 U.S.C. §§ 552, 552a.

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

In the Matter of)	
)	
Affordable Connectivity Program	)	WC Docket No. 21-450
)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
)	
Schools and Libraries Universal Service Support Mechanism	)	WC Docket No. 02-6
)	
Establishing Emergency Connectivity Fund to Close the Homework Gap	)	WC Docket No. 21-93
)	
Rural Health Care Universal Service Support Mechanism	)	WC Docket No. 02-60
)	
Connect America Fund	)	WC Docket No. 10-90
)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
)	

ORDER

Adopted: September 1, 2023

Released: September 1, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we waive, on our own motion, certain Affordable Connectivity Program, Lifeline, E-Rate,¹ Emergency Connectivity Fund, Rural Health Care, and High Cost rules and deadlines to assist participants and service providers, including Universal Service Fund (USF) contributors, located in the areas affected by Hurricane Idalia, which struck Florida's Gulf Coast on August 30, 2023 as a Category 3 storm. The resulting heavy rainfall, catastrophic winds, and flooding have caused significant power outages and damage to homes, schools, libraries, and health care facilities throughout the impacted areas.² Because of these compelling and unique circumstances, we find good cause to waive certain rules and deadlines to assist program participants, service providers, and USF contributors in the affected areas.³

¹ E-Rate is formally known as the schools and libraries universal support mechanism.

² See Nouran Salahieh and Holly Yan, CNN, *Hurricane Idalia makes landfall in Florida as a dangerous Category 3 storm, and, 'It's going to get a lot worse'* (Aug. 30, 2023), <https://www.cnn.com/2023/08/30/weather/florida-hurricane-idalia-wednesday/index.html>.

³ See *Affordable Connectivity Program; Lifeline and Link Up Reform and Modernization; Schools and Libraries Universal Service Support Mechanism; Establishing the Emergency Connectivity Fund to Close the Homework Gap; Rural Health Care Universal Support Mechanism; Connect America Fund; Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket Nos. 21-450, 11-42, 21-93, 02-60, 10-90, 06-122, Order, DA 23- (continued....)

II. BACKGROUND

2. On Wednesday, August 30, 2023, Hurricane Idalia struck Florida's Gulf Coast and made landfall in the Big Bend area, toppling power lines, damaging homes, buildings, and infrastructure, and leaving over 300,000 residents throughout the region without power.⁴ With over 120 mile per hour winds, up to 10 inches of rain and over 15 feet of storm surge, this is the strongest storm to hit the Big Bend area of Florida in over 100 years.⁵ The range of damage from Hurricane Idalia is expected to increase as the storm continues to travel through the southern region of Georgia and parts of North and South Carolina.⁶ The President has declared a state of emergency for Florida and South Carolina, allowing authorities to provide disaster relief.⁷

(Continued from previous page)

723, 2023 WL 5358441 (WCB Aug. 18, 2023) (*Hawaii Wildfires Order*); *Schools and Libraries Universal Service Support Mechanism*; *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; *Rural Health Care Universal Support Mechanism*; *COVID-19 Telehealth Program*; *Universal Service Contribution Methodology*; *Lifeline and Link Up Reform and Modernization*; *Affordable Connectivity Program*; *Connect America Fund*, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-998 (WCB Sept. 22, 2022) (*Hurricane Fiona Order*); *Schools and Libraries Universal Service Support Mechanism*; *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; *Rural Health Care Universal Support Mechanism*; *COVID-19 Telehealth Program*; *Universal Service Contribution Methodology*; *Lifeline and Link Up Reform and Modernization*; *Affordable Connectivity Program*; *Connect America Fund*, CC Docket No. 02-6, WC Docket Nos. 21-93, 02-60, 20-89, 06-122, 11-42, 21-450, and 10-90, Order, DA 22-1063 (WCB Oct. 4, 2022) (*Hurricane Ian Order*); *Schools and Libraries Universal Service Support Mechanism*; *Rural Health Care Universal Service Support Mechanism*; *Lifeline and Link Up Reform and Modernization*; *Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket Nos. 02-60, 11-42, and 06-122, Order, 32 FCC Rcd 7456 (2017) (*Hurricanes Harvey, Irma & Maria Order*) (waiving certain E-Rate, RHC, Lifeline, and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Federal-State Joint Board on Universal Service*; *Schools and Libraries Universal Service Support Mechanism*; *Rural Health Care Support Mechanism*; *Lifeline and Link-Up*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (*Hurricane Katrina Order*) (adopting temporary rules to provide rural and non-rural public and nonprofit health care providers in areas devastated by Hurricane Katrina, and in areas where evacuees are located, with assistance in order to help in the recovery efforts).

⁴ Daniel Kozin et al., AP News, *Hurricane Idalia unleashes fury on Florida after making landfall as a dangerous Category 3 storm* (Aug. 30, 2023), <https://apnews.com/article/florida-hurricane-idalia-2136985ceea53f5deb600c43aeca1138>. See also Sarasota Herald Tribune, *Hurricane Idalia Wednesday live updates: Tornado warning, U.S. 41 closed, Bradenton floods* (Aug. 30, 2023), <https://www.heraldtribune.com/story/weather/hurricane/2023/08/30/hurricane-idalia-wednesday-updates-effects-in-sarasota-ma-flooding-in-bradenton-skyway-bridge-closed/70710711007/>.

⁵ See Terry Spencer, AP News, *Hurricane Idalia unleashes fury on Florida and Georgia, swamping wide stretch of coast*, <https://apnews.com/article/florida-hurricane-idalia-2136985ceea53f5deb600c43aeca1138>. See NBC News, *Hurricane Idalia makes landfall in Florida as Category 3 storm brings damage: Live updates* (Aug. 30, 2023), <https://www.nbcnews.com/news/weather/live-blog/hurricane-idalia-live-updates-rcna102478>.

⁶ See Marlene Lenthag, NBC News, *Idalia's winds subside as storm brings heavy rain to Georgia and the Carolinas* (Aug. 30, 2023), <https://www.nbcnews.com/news/weather/live-blog/hurricane-idalia-live-updates-rcna102478>. See Tony Kukulich, The Post and Courier, *Hurricane Idalia now a Category 1 storm; rain reaches Charleston* (Aug. 30, 2023), https://www.postandcourier.com/hurricane-idalia-updates-sc-impact-wednesday/article_ef06d1f4-471b-11ee-96a3-93c24c1e12a7.html.

⁷ The White House, President Joseph R. Biden, Jr. Approves Emergency Declaration for Florida (Aug. 31, 2023) <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/31/president-joseph-r-biden-jr-approves-florida-disaster-declaration-4/> (last visited Aug. 31, 2023); The White House, President Joseph R. Biden, Jr. Approves Emergency Declaration for Florida (Aug. 28, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/28/president-joseph-r-biden-jr-approves-florida-emergency-declaration-6/> (last visited Aug. 31, 2023); FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Florida (Aug. 28, 2023), <https://www.fema.gov/press-release/20230828/president-joseph-r-biden-jr-approves-emergency-> (continued....)

3. Historically, the Wireline Competition Bureau (Bureau) has granted waivers of certain Program deadlines for areas affected by natural disasters.⁸ For the purposes of the waivers we grant today, we define “Affected Disaster Areas” as the areas in Florida and South Carolina that the Federal Emergency Management Agency (FEMA) has designated as eligible for Individual or Public Assistance for the purposes of federal disaster relief as of the release date of this Order.⁹

III. DISCUSSION

4. In response to the damage caused by Hurricane Idalia, on our own motion, we waive various provisions of the Lifeline, Affordable Connectivity Program (ACP), E-Rate, Emergency Connectivity Fund (ECF) Program, Rural Health Care (RHC) Program, and High Cost rules for those Federal Communications Commission (FCC or Commission) programs’ participants and for USF

(Continued from previous page)

declaration-florida (last visited Aug. 31, 2023); FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for South Carolina (Aug. 31, 2023), <https://www.fema.gov/press-release/20230831/president-joseph-r-biden-jr-approves-emergency-declaration-south-carolina>; *See also* The White House, President Joseph R. Biden, Jr. Approves Emergency Declaration for South Carolina (Aug. 31, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/31/president-joseph-r-biden-jr-approves-south-carolina-emergency-declaration-2/> (last visited Aug. 31, 2023).

⁸ *See, e.g., Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization; Connect America Fund; Federal-State Joint Board on Universal Service High-Cost Universal Service Support; Establishing Emergency Connectivity Fund to Close the Homework Gap; Emergency Broadband Benefits Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, Order, DA 21-1107, 36 FCC Rcd 13405 (WCB 2021) (*Hurricane Ida Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, Order, 32 FCC Rcd 7456, 7457, para. 2 (WCB 2017) (*Hurricanes Harvey, Irma, and Maria Order*); *Schools and Libraries Universal Support Mechanism*, WC Docket No. 02-6, Order, 34 FCC Rcd 56, 57, para. 2 (WCB 2019) (*California Wildfires Order*); *Request for Waiver of Section 54.514 of the Commission’s Rules by Florida Department of Management Services; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 10186, 10188, para. 5 (WCB 2018) (*Florida Hurricanes Order*); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9540, para. 4 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16885, para. 4 (2005) (*Hurricane Katrina Order*).

⁹ Currently, in Florida, Alachua, Baker, Bay, Bradford, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hardee, Hernando, Hillsborough, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Nassau, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, Sumter, Suwannee, Taylor, Union, Volusia and Wakulla counties are covered within the Affected Disaster Areas designated by FEMA. *See* FEMA, Florida Tropical Storm Idalia (Aug. 28, 2023), <https://www.fema.gov/disaster/3596/designated-areas>. In South Carolina, federal disaster assistance has been approved in Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York counties. *See* FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for South Carolina (Aug. 31, 2023), <https://www.fema.gov/press-release/20230831/president-joseph-r-biden-jr-approves-emergency-declaration-south-carolina>; FEMA, South Carolina Hurricane Idalia (last visited Aug. 31, 2023), <https://www.fema.gov/disaster/3597>. We note that the corresponding maps include a more expansive list of counties than the FEMA disaster declarations. We also include in this waiver any additional counties and states that are in the future designated as eligible for Individual or Public Assistance for the purposes of federal disaster relief by FEMA in association with the emergency conditions resulting from Hurricane Idalia.

contributors located in the Affected Disaster Areas.¹⁰ Generally, the Commission's rules may be waived for good cause shown.¹¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³

A. Lifeline

5. We first waive the Lifeline non-usage, recertification, and reverification requirements for subscribers residing in the Affected Disaster Areas. We find that good cause exists to waive sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing in the Affected Disaster Areas through November 30, 2023.¹⁴ Given the devastation caused by Hurricane Idalia to infrastructure in the Affected Disaster Areas, strict compliance with these rules may be impracticable and may risk harm to Lifeline subscribers who may be inappropriately de-enrolled during the recovery efforts.¹⁵

¹⁰ We recognize that entities in the Affected Disaster Areas may need additional relief relating to Lifeline, ACP, E-Rate, ECF, RHC, High Cost, and Contributions obligations not addressed in this Order as they complete assessments of the damage to their networks; such entities should request specific relief from the Bureau to address these individualized circumstances.

¹¹ 47 CFR § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1159.

¹³ *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ See 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f).

¹⁵ See, e.g., *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, Order, 32 FCC Rcd. 7456 (2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 32 FCC Rcd 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, Order, DA-22-998 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors located in the areas affected by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program, Connect America Fund*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, WC Docket No. 10-90, Order, DA 22-1063 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, (continued....)

6. To promote the maintenance and rebuilding of communities affected by the hurricane and to facilitate continued access to telecommunications services for disaster victims, we find it is in the public interest to temporarily waive sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules.¹⁶ Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their Lifeline-supported service and do not use that service for 30 consecutive days.¹⁷ Waiving these rules will help low-income consumers retain access to emergency communications services during this natural disaster, and allows ETCs to continue providing Lifeline service to disaster victims in the Affected Disaster Areas without requiring those subscribers to de-enroll and re-enroll in the program as they continue to work through the damage of the hurricane.¹⁸

7. We also find that good cause exists to waive sections 54.405(e)(4) and 54.410(f) of the Commission's rules, which require Lifeline subscribers to demonstrate continued eligibility for the program, through November 30, 2023.¹⁹ This waiver will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Verifier during the waiver period.²⁰ Waiver of these rules will allow the Universal Service Administrative Company (USAC) and ETCs serving Lifeline subscribers in the Affected Disaster Areas additional time to complete the recertification process. Disruptions to telephone and Internet service resulting from the hurricane could make it difficult, if not impossible, for Lifeline subscribers to receive and respond to recertification requests and reminders. At the expiration of the waiver period, recertification efforts will resume and subscribers who were subject to the waiver will have an additional 60 days to respond to recertification notices.

8. Where USAC has already conducted recertification outreach, we direct USAC to not conduct de-enrollments for any subscriber who would have been de-enrolled, and was not actually de-enrolled, after August 30, 2023. USAC should send new outreach to these subscribers at the end of this waiver period, as is practicable, and give such subscribers an additional 60 days to complete their recertification activity. Any subscriber who has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission's rules. Additionally, to the extent that a Lifeline subscriber successfully completes their recertification process in 2024, they would not be required to undergo Lifeline recertification again in 2024.

9. USAC also conducts a one-time reverification of eligibility for each existing Lifeline subscriber to confirm that all existing Lifeline subscribers meet the National Verifier's eligibility standards. We direct USAC not to de-enroll any Lifeline subscriber residing in the Affected Disaster Areas for failure to successfully respond to a pending reverification request with documentation deadlines that will occur before November 30, 2023. We also direct USAC not to open any new reverification requests requiring documentation for Lifeline subscribers or ETCs in the Affected Disaster Areas until

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Lifeline, High Cost, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian).

¹⁶ 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

¹⁷ *See id.*

¹⁸ As noted above, the waiver period is through November 30, 2023. At the end of the waiver period, the subscriber will have 30 days (beginning on December 1, 2023) to use their Lifeline-supported service. If the subscriber does not use their Lifeline-supported service during that 30-day timeframe, they will enter their 15-day cure period on December 31, 2023.

¹⁹ 47 CFR §§ 54.405(e)(4), 54.410(f).

²⁰ *See* 47 CFR § 54.405(e)(4) (requiring 60 days' notice to subscribers to respond to recertification efforts prior to de-enrollment).

after November 30, 2023 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

10. ETCs in the Affected Disaster Areas that are unable to comply with the Lifeline non-usage, recertification, and reverification requirements at the end of this waiver period may request additional, narrowly tailored relief from these requirements from the Bureau. Additionally, if the hurricane has significantly impacted an ETC's ability to complete an ongoing Lifeline audit, the Bureau will consider requests for extension of any relevant deadlines on a case-by-case basis.

B. Affordable Connectivity Program

11. In order to promote continued access to broadband service for Affordable Connectivity Program (ACP) households affected by Hurricane Idalia, we find that it is in the public interest to temporarily waive through November 30, 2023, for ACP households in the Affected Disaster Areas, sections 54.1808(c)(1) and (2) and 54.1809(c) of the Commission's rules²¹ concerning the non-usage requirement and de-enrollment for non-usage, and sections 54.1806(f)(1) and (5) and 54.1809(d) of the ACP rules concerning the annual recertification and de-enrollment for failure to recertify.²² Strict compliance with these rules may be impracticable and may risk harm to ACP subscribers who may be de-enrolled during the rebuilding and recovery efforts.²³

²¹ 47 CFR §§ 54.1808(c)(1), (2), and 54.1809(c). We make clear that the temporary waiver of these rules does not waive the language in section 54.1808(c)(2) that allows providers to seek reimbursement only after the subscriber activates their ACP service.

²² 47 CFR §§ 54.1806(f)(1), (5), 54.1809(d).

²³ See, e.g., *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, *Order*, 32 FCC Rcd. 7456 (2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Order*, 32 FCC Rcd 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Order*, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, *Order*, DA-22-998, 1 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors located in the areas affected by Hurricane Fiona); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, Establishing the Emergency Connectivity Fund to Close the Homework Gap, COVID-19 Telehealth Program, Affordable Connectivity Program, Connect America Fund*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, WC Docket No. 21-93, WC Docket No. 20-89, WC Docket No. 21-450, WC Docket No. 10-90, *Order*, DA-22-1063, 1 (WCB 2022) (waiving certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, High Cost, and ACP rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Ian).

12. Under the ACP rules in sections 54.1808(c)(1) and (2) and 54.1809(c), participating providers offering an ACP service for which the household does not pay a monthly fee are required to certify that every such household has used its supported service at least once every consecutive 30 days, as usage is defined in section 54.407(c)(2) of the Commission's rules, in order to claim ACP reimbursement for discounted ACP service for a specific subscriber in a given service month.²⁴ Providers cannot claim support for, and must de-enroll, subscribers who do not cure their non-usage during the 15-day cure period.²⁵ We recognize that power and service outages caused by the hurricane may interfere with a household's ability to use their ACP-supported service, perhaps for an extended period of time. Allowing participating providers in the Affected Disaster Areas to maintain service for these ACP households as they experience the aftermath of the hurricane, and claim reimbursement for the service provided to them, helps to ensure that these households are not de-enrolled from the program during the limited waiver period when it may be impossible for them to use their ACP-supported service. It will also ensure that subscribers who lose service due to the hurricane will be able to regain access to their ACP-supported service when it again becomes available to them. After the expiration of the waiver period, ACP subscribers who are subject to the non-usage rule will have 30 days to use their ACP service for the purposes of sections 54.1808(c)(1) and (2) of the Commission's rules, and 15 days to cure any non-usage.²⁶ ACP providers in the Affected Disaster Areas that are unable to comply with the ACP non-usage and related de-enrollment requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Bureau.

13. We find it is also in the public interest to temporarily waive sections 54.1806(f)(1) and (5), and 54.1809(d), of the Commission's rules for ACP subscribers in the Affected Disaster Areas who would have been required to respond to recertification outreach during the waiver period.²⁷ Waiver of these rules will allow USAC and providers serving ACP subscribers in the Affected Disaster Areas additional time to complete the annual recertification process. Disruptions to electricity and communication services resulting from the hurricane could make it difficult, if not impossible, for ACP subscribers in the Affected Disaster Areas to receive and respond to recertification requests and reminders during the waiver period. After the waiver period ends on November 30, 2023, pursuant to section 54.1809(d) of the ACP rules, ACP-only households will have 60 days to respond to recertification outreach by USAC or their service provider as applicable.²⁸ Where USAC or the participating provider has already conducted recertification outreach to an ACP subscriber in the Affected Disaster Areas, after the end of the waiver period, new outreach should be sent to these subscribers within 14 days of the

²⁴ 47 CFR § 54.1808(c)(1) and (2).

²⁵ 47 CFR §§ 54.1808(c)(1) and (2), and 54.1809(c).

²⁶ As noted above, the waiver period is through November 30, 2023. At the end of the waiver period, the subscriber will have 30 days (beginning on December 1, 2023) to use their ACP-supported service. If the subscriber does not use their ACP-supported service during that 30-day timeframe, they will enter their 15-day cure period on December 31, 2023.

²⁷ During the waiver period, USAC may continue to check the continued eligibility of ACP households in the Affected Disaster Areas using the database connections through the National Verifier to the extent that access to those databases has not been impacted by the hurricane. For these automated database checks, USAC is able to verify the continued eligibility of households enrolled in the ACP without any action on the part of the subscriber. During the waiver period, participating providers that are required to recertify their ACP subscribers under the ACP rules may similarly use any permitted eligibility confirmation mechanisms or methods that do not require affirmative action on the part of the subscribers. During the temporary waiver period, participating providers and USAC should otherwise cease any recertification measures that require affirmative action from ACP-households. USAC and participating providers may resume such recertification measures steps after the end of the waiver period.

²⁸ 47 CFR § 54.1809(d). We note that given the progress of ACP recertification efforts in the Affected Disaster Areas there is no near-term subscriber de-enrollment concern, as there is, and was addressed above, in the Lifeline program.

waiver period ending on November 30, 2023, and such subscribers should have an additional 60 days to complete their recertification activity.²⁹

14. Under the ACP rules, qualifying households that are enrolled in both the ACP and Lifeline may rely on a successful Lifeline recertification to satisfy the annual ACP recertification requirement.³⁰ Households that are enrolled in both programs who do not pass Lifeline recertification still have an opportunity to demonstrate that they qualify for the ACP, if required, after completion of the Lifeline recertification process.³¹ Households that are enrolled in both Lifeline and the ACP, and that do not pass their Lifeline recertification for calendar year 2023, will be afforded time to demonstrate their continued eligibility for the ACP even if this extends into 2024.³² We expect USAC and participating providers to start the recertification process for such subscribers in the Affected Disaster Areas within 14 days of the waiver period ending on November 30, 2023. To the extent that an ACP subscriber (whether enrolled in the ACP only or in both the ACP and Lifeline) successfully completes their recertification process in 2024, they would not be required to undergo ACP recertification again in 2024.

C. E-Rate Program

15. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following E-Rate program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the deadline to file FCC Forms 486, 472, and 474; (3) the September 30, 2023 service implementation deadline for non-recurring services; (4) portions of the service and equipment substitution rule; and (5) document retention and production requirements for participating E-Rate applicants and service providers whose documents were destroyed by Hurricane Idalia.

16. *E-Rate Program Deadlines.* For applicants located in Affected Disaster Areas, we waive, on a temporary basis, the following deadlines that may occur on and after August 27, 2023,³³ and provide those affected with up to 150 calendar days from the release date of this Order to submit the required filing:³⁴

- Requests for review or waiver of decisions by USAC, directed to USAC or the Commission.³⁵

²⁹ For the ACP, unlike Lifeline, in certain circumstances participating providers and not USAC are responsible for conducting the required ACP annual recertification. See 47 CFR § 54.1806(f)(1) (outlining when USAC and when service providers, respectively, conduct ACP recertifications).

³⁰ 47 CFR § 54.1806(f)(1).

³¹ As explained in the *Affordable Connectivity Program Order*, there are a few differences in the eligibility criteria between the Lifeline Program and the ACP. See *Affordable Connectivity Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450, 20-445, 37 FCC Rcd 484, 527, para. 86, & n. 248 (2022) (*Affordable Connectivity Program Order*). Accordingly, if a household enrolled in both programs does not pass Lifeline recertification, this would not automatically render that household ineligible for the ACP. See *id.*

³² See *Affordable Connectivity Program Order*, 37 FCC Rcd at 527, para. 86 (“Where a household enrolled in both Lifeline and the Affordable Connectivity Program does not respond or fails recertification for Lifeline, the subscriber will still have an opportunity to demonstrate their continued eligibility for the Affordable Connectivity Program.”); 47 CFR § 54.1809(d) (giving ACP subscribers a 60-day deadline to respond to recertification efforts).

³³ See *supra* note 9. E-Rate program participants located in the Affected Disaster Areas who may have already missed these deadlines due to damage or disruption caused by Hurricane Idalia may submit the required filings up to 150 calendar days from the release date of this Order.

³⁴ We note that USAC, the Administrator of the universal service support programs, including the E-Rate program, has already suspended many of its administrative deadlines for applicants in the Affected Disaster Areas pursuant to its natural disaster procedures.

³⁵ 47 CFR §§ 1.106, 54.720. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should include this waiver in their filing.

- Filing FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form).³⁶
- Filing FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice Form).³⁷

17. *Service Implementation Deadline Extensions.* Additionally, we find that good cause exists to waive section 54.507(d)(4) of the Commission's rules, subject to the limitations herein, for applicants located in the Affected Disaster Areas. We find that the extensive damage to property, facilities, and resources resulting from Hurricane Idalia will make it impossible for some applicants in the Affected Disaster Areas to complete the installation of internal connections and other non-recurring services by the September 30, 2023 deadline for Funding Year (FY) 2022. Accordingly, we extend the FY 2022 implementation deadline for non-recurring services to September 30, 2024 for applicants in the Affected Disaster Areas, and we likewise extend the deadline for all other applicants that have non-recurring service funding requests with September 30, 2023 as the deadline and are located in the Affected Disaster Areas.³⁸

18. *Service and Equipment Substitutions.* Consistent with precedent,³⁹ we will also provide increased flexibility for service and equipment substitutions in the Affected Disaster Areas. Section

³⁶ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 at 4; *see also Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002).

³⁷ 47 CFR § 54.514(a). Given the significant damage inflicted by Hurricane Idalia, consistent with precedent we find that extraordinary circumstances exist warranting a waiver of the invoice filing deadline rule. *See Hurricanes Harvey, Irma and Maria Order*, 32 FCC Rcd at 7458, n.13) (waiving the E-Rate invoice filing deadline for areas impacted by Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13407-08, at para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167, at *4, para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643 at *2, para. 5 (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ian); *Petition of TeleGuam Holdings, LLC for Waiver and Certain Other Relief: Affordable Connectivity Program; Lifeline and Link Up Reform and Modernization; Schools and Libraries Universal Support Mechanism; Rural Health Care Universal Service Support Mechanism; Connect America Fund; Universal Service Contribution Methodology; Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 02-6, 95-116, 99-200, WC Docket Nos. 21-450, 11-42, 02-60, 10-90, 06-122, Order, DA 23-571, 2023 WL 4348349, at *5, para. 16 (rel. June 30, 2023) (*Typhoon Mawar Order*) (waiving the E-Rate invoice filing deadline for areas impacted by Typhoon Mawar); *Hawaii Wildfires Order*, 2023 WL 5358441, at *5, para. 16 (waiving the E-Rate invoice filing deadline for areas impacted by the Hawaii Wildfires); *see also Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd at 8965-66, paras. 238-40 (2014).

³⁸ 47 CFR § 54.507(d)(4); *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 22-976, 2022 WL 4396831, *2, para. 4 (WCB Sept. 19, 2022) (extending the service implementation deadline for certain FY 2020 and 2021 funding requests that had September 30, 2022 as the deadline pursuant to section 47 CFR § 54.507(d)(4)).

³⁹ *See, e.g., Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9543-44, para. 10 (providing increased flexibility for E-Rate program service substitutions in the wake of Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13409, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167 at *5-6, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643 at *5-6, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ian); *Typhoon Mawar Order*, 2023 WL 4348349, at *5, para. 18 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Typhoon Mawar); *Hawaii Wildfires Order*, 2023 WL 5358441, at *5, para. 18 (providing increased flexibility for E-Rate program service substitutions following the aftermath of the Hawaii Wildfires).

54.504(d) of the Commission's rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality;⁴⁰ (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.⁴¹ For applicants located in Affected Disaster Areas that need to replace services or product(s) that have been disrupted, destroyed, or rendered unusable by Hurricane Idalia, we waive this rule to exclude the requirement that the substituted service or product(s) must have the same functionality as the service or product that it is replacing.⁴² This will allow applicants in the Affected Disaster Areas maximum flexibility to substitute services and product(s) based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa),⁴³ so that they may use already approved E-Rate funding to replace damaged or destroyed products(s) and restore services, subject to the limitations stated herein.⁴⁴ We believe this additional flexibility will allow applicants, given their specific understanding of their circumstances, to use E-Rate funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives section 54.504(d)(1)(i) of the Commission's rules while keeping the remaining aspects of our service and equipment substitution rule intact. Applicants must continue to ensure that a service and/or equipment substitution: (a) does not violate any contract provisions;⁴⁵ (b) does not violate state or local procurement

⁴⁰ The Commission previously determined that an equipment or service substitution request does not have the same functionality if it "changes the type of service requested pursuant to the original funding request from one category to another (e.g., a change from telecommunications service to internal connections, or a change from Internet access to telecommunications service)." *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26925, n.82 (2003).

⁴¹ 47 CFR § 54.504(d)(1)(iv).

⁴² 47 CFR § 54.504(d)(1)(i). We remind applicants that they may only request service and equipment substitutions if the implementation deadline for the service or product to be replaced has not passed. *See, e.g.*, 47 CFR § 54.507(d)(1), (d)(4); *see also 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, 15550, 15558, paras. 37, 49 (2014) (*Second 2014 E-Rate Order*).

⁴³ In some cases, replacing one type of service with another may require applicants to switch service providers. The Commission's rules permit applicants to do so when: (a) it is allowed under an applicant's state and local procurement rules; (b) it is allowed under the terms of any contract between the applicant and its original service provider; (c) the applicant has notified its original service provider of its intent to change service providers; (d) there is a legitimate reason to change providers (e.g., the service provider is unable to perform the requested services); and (e) the newly selected service provider received the next highest point value in the original bid evaluation. *See Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket Nos. 02-6, et al., Sixth Report and Order, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (*Schools and Libraries Sixth Report and Order*) (citing *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45 and 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*), and stating that the new requirements are in addition to those outlined in the *Copan Order*).

⁴⁴ Beginning in Funding Year 2021, school districts and library systems are permitted to transfer equipment between schools within a district and libraries within a system without notifying USAC of the transfer. *See* 47 CFR § 54.513(d); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11238-39, para. 49 (2019). However, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years as required by the Commission's rules. 47 CFR § 54.513(d).

laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470.⁴⁶ Applicants must also request approval of service and/or equipment substitutions by submitting a service and/or equipment substitution request to USAC.

19. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records as a result of the destruction caused by Hurricane Idalia. We waive section 54.516(a) of our rules with respect to such destroyed records, which requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.⁴⁷ Applicants and service providers will not be penalized for failure to retain or produce records destroyed by the hurricane. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by Hurricane Idalia. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission. We note that the record retention and production requirements under our rules continue to apply to all records that were not destroyed by Hurricane Idalia, including records relating to any relief granted by this Order.

20. We find that the significant property damage, power outages, and disruptions in services caused by Hurricane Idalia in the Affected Disaster Areas constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We find that a 150-day waiver period for the filing deadlines listed above and other relief granted by this Order are appropriate measures to accommodate the extraordinary circumstances caused by Hurricane Idalia, while continuing to protect program integrity. E-Rate applicants or service providers in the Affected Disaster Areas that are unable to comply with these program deadlines or procedures at the end of this period may request additional, narrowly-tailored relief from these or other requirements from the Bureau.

D. Emergency Connectivity Fund Program

21. For applicants and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Emergency Connectivity Fund (ECF) program rules: (1) the 30-day deadline to file appeals and requests for waiver; (2) the deadline to file FCC Forms 472, and 474; (3) portions of the service and equipment substitution rule; and (4) document retention and production requirements for participating ECF program participants whose documents were destroyed by Hurricane Idalia.

22. *Emergency Connectivity Fund Program Deadlines.* For ECF program participants located in the Affected Disaster Areas, we first waive, on a temporary basis, the deadline to submit a request for review or waiver of decisions by USAC, directed to USAC or the Commission and provide these participants with up to 150 calendar days from the release date of this Order to submit their filing.⁴⁸ Section 54.1718(b) of the Commission's rules requires an affected party requesting review of a decision

(Continued from previous page) _____

⁴⁵ The additional flexibility provided for applicants located in the Affected Disaster Areas seeking substitutions for services and products damaged by Hurricane Idalia is not intended to invalidate any contracts between applicants and service providers. Applicants are solely responsible for ensuring that requested equipment and service substitutions are permitted under their agreements with service providers.

⁴⁶ 47 CFR § 54.504(d). In the event that an equipment or service substitution results in a change in the pre-discount price for the supported equipment or service, support is based on the lower of either the pre-discount price of the equipment or service for which support was originally requested or the pre-discount price of the new, substituted equipment or service. See 47 CFR § 54.504(d)(2).

⁴⁷ 47 CFR § 54.516(a).

⁴⁸ 47 CFR § 54.1718(b); 47 CFR § 1.106. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should indicate such basis in their filing.

by USAC or waiver to submit such request within 30 days from the date of USAC's decision, which is shorter than the timeframe permitted under the E-Rate program rules.⁴⁹ Given this shortened timeframe and recognizing that ECF program participants may have difficulty submitting their requests while dealing with the impact of Hurricane Idalia, we find it is in the public interest to waive and extend this deadline by 150 days for program participants in the Affected Disaster Areas.⁵⁰ For the same reason, we also direct USAC to extend its administrative deadlines associated with information requests issued to affected program participants, including Program Integrity Assurance-related requests, and provide them with an additional 150 days from the release date of this Order to respond to such requests.⁵¹

23. We also waive, on a temporary basis, the deadline to submit requests for reimbursement and provide ECF program participants located in the Affected Disaster Areas with up to 150 days from the release date of this Order to submit their ECF FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and ECF FCC Form 474 (Service Provider Invoice Form).⁵² Given the significant damage inflicted by Hurricane Idalia, we find good cause exists to waive the invoice filing deadline.⁵³ Furthermore, we recognize that there are ECF participants in the Affected Disaster Areas who may have difficulty compiling the necessary documentation and submitting requests ahead of their invoice filing deadline, the first of which falls on October 30, 2023 for many ECF participants.⁵⁴ We therefore find it is in the public interest to waive and extend this deadline by 150 days from the release date of this Order for ECF program participants in the Affected Disaster Areas.

24. *Service and Equipment Substitutions.* Additionally, in light of the destruction to equipment and services destroyed by Hurricane Idalia, we provide additional flexibility to ECF program applicants to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by the hurricane.⁵⁵ Section 54.1710(b) of the Commission's rules allows a request by an applicant to substitute equipment or service for

⁴⁹ 47 CFR § 54.1718(b).

⁵⁰ We anticipate that some affected applicants will need more time to submit appeals of USAC's decisions than provided under our rules; and, therefore, we find a waiver of this deadline appropriate.

⁵¹ See, e.g., *Hurricane Ida Order*, 36 FCC Rcd at 13413, para. 23 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167, at *6-7, para. 10 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643, at *7, para. 10 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Ian); *Hawaii Wildfires Order*, 2023 WL 5358441, at *6, para. 22 (waiving USAC's ECF administrative deadlines associated with USAC's information requests in the aftermath of the Hawaii Wildfires).

⁵² 47 CFR § 54.1711(d).

⁵³ See *Request for a Waiver by T-Mobile USA, Inc., Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No 21-93, Order, DA 23-669, at para. 8 (WCB rel. Aug. 14, 2023) (*ECF Invoice Filing Waiver Order*) (finding good cause and providing a waiver of the ECF invoice filing deadline rule).

⁵⁴ See *ECF Invoice Filing Waiver Order*, DA 23-669, at para. 8 (extending the ECF invoice filing deadline to October 30, 2023 for certain ECF program participants).

⁵⁵ See, e.g., *Hurricane Ida Order*, 36 FCC Rcd 13414, para. 25 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Ida); *Hurricane Fiona Order*, 2022 WL 4483167, at *7-8, para. 12 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Fiona); *Hurricane Ian Order*, 2022 WL 6351643, at *7-8, para. 12 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Ian); *Hawaii Wildfires Order*, 2023 WL 5358441, at *7, para. 24 (providing ECF applicants greater flexibility to request substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by the Hawaii Wildfires).

another where (i) the equipment or service has the same functionality and (ii) the substitution does not violate any contract provisions or state, local, or Tribal procurement law.⁵⁶ For applicants in the Affected Disaster Areas that need to replace equipment or services that have been disrupted, destroyed, or rendered unusable by Hurricane Idalia, we waive this rule to exclude the requirement that the substituted equipment or service must have the same functionality as the equipment or service that it is replacing.⁵⁷ This will allow applicants in the Affected Disaster Areas the maximum flexibility using already approved ECF funding to substitute much needed equipment or services (including service providers, where necessary) as quickly as possible, particularly where the availability of such items may be limited given the pandemic's impact on the global supply chain. The flexibility conferred by this measure effectively waives section 54.1710(b)(2)(i) of the Commission's rules for affected applicants while keeping the remaining aspects of the ECF service substitution rule intact, including the requirement that the service substitution request be in writing and that the substitution not violate any contract provisions or state, local, or Tribal procurement law.

25. *Documentation Retention and Production.* Recognizing that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricane Idalia, we next waive section 54.1715(b) of the Commission's rules, which requires ECF program participants to retain all records related to their participation in the program for at least 10 years after the last date of service or delivery of equipment.⁵⁸ As with our waiver of the E-Rate records retention rule, ECF applicants and service providers will not be penalized for failure to retain or produce records destroyed by Hurricane Idalia. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the hurricane. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party (e.g., consultant or service provider) upon request by USAC or the Commission. We note that the record retention and production requirements under our rules continue to apply to all records that were not destroyed by the hurricane, including records relating to any relief granted by this Order.

E. Rural Health Care Program

26. For health care providers and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Rural Health Care (RHC) Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the 14-day deadline to respond to USAC information requests; (3) the five-year documentation retention and production rules for participating health care providers and service providers whose documents were destroyed by Hurricane Idalia; (4) the invoice filing deadline; and (5) the September 30, 2023 deadline for Healthcare Connect Fund Program participants to file Annual Reports.

27. *Deadline for Appeals and Requests for Waiver.* We waive and extend the 60-day deadlines in section 54.720(b) of the Commission's rules for requests for review or waiver of decisions by

⁵⁶ 47 CFR § 54.1710(b).

⁵⁷ 47 CFR § 54.1710(b)(2)(i). While we waive the requirement that the substituted equipment or service have the same functionality as the equipment or service being replaced, we remind applicants that the substituted equipment or service must still be eligible for support under the ECF rules. Therefore, an applicant cannot request to replace a laptop computer destroyed in the hurricane with an ineligible smartphone. *See Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8710 para. 32 (2021) (*Emergency Connectivity Fund Report and Order*). In addition, we remind applicants that if an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. 47 CFR § 54.1710(b)(3).

⁵⁸ 47 CFR § 54.1715(b); *see also* 47 CFR § 54.720.

USAC or directed to USAC or the Commission.⁵⁹ We find that waiving the deadlines for health care providers and service providers in the Affected Disaster Areas for filing appeals and waivers is an appropriate measure to accommodate the extraordinary circumstances caused by Hurricane Idalia. Any harm in providing a filing deadline extension is outweighed by the significant public interest benefits derived from giving petitioners, participants, and other service providers additional time to submit their filings. To reduce the burden on affected program participants, we direct USAC to automatically provide affected program participants with an additional 150 days to file appeals and waivers. This waiver will be in effect for all deadlines of appeals and waiver requests from August 27, 2023 through 150 calendar days from the release of this Order.

28. *Response Time for USAC Information Requests.* We waive the 14-day deadline for RHC Program participants in the Affected Disaster Areas to respond to information requests from USAC.⁶⁰ We find that waiving the 14-day response time for USAC information requests is an appropriate response to Hurricane Idalia. This waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by RHC Program participants, and will apply to all information requests with a deadline on or after August 27, 2023 regardless of the funding year for which those requests relate. We provide affected health care providers and service providers with up to 150 calendar days from the effective date of this Order to respond to information requests from USAC.

29. *Document Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricane Idalia. With respect to such destroyed records, we waive section 54.631(b) of the Commission's RHC Program rules, which requires health care providers and service providers to retain all documents specified by the rule for at least five years after the last day of the delivery of supported services in a given funding year.⁶¹ Program participants will not be penalized for failure to retain records destroyed by the hurricane. Applicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants that rely on this waiver as a basis for not retaining or producing records upon request from USAC or the Commission will be required to certify that the records, and any copies of such records, were destroyed by Hurricane Idalia. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by the hurricane, including records relating to any relief granted by this Order.

30. *Invoice Filing Deadline.* We also waive section 54.627(a) to automatically grant a 120-day extension of the invoice filing deadline for all funding year 2022 funding requests from health care providers in the Affected Disaster Areas. Section 54.627(a) requires that RHC Program participants submit invoices to USAC within 120 days after the later of: (1) the service delivery deadline; or (2) the date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request.⁶² RHC Program participants may request a one-time extension of the invoice filing deadline.⁶³ If the extension is timely requested, USAC is required to grant a 120-day extension.⁶⁴ We find that extending the invoice deadline is an appropriate measure to accommodate the extraordinary circumstances caused by Hurricane Idalia and that the significant public interest benefits derived from

⁵⁹ 47 CFR § 54.720(a)-(b).

⁶⁰ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 230, para. 1 (2015).

⁶¹ 47 CFR § 54.631(b).

⁶² 47 CFR § 54.627(a).

⁶³ 47 CFR § 54.627(b).

⁶⁴ *Id.*

extending the deadline outweigh any possible harm from such relief. To reduce the burden on participants, we direct USAC to automatically provide participants in the areas affected by Hurricane Idalia with a 120-day extension to submit their invoices without it being requested.

31. *Health Care Connect Fund Program – Annual Reporting.* We also waive the September 30, 2023 deadline in section 54.618 of the Commission’s rules for Healthcare Connect Fund Program participants located in the Affected Disaster Areas to file Annual Reports for funding year 2022.⁶⁵ We find that the property damage, personal injury, and disruptions in services caused by Hurricane Idalia warrant a waiver of the deadline for the annual reporting requirement. All affected Program participants will have up to 150 calendar days from the effective date of this Order to file Annual Reports for funding year 2022.

F. High Cost Program

32. *Waiver of Performance Measures Testing for Third and Fourth Quarter 2023.* Recipients of high-cost universal service support with broadband build-out obligations must test the speed and latency performance at the supported locations and submit the testing results.⁶⁶ The purpose of the testing requirement is to ensure high-cost supported networks meet the required standards for the relevant support program. To capture any seasonal effects on a carrier’s broadband performance, carriers must conduct one week of testing in each quarter of the calendar year—January through March (first quarter), April through June (second quarter), July through September (third quarter), and October through December (fourth quarter).⁶⁷ Carriers in testing whose results show they are not meeting minimum requirements are subject to support withholding/reductions and additional reporting.⁶⁸

33. Given the substantial service disruptions and outages caused by Hurricane Idalia, the ability of affected carriers to conduct performance testing is extremely difficult and burdensome, if not impossible. We previously said that we would generally consider requests “for waiver or extension [of performance testing in cases where a major, disruptive event (e.g., a hurricane) negatively affects a provider’s broadband performance.”⁶⁹ We find that acting *sua sponte*—absent any request—is prudent due the extreme nature of the hurricane, its impact, and recovery efforts, as this waiver relieves affected carriers from the additional burden of filing a petition.

34. Further, while the Bureau prefers that carriers reschedule testing within the quarter when possible,⁷⁰ again the extreme nature of Hurricane Idalia warrants waiving the testing requirements for the third and fourth quarter of 2023 for any carrier serving a location in the Affected Disaster Areas altogether rather than requiring the affected carriers to reschedule. Waiving the testing requirements for third and fourth quarter of 2023 is in the public interest as it allows affected carriers to reappportion resources to better meet their customers’ needs during storm recovery. Moreover, with this waiver, we are not relieving carriers from providing the required service levels to high-cost supported locations; rather, we are relieving them solely from the requirement to test performance for the third and fourth quarters of 2023. Affected carriers may be concerned about losing two quarters of testing data and how

⁶⁵ 47 CFR § 54.618.

⁶⁶ The Commission adopted detailed performance measures requirements in 2018 and an order on reconsideration in 2019. See *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB 2018) (*First Performance Measures Order*), *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*). See also 47 CFR § 54.313(a)(6).

⁶⁷ See *First Performance Measures Order*, 33 FCC Rcd at 6520, para. 29.

⁶⁸ See *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67, *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10133-38, paras. 65-75.

⁶⁹ See *First Performance Measures Order*, 33 FCC Rcd at 6521, para. 33.

⁷⁰ *Id.*

that will affect its compliance with testing obligations. Therefore, affected carriers may still test its network and certify the results to be part of the compliance calculations. However, pursuant to this waiver, they are not required to do so.⁷¹

G. Contributions

35. To provide further relief for affected companies, we waive additional rules and requirements for affected contributors to USF. We find that good cause exists to waive these rules and requirements, subject to the limitations herein, for all contributors serving the affected area. The extensive damage to property and infrastructure by the hurricane has caused significant disruption to operations in Florida. We find that these circumstances warrant a temporary waiver of the contributions rules and requirements described below. We have taken similar action under extreme circumstances in the past,⁷² and find that granting this emergency relief will help to temporarily alleviate burdens on service providers in the Affected Disaster Areas.

36. *Form 499-Q Deadlines.* We extend the 45-day revision deadline for FCC Form 499-Q filings made on August 1, 2023, by contributors serving the Affected Disaster Areas. Extending this deadline will allow USAC to recalculate the contribution obligations for affected providers to immediately reflect the effect of Hurricane Idalia on contributor revenues rather than having to wait until next year's FCC Form 499-A true-up process. We direct USAC to accept revisions to these filings until November 1, 2023. For those contributors that seek to revise their August 2023 FCC Form 499-Qs after November 1, 2023, the Bureau will consider requests for an extension of the revision deadline on a case-by-case basis.

H. Protecting Program Integrity

37. We are committed to protecting the integrity of the Lifeline, Affordable Connectivity, E-Rate, Emergency Connectivity Fund, Rural Health Care, and High Cost programs (collectively, FCC programs). Although we grant the limited waivers described herein, program participants, service providers, and USF contributors remain otherwise subject to audits and investigations to determine compliance with FCC program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the FCC programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the FCC programs under our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

38. ACCORDINGLY, IT IS ORDERED, pursuant to the authority in sections 1-4, 251(b)(2), 251(e), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 251(b)(2), 251(e), and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR §§ 1.106, 54.313(a)(6), 54.405(e)(3)-(4), 54.407(c)(2), 54.410(f), 54.504(d)(1)(i), 54.507(d)(4), 54.514(a), 54.516(a), 54.618, 54.627(a), 54.631(b), 54.720(b), 54.1710(b), 54.1711(d), 54.1715(b), 54.1718(b), 54.1806(f)(1), 54.1806(f)(5), 54.1808(c)(1)-(2), 54.1809(c), and 54.1809(d) of the Commission's rules ARE WAIVED to the extent provided herein.

⁷¹ We appreciate that affected carriers are still assessing their networks in the Affect Disaster Areas, and we will evaluate at a later time whether relief from the applicable deployment milestones is warranted.

⁷² See, e.g., *Schools and Libraries Universal Service Support Mechanism, et al.*, Order, 32 FCC Rcd 7456 (2017) (waiving certain E-Rate, Rural Health Care, Lifeline, and contribution rules and deadlines to assist schools, libraries, healthcare providers, Lifeline Program participants, and contributors affected by Hurricanes Harvey, Irma, and Maria).

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
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DA 23-806

Released: September 4, 2023

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES DEACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR HURRICANE IDALIA

The Federal Communications Commission (FCC) has deactivated its Disaster Information Reporting System (DIRS) for Hurricane Idalia,¹ at the request of the State of Florida, and in coordination with the Department of Homeland Security Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency. Communications providers do not need to provide any additional reporting in DIRS in connection with this event. The FCC will, however, continue to monitor the status of communications services and work with providers and government partners as needed to support remaining restoration efforts.

Effective today, no further reports to DIRS are requested in response to Hurricane Idalia. Also, effective today, Network Outage Reporting System reporting obligations under Part 4 of the Commission's rules,² which were suspended for providers reporting in DIRS while DIRS was activated, are now again in effect for new network outages for the area covered by DIRS reporting for Hurricane Idalia.

If there are major changes, whether improvements or setbacks, to the status of communications in the affected area, the FCC asks communications providers to supply that information directly to FCC personnel at the contact information below as events occur. The FCC continues to be available to address emergency communications needs related to Hurricane Idalia 24 hours per day, seven days per week through our 24-hour operations center, which can be reached on 202-418-1122 or fccops@fcc.gov. This combination of measures will provide the Commission with the necessary situational awareness as service restoration continues.

The FCC appreciates the cooperation of all the communications providers that voluntarily submitted data to DIRS in the aftermath of Hurricane Idalia. In disaster situations, information on the operational status of communications services provides critical situational awareness and supports effective emergency response and restoration efforts. The FCC published its final daily communications status report for Hurricane Idalia today, September 4, 2023.

For further information, please contact:

Michael Caiafa (202) 418-1311, (540) 834-7401 (cell), michael.caiafa@fcc.gov
David Ahn (571) 232-8487 (cell), (202) 418-0853, david.ahn@fcc.gov
FCC 24/7 Operations Center – 202-418-1122

- FCC -

¹ DIRS is a voluntary, web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, can use to report communications infrastructure status and situational awareness information during times of crisis.

² 47 C.F.R. Part 4.

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

In the Matter of)	
)	
Licenses to Cover for Television Translator	)	Facility ID Nos. 23233, 23235 and 23237
Stations K11HE, Jordan, etc., Montana; K09HI,	)	NAL/Acct. No. 202341420035
Jordan, etc., Montana; and K13HK, Sand Springs,	)	FRN: 0009220328
Montana	)	LMS File Nos. 0000170160, 0000170161 and
	)	0000173691

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

Adopted: September 5, 2023

Released: September 5, 2023

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division (Division) of the Media Bureau has before it the above-captioned applications (Applications) of Garfield TV Club (GTC), for licenses to cover television translator (TV translator) stations K11HE, Jordan, etc., Montana (K11HE); K09HI, Jordan, etc., Montana (K09HI); and K13HK, Sand Springs, Montana (K13HK) (collectively, Stations). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,¹ we find that GTC apparently willfully violated section 74.788² of the Rules by failing to timely file license to cover applications, and willfully and repeatedly violated section 301 of the Act,³ by engaging in unauthorized operation of the Stations after their construction permits had expired. Based upon our review of the facts and circumstances before us, we conclude that GTC is apparently liable for a monetary forfeiture in the amount of one hundred eleven dollars (\$111).

II. BACKGROUND

2. The Stations were required to transition to digital operations not later than July 13, 2021,⁴ and each obtained a digital conversion (“flash cut”) construction permit (Digital CPs) to convert to digital operations on its former analog channel.⁵ The Stations failed to file licenses to cover by the Digital CPs’

¹ This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Commission’s rules (Rules). See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. See 47 CFR § 0.283.

² See 47 CFR § 74.788 (2022). Effective October 24, 2022, 47 CFR § 74.788 of the Commission’s rules was eliminated and found by the Commission to be duplicative with 47 CFR § 73.3598 of the Rules. See 87 FR 58200, Oct. 24, 2022; *In the Matter of Amend. of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission’s Rules Related to Low Power Television and Television Translator Stations*, FCC 22-58 (July 13, 2022); 47 CFR § 74.780(bbb) (making 47 CFR § 73.3598 applicable to all TV translator and LPTV stations). At the time the violation at issue occurred, 47 CFR § 74.788 was in effect; however, to the extent necessary, we also find that the Licensee violated 47 CFR § 73.3598.

³ See 47 U.S.C. § 301.

⁴ See 47 CFR § 74.731(m).

⁵ CDBS File Nos. BDFCDTV-20110922ACZ, BDFCDTV-20110922ACM and BDFCDTV-20110926ADY.

expiration dates and the Digital CPs automatically forfeited and the Stations' licenses automatically cancelled at 12:00 A.M. (local time) on July 14, 2021.⁶

3. On November 22, 2021, more than four months after their Digital CPs were forfeited and their licenses cancelled, GTC late-filed the Applications and sought reinstatement of the Stations' expired construction permits and licenses.⁷ GTC included an explanation for why the Applications were late-filed stating that, due to a misunderstanding with its consulting engineer, it thought that the Applications had been timely-filed.⁸ According to GTC, K09HI and K11HE completed their digital conversion on June 20, 2018 and K13HK converted to digital operations on June 10, 2019.⁹

4. GTC is a "Special Purpose District" formed under Montana state law and its revenue is collected through a special tax assessment on local residents.¹⁰ GTC argues that the Stations serve small towns in rural Montana that depend on the Stations for free, over-the-air news, weather, and emergency information.¹¹ GTC notes that these are farming and ranching communities that are especially dependent on weather and emergency warnings and the Stations are their only over-the-air television source.¹² GTC also includes financial documents filed with the State of Montana showing that its average gross revenue for fiscal years 2019, 2020, 2021, and 2022 was \$10,825.¹³

III. DISCUSSION

5. Pursuant to section 503(b)(1)(B) of the Act,¹⁴ 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.¹⁵ 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.¹⁶ 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,¹⁷ and the Commission has so

⁶ GTC was notified by letter of the forfeiture of its construction permits, deletion of its call signs, and cancellation of its licenses. Letter to Garfield TV Club from Barbara A. Kreisman, Chief, Video Division (Aug. 9, 2021) (Cancellation Letter), copies of which are available on LMS at Fac. ID Nos. 23233, 23235 and 23237. Such action was ministerial and did not constitute an official Commission action nor require any affirmative cancellation by the Commission. *See Media Bureau Reminds Remaining Low Power Television and Television Translator Stations that the July 13, 2021 Digital Transition Date and Other Important Deadlines are One Week Away*, Public Notice, DA 21-786 (rel. July 6, 2021).

⁷ The Division treated the attachments to the Applications as a Petition for Reinstatement of the Digital CPs. On July 5, 2023, the Division granted the request and reinstated the Displacement CPs and Stations' licenses. A copy of the reinstatement notification can be found on the Stations' LMS facility pages.

⁸ *See* LMS File Nos. 0000170160, 0000170161 and 0000173691 (collectively, Applications), Pleading at 1. The Applications contain identical attachments.

⁹ Applications, Cover Letter at 1.

¹⁰ *Id.*

¹¹ Applications, Pleading at 1.

¹² *Id.*

¹³ Applications, FY 2019, 2020, 2021, and 2022 Financials.

¹⁴ 47 U.S.C. § 503(b)(1)(B).

¹⁵ *Id.* *See also* 47 CFR § 1.80(a)(1).

¹⁶ 47 U.S.C. § 312(f)(1).

¹⁷ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

interpreted the term in the section 503(b) context.¹⁸ 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.”¹⁹

6. *Apparent Violation.* GTC admits that it failed to timely file licenses to cover as required by section 74.788 of the Rules,²⁰ and continued operating the Stations with the permitted facilities after the Digital CPs expired on July 14, 2021, before filing the Applications over four months later. GTC explains that it completed construction of the Stations’ digital facilities in accordance with their Digital CPs and commenced operation of those facilities well before their expiration dates. GTC goes on to admit that it overlooked submitting the licenses to cover due to a misunderstanding with its consulting engineer. According to GTC, it was under the impression that the Applications had been filed. At the time the construction permits expired, GTC had ceased operating the stations in analog and been operating K09HI and K11HE in digital format for just over three years and K13HK for just over two. It is well settled that administrative oversight is not an excuse for failure to comply with the Commission’s rules.²¹ Furthermore, applicants and licensees are responsible for the errors of their staff, including contractors.²² As a result of its late filings, GTC also engaged for several years in unauthorized operation of the Stations in violation of section 301 of the Act.²³ We therefore find that GTC has apparently violated the Rules and Act and is apparently liable for forfeiture.

7. *Proposed Forfeiture Amount.* The Commission’s *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 per violation for the failure to file a required form.²⁴ The guidelines also specify a base forfeiture amount of \$10,000 per violation for construction and operation without an instrument of authorization for the service.²⁵ 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.”²⁶

¹⁸ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

¹⁹ 47 U.S.C. § 312(f)(2).

²⁰ See 47 CFR § 74.788.

²¹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted).

²² See, e.g., *Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC Rcd 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee’s engineer was to blame for station’s unauthorized operations).

²³ See 47 U.S.C. § 301.

²⁴ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I. See also *Clear Channel*, 26 FCC Rcd at 7157 (“We note that the staff may also issue Notices of Apparent Liability for ‘failure to file a required form’ as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the ‘Act’) and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.”).

²⁵ A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

²⁶ 47 U.S.C. § 503(b)(2)(E); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(10).

8. When considering a licensee's ability to pay a forfeiture, the Commission will look at things such as: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.²⁷ Any claim relating to ability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.²⁸ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission has recognized that, in some cases, other financial indicators, such as net losses, may also be relevant.²⁹ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.³⁰ In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally averages about five percent of the violator's gross annual income and has not exceeded eight percent thereof, although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.³¹

9. In this case, GTC failed to file timely licenses to cover for the Stations when it completed construction of its Digital CPs, and not only filed its Applications more than four months after the Digital CPs expired, but engaged in unauthorized operation of the Stations for several years. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, including GTC's financial ability to pay based on documentation provided, GTC's history of compliance, and the unique facts and circumstances presented, notably that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find a proposed forfeiture in the amount of \$111 is appropriate.³² This represents a proposed fine of approximately \$37 per station.

10. *Other Pending Matters.* In light of the facts and circumstances discussed above and our findings that forfeiture is a sufficient sanction for GTC's apparent violations, we will act upon the Application and all other pending applications by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,³³ Garfield TV Club is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of one hundred eleven dollars (\$111) for its apparent willful violation of section 74.788 of the Commission's rules and apparent

²⁷ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

²⁸ *Id.*

²⁹ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

³⁰ *Id.*

³¹ See *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period).

³² See *Methow Valley Communications District*, Forfeiture Order, DA 23-403 (Vid. Div. May 12, 2023) (paid May 18, 2023) (reducing the proposed forfeiture based on the Station's history of compliance and fact that the station is a community translator serving rural areas with limited or no over-the-air television service). In the case of *Methow Valley Communications District*, the proposed forfeiture was initially reduced based on the Station's secondary status. *Methow Valley Communications District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 6716, 6718, para. 7 (Vid. Div 2022).

³³ 47 U.S.C. § 503(b); 47 CFR § 1.80.

willful and repeated violations of section 73.1745 of the Commission's rules and section 301 of the Communications Act of 1934, as amended.³⁴

12. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,³⁵ that, within thirty (30) days of the release date of this *NAL*, Garfield TV Club **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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),³⁶ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification that payment has been made must be sent on the day of payment to Robin.Fagan@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:³⁷

- 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).³⁸ 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

³⁴ 47 CFR § 74.788 (2022); 47 CFR § 73.1745; and 47 U.S.C. § 301. *See supra* note 2.

³⁵ 47 CFR § 1.80.

³⁶ Payments made using CORES do not require the submission of an FCC Form 159.

³⁷ 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.

³⁸ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

14. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.³⁹ 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.

15. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.⁴⁰ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Robin Fagan, Attorney-Advisor, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.⁴¹ A courtesy copy should also be emailed to Shaun.Maher@fcc.gov to assist in processing the response.

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

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.⁴²

17. **IT IS FURTHER ORDERED** that copies of this NAL shall be sent by First Class and Certified Mail, Return Receipt Requested, to Garfield TV Club, George Fitzgerald, P.O. BOX 465, Jordan, MT 59337 as well as e-mailed to: charlie@montana.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

³⁹ See 47 CFR § 1.1914.

⁴⁰ 47 CFR §§ 1.16 and 1.80(g)(3).

⁴¹ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

⁴² See 47 U.S.C. 503(b)(2)(E); *supra* para. 8. We have already considered the Licensee's ability to pay as part of our proposed forfeiture and absent additional information are unlikely to consider further reduction on that basis.

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

In the Matter of)	
)	
Viasat, Inc.	)	ICFS File No. SES-LIC-20210323-00559
)	
Application for Earth Station License	)	Call Sign: E210058
Douglasville, Georgia)	

ORDER AND AUTHORIZATION

Adopted: September 5, 2023

Released: September 5, 2023

By the Chief, Space Bureau:

I. INTRODUCTION

1. By this Order, we grant the Fixed-Satellite Service (FSS) earth station license application of Viasat, Inc. (Viasat) to operate an earth station in Douglasville, Georgia to communicate with its Viasat-3 system. We also grant Viasat's request to operate this earth station in the 27.5-28.35 GHz frequency band on a co-primary basis with terrestrial Upper Microwave Flexible Service (UMFUS) operations, and deny Verizon, Inc.'s Petition in opposition.¹ Verizon objects to Viasat's use of the irregular terrain model (ITM) in modelling its power flux density (PFD) propagation contour. We find that Viasat's use of the ITM PFD propagation model complies with the Commission's rules, and we deny Verizon's petition. Finally, we grant Viasat's request for a waiver of section 2.106 of the U.S. Table of Frequency Allocations, 47 CFR § 2.106, to permit operations in the 17.7-17.8 GHz band on an unprotected, non-harmful interference basis.

II. BACKGROUND

A. Review of Section 25.136 and Public Notices

2. The Commission adopted section 25.136 in the *Spectrum Frontiers First Report and Order*² to specify conditions under which FSS earth stations can coexist with UMFUS operations in the 27.5-28.35 GHz and 37.5-40.0 GHz frequency bands. Section 25.136 requires FSS earth station applicants to provide several demonstrations, including an analysis showing the PFD contour at 10 meters

¹ Petition of Verizon, IBFS File No. SES-LIC-20210323-00559 (filed Sept. 3, 2021).

² *Use of the Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016) (*Spectrum Frontiers First Report and Order*). The Commission subsequently released additional orders in the Spectrum Frontiers proceeding making changes to section 25.136, including adding additional frequency bands. See *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988 (2017) (*Spectrum Frontiers Second Report and Order*); *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services et. al.*, Third Report and Order, Third Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 33 FCC Rcd 5576 (2018); *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Fifth Report and Order, 34 FCC Rcd 2556 (2019).

above ground level around their station does not exceed -77.6 dBm/m²/MHz.³ In addition, there are limits on the number of earth stations that may operate in a given county,⁴ and the aggregate population within all earth station contours within a market may not exceed a certain level based on the size of the market where the earth station(s) are located.⁵ Further, contours must avoid crossing major roadways, venues, passenger railroad lines, etc., to minimize the potential impact on UMFUS.⁶

3. The International Bureau (Bureau)⁷ sought “comment on the methodology for determining interference or protection zones” when it released a Public Notice on June 21, 2017.⁸ On June 16, 2020, the Bureau released the Guidance Public Notice (2020 Guidance PN), which sought to provide applicants with a better understanding of the Bureau’s expectations regarding earth station applications subject to section 25.136 while allowing applicants flexibility in how they demonstrate compliance with this rule.⁹ Regarding applicants’ use of modelled PFD contours to demonstrate compliance with section 25.136, the 2020 Guidance PN encouraged the use of “widely accepted” and “publicly available” models such as ITU Recommendations¹⁰ that are appropriate for the distance over which the PFD contours are being measured, the environment in which the earth station is located, and

³ 47 CFR § 25.136 (e)(1).

⁴ 47 CFR § 25.136(a)(4)(i).

⁵ 47 CFR § 25.136 (a)(4)(ii).

⁶ 47 CFR § 25.136 (a)(4)(iii).

⁷ On January 4, 2023, the Commission adopted an Order that established the Space Bureau to handle the policy and licensing matters related to satellite communications and other in-space activities formerly handled by the International Bureau, which the Order eliminated. *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1, paras. 1-2 (adopted Jan. 4, 2023). The Space Bureau officially launched on April 11, 2023. *See* Press Release, FCC, FCC Space Bureau & Office of International Affairs to Launch Next Week (April 7, 2023), <https://docs.fcc.gov/public/attachments/DOC-392418A1.pdf>. All references in this document to the International Bureau refer to filings made with, or actions taken by, the International Bureau prior to the establishment of the Space Bureau.

⁸ *International Bureau Seeks Comment on Implementing Earth Station Siting Methodologies*, Public Notice, DA 17-606 (June 21, 2017) (2017 Public Notice); and comments filed by EchoStar Satellite Operating Corp. and Hughes Network Systems, LLC (filed July 21, 2017); AT&T Services, Inc. (filed July 21, 2017); Viasat, Inc. (filed July 21, 2017); WorldVu Satellites Limited (filed July 21, 2017); The Boeing Company (filed July 21, 2017); Joint Comments of SES Americom, Inc., O3b Limited, Inmarsat, Inc., and Telesat Canada (filed July 17, 2017); CTIA (filed Aug. 7, 2017); Joint Reply Comments of SES Americom, Inc., O3b Limited, Inmarsat, Inc., Telesat Canada and WorldVu Satellite Ltd. (filed Aug. 7, 2017); AT&T Services, Inc. (filed Aug. 7, 2017); Viasat, Inc. (filed Aug. 7, 2017); Notice of Ex Parte of Hughes Network Systems, LLC and Inmarsat, Inc. (filed Aug. 25, 2017); Notice of Ex Parte of Hughes Network Systems, LLC, Inmarsat, Inc., SES Americom, Inc., O3b Limited, WorldVu Satellites Ltd, and Telesat Canada (filed Sept. 14, 2017); Space Exploration Technologies Corp. (filed Feb. 20, 2020), Hughes Network Systems, LLC (Apr. 9, 2020), CTIA (filed May 21, 2020), Verizon (filed June 5, 2020) and Hughes Network Systems (filed June 9, 2020).

⁹ *International Bureau Issues Guidance On Siting Methodologies For Earth Station Seeking To Operate In The 24.75-25.25 GHz, 27.5-28.35 GHz, 37.5-40 GHz, 47.2-48.2 GHz, and 50.4-51.4 GHz Frequency Bands To Demonstrate Compliance With Section 25.136*, Public Notice Guidance, DA-20-631, at 2 (June 16, 2020) (2020 Guidance Public Notice). SIA subsequently filed a Petition for Reconsideration of this Public Notice Guidance, to which IB requested comment. The Petition for Reconsideration is pending. *See* Satellite Industry Association, Petition for Reconsideration of International Public Notice on Siting Methodologies for Earth Stations Seeking to Operate in the 24.75-25.25 GHz, 27.5-28.35 GHz, 37.5-40 GHz, 47.2-48.2 GHz, and 50.4-51.4 GHz Frequency Bands to Demonstrate Compliance with Section 25.136 (filed July 16, 2020) and *Public Notice*, International Bureau Seeks Comments on Satellite Industry Association Petition for Reconsideration of Public Notice Issuing Guidance on Siting Methodologies for Earth Stations Subject to Section 25.136, DA 20-779 (July 22, 2020).

¹⁰ ITU Recommendation R-REC-P.452, available at <https://extranet.itu.int/brdocsearch/R-REC/Forms>.

the frequency band.¹¹ The 2020 Guidance PN also stressed the importance of applicants “explain[ing] which models they rely on for their analysis and why the chosen models are appropriate.”¹² Finally, the 2020 Guidance PN specified that the Commission will assess all section 25.136 applications “on a case-by-case basis.”¹³

B. Viasat Application and Responsive Petition

4. Between March and August 2021, Viasat filed more than 300 satellite earth station license applications—including the instant application—for new Ka-band gateways to support Viasat 3, its newest high throughput satellite, which launched in May 2023.¹⁴ In each of these applications, Viasat seeks co-primary status with UMFUS in the 27.5-28.35 GHz band under earth station siting criteria in section 25.136.¹⁵

5. On March 17, 2021, Viasat filed the instant application for a license to operate a 2.4 m transmit/receive earth station in the 27.5-28.35 GHz and the 17.7-18.3 GHz bands (the use of the latter band is unopposed).¹⁶ The application was accepted for filing on August 4, 2021.¹⁷ On September 3, 2022, Verizon filed a Petition asserting that Viasat’s use of the ITM model to generate its contours is not appropriate, and the Bureau should defer Viasat’s Application until more accurate data is used to measure the contour around Viasat’s earth stations.¹⁸

6. On September 16, 2022, Viasat filed an Opposition to Verizon’s Petition,¹⁹ to which Verizon filed a reply.²⁰ Viasat argued that its applications included the technical information required under section 25.136, and that “Viasat’s proposed earth station operations have been fully coordinated with all potentially affected UMFUS licensees.”²¹ Verizon asserts that Viasat’s use of the ITM to calculate the contours of its earth stations does not satisfy the Bureau’s guidance, and the Commission should defer Viasat’s application until Viasat uses a more “widely accepted” and “publicly available” model to measure contours.²² Further, Verizon asks the Commission to require Viasat to operate non-compliant earth stations on “a secondary, non-interference basis.”²³

7. On May 13, 2022, the Commission requested that Viasat respond to specific questions regarding its use of ITM in connection with the applications at issue and on June 27, 2022, Viasat filed an

¹¹ 2020 Guidance PN at 3.

¹² *Id.* at 4.

¹³ *Id.* at 2.

¹⁴ See Letter from Jarrett S. Taubman, VP & Deputy Chief Government Affairs and Regulatory Officer, Viasat, Inc., to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-LIC-20210323-00559 (filed June 27, 2022) (Viasat June 27, 2022 Letter).

¹⁵ 47 CFR § 25.136.

¹⁶ Viasat, Inc., Application for Earth Station Authorization, IBFS File No. SES-LIC-20210323-00559 (filed March 17, 2021).

¹⁷ Public Notice, Satellite Radio Applications Accepted for Filing, Report No. SES-02387 (Aug. 4, 2021).

¹⁸ Verizon Petition.

¹⁹ Opposition of Viasat, Inc., IBFS File No. SES-LIC-20210323-00559 (filed Sept. 16, 2022) (Viasat Opposition).

²⁰ Verizon’s Reply in Support of its Petition, IBFS File No. SES-LIC-20210323-00559 (filed Apr. 26, 2022) (Verizon Reply).

²¹ Viasat Opposition at 1.

²² Verizon Reply at 1.

²³ *Id.*

ex parte response.²⁴ On July 21, 2022, Verizon filed an *ex parte* presentation explaining why it believes that the ITM is an inappropriate model for analyzing interference effects in the 27.5-28.35 GHz band.²⁵

III. DISCUSSION

8. We accept Viasat, Inc.'s use of the ITM as an acceptable propagation model in compliance with the section 25.136 requirement that FSS earth station applicants operating within the 27.5-28.35 GHz band provide an analysis showing the contour around their earth stations. We address each of Verizon's objections below, and find that Viasat has adequately explained how its implementation of the ITM predicts a contour that demonstrates compliance with the siting criteria in section 25.136 of the Commission's rules.

9. First, Verizon argues that, according to the 2020 Guidance PN, any model used to demonstrate section 25.136 compliance should be a "widely accepted and publicly available" propagation model. Verizon further argues that the 2020 Guidance PN recommends "[a]pplicants should not use statistical models to estimate clutter loss" such as the ITM "when there are more accurate means of estimating clutter loss" such as ITU-R Rec. P. 452.²⁶ In response Viasat argues that the ITM is "widely accepted and publicly available" and "is an accepted [FCC] model" that Viasat has validated the accuracy of in other contexts.²⁷ Viasat also argues that ITM has been used to "produce conservative results (low path loss) for propagation paths for the site-specific geometries analyzed."²⁸

10. We agree with Viasat that the ITM is a widely accepted and publicly available model and is appropriate for purposes of predicting a contour to demonstrate compliance with the siting criteria in section 25.136. Indeed, the ITM is an accepted model used by the Commission in other contexts.²⁹ In addition, the model's source code base is publicly available on the National Telecommunications and Information Administration's (NTIA) website.³⁰ We disagree with Verizon's characterization that the ITM model as implemented by Viasat uses only statistical approximations (such as average terrain variation).³¹ The ITM model does have an "area mode" which estimates a number of parameters using empirical formulas in which average terrain variation plays an important role.³² However, it also has a "point-to-point" mode which derives inputs for these same parameters from a terrain profile of actual

²⁴ Viasat June 27, 2022 Letter.

²⁵ Letter from Daudeline Meme, Vice President & Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-LIC-20210719-01091 (filed July 25, 2022) (Verizon *Ex Parte* Presentation).

²⁶ Verizon Petition at 2-3; 2020 Guidance PN at 3.

²⁷ Viasat *Ex Parte* Response at 6, Attachment 3 (*citing* Letter from Viasat to FCC, GN Docket No. 14-177 et al. (filed Apr. 20, 2017)). Viasat states that it previously validated the accuracy of the ITM as part of the Commission's *Spectrum Frontiers* proceeding in which on-site measurements of radio frequency levels around its Carlsbad, California facility were performed from a 1.8 m roof-mounted antenna operating in the Ka band. *Id.* at 6.

²⁸ Viasat Opposition at 6, Explanatory Addendum.

²⁹ See NTIA Report 82-100 at 1 (Apr. 1, 1982), available at https://www.ntia.doc.gov/files/ntia/publications/ntia_82-100_20121129145031_555510.PFD. See also The Commission Begins the Process for Authorizing 6 GHz Band Automated Frequency Coordination systems, 36 FCC Rcd 14098, 14100, para 5 (2021) ("The ITM has been widely available and accepted since the early 1980s [and] has been used by the Commission for interference prediction in other proceedings . . .").

³⁰ See Viasat *Ex Parte* Response at 4; *Irregular Terrain Model (ITM) (Longley-Rice) (20 MHz – 20 GHz)*, <https://its.ntia.gov/research-topics/radio-propagation-software/itm/itm.aspx>. (last visited Mar. 3, 2023).

³¹ Verizon Petition at 4.

³² https://its.ntia.gov/media/50676/itm_alg.pdf at 5, noting that the documentation states that the parameters h_{ej} , d_{Lj} , Θ_{ej} , $j = 1, 2$, which are part of the input in the point-to-point mode are, in the area prediction mode, estimated using empirical formulas in which Δh (eg average terrain variation) plays an important role.

terrain data between two known points.³³ Viasat used the ITM model in point-to-point mode and used terrain and clutter height data from NEXTmap Data.³⁴ The ITM model, when used in point-to-point mode, removes the location variability.³⁵ Accordingly, Viasat did not use a “statistical model[] to estimate clutter loss,” despite Verizon’s claim to the contrary.³⁶ The 2020 Guidance PN emphasizes the importance of flexibility for applicants to demonstrate compliance with section 25.136, and efficiency for the Bureau to determine compliance with section 25.136.³⁷ Earth station operators are therefore given latitude to use a non-ITU model like the ITM, provided they explain why the model is appropriate, which Viasat has done in this case.³⁸

11. Second, Verizon argues that Viasat uses “proprietary formulas and add-ons”³⁹ and that Viasat fails to “provide a list of input parameters and formulas used to calculate the PFD contours or protection zones to allow for independent verification of . . . the PFD contours.”⁴⁰ Verizon further claims Viasat failed to provide statistical parameter inputs needed to verify the ITM.⁴¹ Because of Viasat’s alleged failures, Verizon argues, it cannot independently verify Viasat’s PFD contours.⁴² Verizon also notes that when it attempted to recreate Viasat’s earth stations’ contours on NTIA’s website, the model failed to run for frequencies over 20 GHz and produced an error message.⁴³

12. Viasat asserts that its application, along with an exhibit that describes Viasat’s methodology, includes all information necessary to independently verify necessary input parameters, calculations, and PFD contour analysis.⁴⁴ Viasat further argues that Verizon’s failure to independently verify the ITM’s PFD contour analysis is merely the result of Verizon’s failure to use “an executable version of the [ITM]” on NTIA’s website.⁴⁵ In addition, Viasat notes that Verizon is not guaranteed access to specific software tools nor is access to NTIA’s tools guaranteed by the Commission’s rules or the 2020 Guidance PN and asserts that Verizon has the available tools to successfully replicate Viasat’s PFD contour analysis.⁴⁶

13. We find that Viasat has provided sufficient data and background in its filings in order to verify its modelling. We agree with Viasat that its application and exhibits provide sufficient explanation and data for others, such as Verizon, to independently verify the results of the ITM. The ITM was selected by Viasat and its engineering firm, RKF, because the ITM is an accepted model used by the

³³ *Id.*

³⁴ Viasat Ex Parte Response at 2.

³⁵ https://its.ntia.gov/media/50676/itm_alg.pdf at 4.

³⁶ Verizon Petition at 3; Verizon Reply at 2-3; 2020 Guidance PN at 3.

³⁷ 2020 Guidance PN at 2.

³⁸ *See* para. 17 below.

³⁹ Verizon Petition at 5.

⁴⁰ Verizon Reply at 2.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Verizon Petition at 4.

⁴⁴ Viasat Opposition at 4.

⁴⁵ Viasat Opposition at 4. The C++ implementation from NTIA’s website is “functionally identical to the version of the ITM currently available on Github, but does not generate the same warning or error messages as the Github version in certain cases.” Viasat Ex Parte Response at 4. However, when Viasat downloaded the C++ code from NTIA’s website and implemented the code for its demonstrations the code “compiles and runs without error for the distances and frequency ranges analyzed by Viasat.” *Id.*

⁴⁶ *Id.* at 4-5.

Commission in other contexts.⁴⁷ Viasat has adequately explained in its initial applications (including an exhibit explaining the ITM's methodology),⁴⁸ and in an *ex parte* response to the Bureau's questions why the ITM is an acceptable model to demonstrate its earth stations compliance with section 25.136.

14. Third, Verizon argues that the ITM does not apply or is inaccurate when applied in frequency bands beyond the 20 GHz band because the article Viasat references to verify use of the ITM for 27.5-28.35 GHz is invalid.⁴⁹ It also states Viasat has not named an analogous circumstance when the ITM had been used at 27.5-28.35 GHz.⁵⁰

15. In response, Viasat asserts that while the article it references to support its use of the ITM at 27.5-28.35 GHz modified the ITM's upper limit to 20 GHz in later documentation, use of the model in 27.5-28.35 GHz nonetheless conforms within these topologies.⁵¹ Finally, Viasat argues that error messages generated by the Github version of the ITM at frequencies above 20 GHz in no way impacts the validity of Viasat's use of the ITM because the original source for the ITM makes clear that it is valid up to 40 GHz.⁵²

16. We disagree with Verizon that the use of the ITM as a propagation model is necessarily limited to frequencies between 20 MHz and 20 GHz.⁵³ The model was developed before use in the frequency bands above 20 GHz was viable, but its methodology is still applicable. We find persuasive Viasat's argument that the ITM model is suitable for use with 27.5-28.35 GHz frequencies because the ITM model methodology (using double knife edge and irregular terrain diffraction⁵⁴) can be applied in frequency bands ranging from 20 MHz to 40 GHz.⁵⁵ In addition, NTIA documentation validates this conclusion.⁵⁶

17. Viasat has also performed testing of similar ITM modeling with measurements of radio frequency levels operating in the Ka-band.⁵⁷ The tests were conducted at 27.5-28.35 GHz and

⁴⁷ See NTIA Report 82-100 at 1 (Apr. 1, 1982), available at https://www.ntia.doc.gov/files/ntia/publications/ntia_82-100_20121129145031_555510.PFD. See also The Commission Begins the Process for Authorizing 6 GHz Band Automated Frequency Coordination systems, 36 FCC Rcd 14098, 14100, para 5 (2021) ("The ITM has been widely available and accepted since the early 1980s [and] has been used by the Commission for interference prediction in other proceedings . . .").

⁴⁸ See Viasat Application, Exhibit A.

⁴⁹ See "What are the underlying calculations, parameters, and assumptions for the Longley-Rice (ITM) propagation model?" September 24, 2013, RF Engineering Articles, <https://www.softwright.com/support/faq/underlying-calculations-parameters-assumptions-longley-rice-itm-propagation-model/>.

⁵⁰ See Verizon Petition at 3.

⁵¹ See Viasat Opposition, Explanatory Addendum.

⁵² See Viasat *Ex Parte* Response at 4; see also A.G. Longley & P. Rice, Prediction of Tropospheric Radio Transmission Loss Over Irregular Terrain. A Computer Method, ESSA Tech. Rep. ERL 79-ITS 67, U.S. Government Printing Office, at 2 (1968) (NTIA ITM) (noting that the model is intended for use in frequencies from "20 to 40,000 MHz," *i.e.*, 20 MHz to 40 GHz).

⁵³ See Verizon Petition at 3; see also Verizon Reply at 5.

⁵⁴ Double Knife Edge and irregular terrain diffraction are specific techniques used for predicting RF propagation. They are used in the ITM model as well as other propagation models such as the NSMA OHLOSS path calculation, (see <https://nsma.org/wp-content/uploads/2016/05/WG2-99-052.pdf>) and are discussed in the ITU recommendation ITU-R P.526-15 (see https://www.itu.int/dms_pubrec/itu-r/rec/p/R-REC-P.526-15-201910-I!!PDF-E.pdf). Notably, the ITU Recommendation states - regarding knife edge diffraction - that the technique applies when the wavelength is fairly small in relation to the size of the obstacles, *i.e.*, mainly to VHF and shorter waves ($f > 30$ MHz).

⁵⁵ Viasat *Ex Parte* Response at 5.

⁵⁶ See NTIA ITM.

⁵⁷ Viasat *Ex Parte* Response, Annex 1.

measurements were taken at both two and ten meter heights above ground level at locations around the earth station location.⁵⁸ Those test results demonstrated the measured signal levels were significantly less than those predicted by free space path loss values.⁵⁹ Thus, the actual path loss was larger than free space path loss, demonstrating that the potential for interference in real world conditions is less. Using the natural terrain feature Digital Surface Model and a bare earth Digital Terrain Model, the NEXTMap provides terrain elevation data representing reasonable adjustments to propagation modeling criteria and reflecting actual terminal terrain conditions with the selected clutter data. The ITM is not disqualified to the extent that the ITM's predictions are conservative as Verizon has argued.⁶⁰ The rules establish the limits necessary to minimize the impact on UMFUS and applications are evaluated on whether or not they meet that criteria. If an applicant chooses to demonstrate compliance with the siting criteria using a more conservative model and/or assumptions, and can successfully demonstrate compliance, that demonstration simply provides more confidence that the siting criteria would also be met by the actual deployment. The rules do not require that the licensee use less conservative modeling to minimize the size of the contour in addition to meeting and complying with the siting criteria.

18. Fourth, Verizon argues that the ITM is a statistical model that fails to account for shorter ranges within the first kilometer because the ITM was originally designed to account for long-range terrain effects over one kilometer and frequencies below 1000 MHz.⁶¹ Further, Verizon argues that the ITM does not “use localized terrain and clutter data based on 2D or 3D mapping” and that Viasat should have used a “widely acceptable and publicly available”⁶² model like the ITU-R Rec. P. 452 that accounts for localized terrain and clutter without the use of NEXTMap data.⁶³ In response, Viasat argues that it accounts for loss within the first kilometer by using the ITM model's formulas in association with the NEXTMap terrain and clutter data starting at 100 meters from the earth station sites.⁶⁴ Viasat also defends the use of the ITM at distance as low as 200 meters by citing a doctoral thesis to support this point.⁶⁵

19. We disagree with Verizon's assertion that Viasat's ITM does not account for shorter ranges within the first kilometer.⁶⁶ We find persuasive Viasat's use of NEXTMap data, which provides elevation information, in conjunction with the ITM to account for shorter ranges.⁶⁷ Viasat has provided data to support knife edge modeling which takes the effect of the actual environment into account by using 3D vector building data plus terrain profile diffraction loss to the ITM predicted loss (ITM path loss minus free space loss) for paths equal to or less than one kilometer.⁶⁸ In all but one case shown, the ITM model significantly underestimates the loss compared to the knife edge prediction.⁶⁹ Nothing in the Commission's rule requires that applicants use models without the aid of other resources like NEXTMap

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Verizon *Ex Parte* Presentation at 2.

⁶¹ Verizon Petition at 4.

⁶² 2020 Guidance Public Notice at 3.

⁶³ Verizon Petition at 4-5.

⁶⁴ Viasat Opposition at Explanatory Addendum.

⁶⁵ Viasat Opposition at Explanatory Addendum; *see also* “Modelling and Coverage Improvement of DVB-T Networks,” a thesis submitted for the degree of Doctor of Philosophy by Kasampalis Stylianos, March 2018.

⁶⁶ Verizon Petition at 4.

⁶⁷ *See* Viasat Application, Exhibit A.

⁶⁸ *See* Viasat Opposition at Explanatory Addendum.

⁶⁹ Viasat *Ex Parte* Response, Attachment 2.

to account for loss within the first kilometer.

20. Based on our review of Viasat's showing, we conclude that its proposed earth station complies with the criteria in section 25.136(a)(4) of the rules. First, there are no other earth stations licensed in the 28 GHz band in Douglas County, Georgia, where Viasat's proposed earth station will be located. Second, Viasat's proposed -77.6 dBm/m²/MHz contour covers a population of only one person, which is well below the limit of 450 people.⁷⁰ Third, the area within Viasat's proposed -77.6 dBm/m²/MHz contour does not contain a major event venue, urban mass transit route, passenger railroad, or cruise ship port, nor does it cross any of the types of roads listed in the rule.⁷¹ Finally, Viasat has coordinated with the relevant UMFUS licensees.⁷² Accordingly, Viasat will be authorized to operate without providing interference protection to UMFUS stations within Viasat's -77.6 dBm/m²/MHz contour.

21. Finally, Viasat has requested a waiver of section 2.106 of the U.S. Table of Frequency Allocations (U.S. Table), 47 CFR § 2.106, to permit space-to-earth operations in the 17.7-17.8 GHz band. Viasat notes that the Commission granted a similar waiver in authorizing Viasat-3 after Viasat demonstrated that the ViaSat-3 downlinks at 17.7-17.8 GHz would not cause harmful interference into primary fixed service operations or neighboring Broadcast Satellite Service spacecraft. Viasat asserts that there is good cause for a corresponding waiver to allow the earth station at issue here to receive those same downlinks, as such waiver would have no impact on the authorized radiofrequency environment and otherwise would be consistent with the Commission's prior decision.⁷³

22. The Commission recently adopted a Report and Order that, among other things, made changes to the U.S. Table to add a co-primary allocation for FSS in the space-to-Earth direction to allow limited GSO FSS downlink use.⁷⁴ These rule changes are not yet in effect, so we address below Viasat's request for waiver of the U.S. Table. A waiver is appropriate if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.⁷⁵ Generally, the Commission may waive any rule if there is good cause to do so⁷⁶ 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.⁷⁷ We find that there are special circumstances that warrant grant of Viasat's

⁷⁰ Viasat Application, Exhibit A at 2-3.

⁷¹ 47 CFR § 25.136(a)(4)(iii).

⁷² 47 CFR § 25.136(a)(4)(iv), Viasat Application, Exhibit C.

⁷³ Viasat Application Narrative at 3 (citing 47 CFR § 1.3; Fugro-Chance, Inc., 10 FCC Rcd 2860, at ¶ 2 (1995) (waiver of U.S. Table appropriate "when there is little potential for interference" into conforming services and "the non-conforming operator accepts any interference from [such] services")).

⁷⁴ *Amendment of Parts 2 and 25 of the Commission's Rules to Enable GSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band, to Modernize Certain Rules Applicable to 17/24 GHz BSS Space Stations, and to Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS Operations*, Report and Order, IB Docket No. 20-330, FCC 22-63, at paras. 18-19, (Aug. 3, 2023) (17 GHz Proceeding).

⁷⁵ *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)).

⁷⁶ See 47 CFR § 1.3.

⁷⁷ See *Northeast Cellular*, 897 F.2d at 1166 ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation."); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.").

waiver request to receive signals in the 17.7-17.8 GHz band, and that deviation from the Table of Allocations better serves the public interest in this case. Consistent with our finding that Viasat has demonstrated that Viasat-3 would not cause harmful interference into the band, we permit this earth station to receive those same downlinks, and consistent with the Commission's recent decision in the *17 GHz Proceeding*. Operations in this band are on an unprotected, non-harmful interference basis, that is, they must not cause harmful interference to any authorized users, nor can they claim protection from harmful interference caused by any authorized users.

IV. CONCLUSION

23. We conclude that Viasat's use of the ITM to model its PFD contour complies with section 25.136. Accordingly, we grant the FSS earth station license application of Viasat to operate an earth station in Douglasville, Georgia to communicate with its Viasat 3 system. We also grant Viasat's request to operate this earth station in the 27.5-28.35 GHz frequency band on a co-primary basis with terrestrial UMFUS operations, and deny Verizon's Petition in opposition. Finally, we grant Viasat's request for a waiver of section 2.106 of the U.S. Table of Frequency Allocations, 47 CFR § 2.106, to permit operations in the 17.7-17.8 GHz band unprotected, non-harmful interference basis.

V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 0.51 and 0.261 of the Commission's rules, 47 CFR §§ 0.51 and 0.261, and sections 4(i), 301, 303(r), 308, and 310 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 301, 303(r), 308, 309, and 310, subject to the requirements and conditions set forth below, the Application filed by Viasat, Inc. is GRANTED.

25. IT IS FURTHER ORDERED that the Petition filed by Verizon is DENIED.

26. IT IS FURTHER ORDERED that Viasat's authorization is subject to the following requirements and conditions:

- a. Licensee must ensure that a current listing of the name, title, mailing address, email address, and telephone number of the responsible point of contact are on file at the FCC. Any changes must be filed electronically in the International Communications Filing System using the "Pleadings and Comments" link on the MyICFS homepage within 10 days of the change.
- b. Licensee must comply with the license modification and notification requirements of 47 CFR § 25.118 to change the coordinates of its authorized earth station.
- c. Licensee must notify the Commission when all earth stations operating under this authorization are no longer operational or when they have not been used to provide any service during any 6-month operation.
- d. The 17.8-20.2 GHz band is shared with U.S. Government space stations and associated earth stations in the Fixed-Satellite Services. Services within the United States over the satellite network of which this is a cooperating earth station are subject to coordination under US334 and operation of the earth station(s) authorized herein will be subject to any technical constraints resulting from this coordination. See 47 CFR § 2.106, Footnote US334.
- e. Changes to previously authorized transmitting facilities, operations and devices regulated by the Commission that may have significant environmental impact, and are not excluded by § 1.1306, require the preparation of an Environmental Assessment (EA) by the licensee. (See 47 CFR §§ 1.1307, 1.1308, and 1.1311).
- f. The licensee shall, at all times, take all necessary measures to ensure that operation of this authorized earth station does not create potential exposure of humans to radiofrequency radiation in excess of the FCC exposure limits defined in 47 CFR §§ 1.1307(b) and 1.1310. Physical measures must be taken to ensure compliance with

limits for both occupational/controlled exposure and for general population/uncontrolled exposure, as defined in these rule sections. Compliance can be accomplished in most cases by appropriate restrictions, such as fencing. Requirements for restrictions can be determined by predictions based on calculations, modeling, or by field measurements. The FCC's OET Bulletin 65 (available on-line at www.fcc.gov/oet/rfsafety) provides information on predicting exposure levels and on methods for ensuring compliance, including the use of warning and alerting signs and protective equipment for workers.

- g. Operations in the 27.5-28.35 GHz (Earth-to-space) frequency band are authorized based on a demonstration of compliance with 47 CFR § 25.136(a)(4). Consequently, this earth station may operate without providing any additional interference protection to stations in the Upper Microwave Flexible Use Service in the 27.5-28.35 GHz frequency band.
- h. The earth station licensee is required to take corrective action to mitigate interference in the 27.5-28.35 GHz frequency band if the actual PFD, at ten meters above ground level, exceeds -77.6 dBm/m²/MHz anywhere outside the contour specified in the application.
- i. To the extent that the actual gain pattern of the antenna ultimately deployed by the licensee exceeds the antenna mask used in the calculation of the PFD contour, the contour resulting from the actual antenna pattern must continue to meet all of the criteria specified in 47 CFR § 25.136(a)(4)(i-iv).
- j. Viasat's request for a waiver of section 2.106 of the U.S. Table of Frequency Allocations, 47 CFR 2.106, to permit operations in the 17.7-17.8 GHz band is GRANTED. Operations in this band are on an unprotected, non-harmful interference basis, that is, they must not cause harmful interference to any authorized users, nor can they claim protection from harmful interference caused by any authorized users.
- k. Operations in the 17.8-18.3 GHz frequency band are on a secondary basis to the Fixed Service (FS). Licensee must accept any interference from existing and future FS transmissions in the 17.8-18.3 GHz frequency band.
- l. Grant of this application is subject to operations consistent with the associated space station authorization(s) or grant(s) of U.S. market access, including all conditions, waivers, and findings therein.
- m. Grant of operations in the 27.5-28.35 GHz frequency band is based on the applicant's calculation of the aggregate population affected by all earth stations in the county, under 47 CFR § 25.136(a)(4)(ii), using the "actual area method." For Douglas County, in the State of Georgia, the estimated population affected by this earth station was determined to be 1 person, out of a maximum of 450 people allowed to be affected in this County, based on the decennial 2020 U.S. Census Population information.

27. This action is taken by the Chief of the Space Bureau under delegated authority pursuant to sections 0.51 and 0.261 of the Commission's rules, 47 CFR §§ 0.51 and 0.261.

FEDERAL COMMUNICATIONS COMMISSION

Julie M. Kearney
Chief
Space Bureau

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

In the Matter of)	
)	
Telephone Number Portability	)	CC Docket No. 95-116
)	
Numbering Resource Optimization	)	CC Docket No. 99-200
)	

ORDER

Adopted: September 5, 2023

Released: September 5, 2023

By the Chief, Wireline Competition Bureau:

1. Between August 28 and 31, 2023, the Federal Emergency Management Agency (FEMA), Department of Homeland Security announced that the President has signed a Major Disaster Declaration for certain areas in Florida affected by Hurricane Idalia, an Emergency Declaration for certain areas in South Carolina affected by Hurricane Idalia, as well as additional areas in Florida affected by the same weather system when it was known as Tropical Storm Idalia (together, the Major Disaster Declarations and, together, Hurricane Idalia).¹ To assist telephone customers in those areas subject to the Major Disaster Declarations, we grant, on our own motion, a temporary partial waiver of the Commission's telephone number "aging" rule. Specifically, we waive section 52.15(f)(1)(ii) with respect to the maximum aging period for residential customers, which states, in pertinent part, that service providers may only age telephone numbers that have been disconnected for up to 90 days before assigning them to other customers.² We also encourage service providers to port telephone numbers to locations that may be outside of a customer's telephone rate center and to waive certain service charges in order to assist customers experiencing this disaster.

2. We find there is good cause for this partial waiver, as required by section 1.3 of the Commission's rules.³ We recognize that customers who have been displaced by Hurricane Idalia may want to discontinue their service temporarily and reinstate it at a later time. Due to the extent of the damage to telecommunications systems in Florida and South Carolina, we expect that in many cases these customers may seek to reinstate their service after the 90-day period has lapsed. Assisting residential customers who are dealing with the effects of a hurricane is in the public interest and thus warrants a temporary partial waiver of section 52.15(f)(1)(ii) of the Commission's rules. A partial waiver of section

¹ FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Florida (Aug. 31, 2023), <https://www.fema.gov/press-release/20230831/president-joseph-r-biden-jr-approves-major-disaster-declaration-florida>; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for South Carolina (Aug. 31, 2023), <https://www.fema.gov/press-release/20230831/president-joseph-r-biden-jr-approves-emergency-declaration-south-carolina>; FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Florida (Aug. 28, 2023), <https://www.fema.gov/press-release/20230828/president-joseph-r-biden-jr-approves-emergency-declaration-florida>.

² 47 CFR § 52.15(f)(1)(ii) ("Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no less than 45 days and for no more than 90 days."). We do not waive the 45-day minimum aging requirement.

³ 47 CFR § 1.3 (providing that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown").

52.15(f)(1)(ii) will allow service providers in the affected areas, upon customers' request, to disconnect temporarily customers' telephone service to avoid billing issues, and then reinstate the customers' same numbers when service is reconnected. This partial waiver applies to all companies that provide service in areas of Florida and South Carolina covered by the Major Disaster Declarations. This partial waiver is in effect immediately and for a 270-day period, expiring on June 3, 2024.

3. This partial waiver of the aging rule will also apply to residential customers in other areas of Florida, South Carolina, and other states subject to future Major Disaster and Emergency Declarations signed by the President, due to hurricanes, typhoons, and tropical storms during 2023.⁴ Any future partial waivers will expire 270 days from the date the President declares a state of emergency or major disaster for affected areas. If service providers are unable to resume service on a normal basis after this time period has lapsed, they should request additional relief from the Wireline Competition Bureau.

4. Also, because of substantial damage to telecommunications systems caused by Hurricane Idalia, we recognize that customers in the affected areas may wish to port numbers to locations outside their rate centers. To facilitate their customers' continued access to telecommunications service following Hurricane Idalia, we encourage service providers to port telephone numbers geographically outside a rate center to the extent it is technically feasible. We also encourage all service providers in the areas affected by Hurricane Idalia, and any future hurricanes, typhoons, and tropical storms covered under this Order, to waive call forwarding, message center, and voicemail service charges for affected customers, to the extent lawfully permitted, until the customers' service is restored.

5. In addition, we take this opportunity to clarify that our recent orders granting relief from the aging rule in connection with Typhoon Mawar and the Hawaii wildfires,⁵ like this Order, only grant a partial waiver of section 52.15(f)(1)(ii). As in this Order, to assist residential subscribers who are dealing with the effects of major disasters, those orders only waive the maximum aging requirement of this rule and not the 45-day minimum aging requirement.⁶

⁴ The Federal Emergency Management Agency (FEMA) maintains a list of declared disasters on its website. FEMA, *Declared Disasters*, <https://www.fema.gov/disaster/declarations> (last visited Aug. 29, 2023).

⁵ *Telephone Number Portability; Numbering Resource Optimization*, CC Docket Nos. 95-116 and 99-200, Order, DA 23-722 (WCB Aug. 18, 2023) (*Hawaii Wildfires Order*); *Petition of TeleGuam Holdings, LLC for Waiver and Certain Other Relief et al.*, WC Docket No. 21-450 et al., Order, DA 23-571 (WCB June 30, 2023) (*Typhoon Mawar Order*).

⁶ *Hawaii Wildfires Order* at paras. 1 ("Specifically, we waive section 52.15(f)(1)(ii), which says that service providers may only age telephone numbers that have been disconnected for up to 90 days before assigning them to other customers."), 5 (granting a waiver "to the extent herein described herein"); *Typhoon Mawar Order* at paras. 33 ("Section 52.15(f)(1)(ii) limits a telecommunications service or interconnected VoIP provider's ability to "age" residential telephone numbers that have been disconnected for up to 90 days before assigning them to other customers. Waiver of section 52.15(f)(1)(ii) will allow service providers This waiver is in effect"), 35 (granting waiver of section 52.15(f)(1)(ii), among other provisions of the Commission's rules, "to the extent provided herein."). See also 47 CFR § 52.15(f)(1)(ii).

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 251(b)(2), and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251(b)(2) and 251(e), and sections 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.291, 1.3, that section 52.15(f)(1)(ii), [47 CFR § 52.15\(f\)\(1\)\(ii\)](#), is waived to the extent herein described herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-810

Released: September 7, 2023

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON NECA 2024 MODIFICATION OF THE AVERAGE SCHEDULE COMPANY UNIVERSAL SERVICE HIGH COST LOOP SUPPORT FORMULA

WC Docket Nos. 05-337 and 10-90

Comment Date: October 10, 2023
Reply Comment Date: October 25, 2023

On August 29, 2023, the National Exchange Carrier Association, Inc. (NECA) filed its 2024 Modification of the Average Schedule Universal Service High Cost Loop Support Formula.¹ The proposed formula, if approved, would take effect on January 1, 2024, and remain in effect through December 31, 2024. The Wireline Competition Bureau seeks comment on the proposed formula.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before the dates indicated above.² All pleadings are to reference **WC Docket No. 05-337**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.³

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: www.fcc.gov/ecfs.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. 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.

¹ NECA 2024 Modification of the Average Schedule Universal Service High-Cost Loop Support Formula, WC Docket No. 05-337 (filed Aug. 29, 2023).

² 47 CFR §§ 1.415, 1.419.

³ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁴

In addition, we request that one copy of each pleading be sent to each of the following:

- (1) Abdel Eqab, Telecommunications Access Policy Division, Wireline Competition Bureau, e-mail: Abdel-Hamid.Eqab@fcc.gov; and
- (2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, e-mail: Charles.Tyler@fcc.gov.

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

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.⁵

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information, please contact Abdel Eqab, Telecommunications Access Policy Division, Wireline Competition Bureau at Abdel-Hamid.Eqab@fcc.gov, (202) 418-7400.

- FCC -

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).

⁵ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

⁶ 47 CFR §§ 1.1200 *et seq.*

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

In the Matter of)	
)	
Amendment of section 73.202(b), Table of	)	MB Docket No. 23-302
Allotments, FM Broadcast Stations (Lac du	)	RM-11965
Flambeau, Wisconsin))	
)	

NOTICE OF PROPOSED RULEMAKING

Adopted: September 6, 2023

Released: September 6, 2023

Comment Date: October 30, 2023

Reply Comment Date: November 15, 2023

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it the Petition for Rulemaking (Petition) filed by L.D.F. Business Development Corp. (Petitioner), the non-gaming wholly-owned business entity of the Lac du Flambeau Band of Lake Superior Chippewa Indians (LDF Tribe), and an associated FCC Form 301 application.¹ Petitioner proposes to amend the FM Table of Allotments, section 73.202(b) of the Commission's rules,² by allotting Channel 225A at Lac du Flambeau, Wisconsin, as a first local service. Petitioner seeks a Tribal Priority for the proposed allotment. In this Notice of Proposed Rule Making, we seek comment on that proposal.

II. BACKGROUND

2. In *Rural Radio*,³ the Commission concluded that it would serve the public interest to establish a section 307(b) priority in favor of Tribal Entities proposing the allotment of FM radio channels to serve Tribal lands.⁴ The rationale for this determination was that "the establishment of an allocation priority for the provision of radio service to tribal lands by Indian tribal government-owned stations will advance our Section 307(b) goals and serve the public interest by enabling Indian tribal governments to

¹ See Application File No. 0000219341.

² 47 CFR § 73.202(b).

³ See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, 24 FCC Rcd 5239 (2009) ("NPRM"); First Report and Order, 25 FCC Rcd 1583 (2010) ("First R&O"); Second Report and Order, 26 FCC Rcd 2556 (2011) ("Second R&O"); and Third Report and Order, 26 FCC Rcd 17642 (2011) ("Third R&O") (collectively, "*Rural Radio*").

⁴ *Rural Radio*, First R&O, 25 FCC Rcd at 1596-97. See also NPRM, 24 FCC Rcd at 5248, n.29 (defining "Indian Tribe[s]" and "Federally-Recognized Indian Tribes"), and n.30 (defining "tribal lands").

provide radio service tailored to the needs and interests of their local communities that they are uniquely capable of providing.”⁵

3. The Commission instituted several requirements for a Tribal Allotment. Those requirements pertain to the identity of the applicant, the land and population covered by the principal community contour, the location of the proposed community, and the availability of radio services, especially Tribally-owned or Tribal Entity owned radio services, at the proposed community.⁶ Upon award of a Tribal Allotment, within a reasonable period of time the Commission will release a public notice announcing a Threshold Qualifications Window, during which any qualifying applicant will be afforded the opportunity to file FCC Form 2100, Schedule 301-FM for the channel allotted as a Tribal Allotment.⁷

4. Petitioner certifies that its proposal meets the requirements established in *Rural Radio* for a Tribal Priority.⁸ Petitioner states that it is a wholly-owned entity of the LDF Tribe, a federally recognized Native American Tribe, proposing Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment.⁹ Petitioner contends that Lac du Flambeau is a community for allotment purposes. Lac du Flambeau is a census-designated place (CDP) in Vilas County, Wisconsin with a 2020 U.S. census population of 1,845 persons. Petitioner states further that the proposed new station will be the first local tribally-owned commercial full power service at Lac du Flambeau since no full power broadcast stations are licensed to the community. Petitioner contends that the new FM station will serve 98.9% of the tribal population and 96.3% of the reservation area within the 70 dBu contour.

III. DISCUSSION

5. The facts presented by Petitioner are sufficient to support consideration of the allotment of FM Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment. The proposed Tribal

⁵ *Rural Radio*, Third R&O, 26 FCC Rcd at 1588.

⁶ In order to satisfy the prerequisites for a Tribal Allotment, the following requirements must be met: “(A) The applicant is either a federally recognized Tribe or Tribal consortium, or an entity 51 percent or more of which is owned or controlled by a Tribe or Tribes...; (b)(1) At least 50 percent of the area within the proposed principal community contour is over that Tribe’s Tribal Lands, or (2) the proposed principal community contour (a) encompasses 50 percent or more of that Tribe’s Tribal Lands, (b) serves at least 2,000 people living on Tribal Lands, and (c) the total population on Tribal Lands residing within the proposed station’s service contour constitutes at least 50 percent of the total covered population...; (C) The proposed community of license must be located on Tribal Lands; and (D) The proposed service must constitute first or second aural (reception) service, or first local Tribal-owned commercial transmission service at the proposed community of license.” *Rural Radio*, Third R&O, 26 FCC Rcd at 17646-47. See also First R&O, 25 FCC Rcd at 1596-97; and Second R&O, 26 FCC Rcd at 2585-87.

⁷ See Third R&O, 26 FCC Rcd at 17645-46. See also Second R&O, 26 FCC Rcd at 2588-90. Should no applicant meeting threshold qualifications file FCC Form 2100, Schedule 301-FM during the Threshold Qualifications Window (and should the proponent request that its already-filed Form 2100, Schedule 301-FM application not be immediately processed), the Tribal Allotment will be included in the inventory for a broadcast auction at a later date. In that event, only threshold qualified applicants, including the original proponent, may specify the Tribal Allotment in their applications to participate in the auction (FCC Form 175). Third R&O, 26 FCC Rcd at 17649.

⁸ Specifically, Petitioner provides evidence that: at least 50 percent of the proposed principal community contour consists of LDF Tribal lands; Lac du Flambeau, Wisconsin, the proposed community of license, is located on LDF Tribal lands; and the proposed facility will be the first local Tribally-owned commercial transmission service at the proposed community of license. Petitioner further states that it is eligible for a Tribal Priority at Lac du Flambeau, because it is a fully-chartered organization owned and controlled by the LDF Tribe, and its main campus lies within the principal community border of the proposed facility. The members of the tribal council serve as the directors of the corporation.

⁹ Petition at 1.

Allotment of FM Channel 225A could serve the public interest by providing vital radio service to Lac du Flambeau and surrounding LDF Tribal lands, and by enabling the Petitioner, an Entity of the LDF Tribe, to set its own communications priorities and goals with respect to such service. Moreover, the allotment could further the public interest by providing a first local service at Lac du Flambeau.

6. Finally, the proposed change in the FM Table of Allotments complies with the technical requirements of the Commission's rules. A staff engineering analysis indicates that Channel 225A can be allotted to Lac du Flambeau, Wisconsin, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 12.1 km (7.5 miles) northwest of the community. The reference coordinates are 46-01-14 NL and 89-44-54 WL.¹⁰ The staff engineering analysis confirms that the Tribal Reservation would cover 3,518 persons, of whom 3,480 persons (98.9%) reside on the Lac du Flambeau Reservation.

7. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, 47 C.F.R. section 73.202(b), by the allocation of FM Channel 225A at Lac du Flambeau, Wisconsin, as a Tribal Allotment, as set forth below:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Lac du Flambeau, Wisconsin	-----	225A ¹¹

IV. PROCEDURAL MATTERS

8. *Showings Required.* Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (NPRM). Petitioner or any party that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the Rules.¹²

9. *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.¹³
- (b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.¹⁴

10. *Comments and Reply Comments.* Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,¹⁵ interested parties may file comments and reply comments on or before the dates indicated on the

¹⁰ Lac du Flambeau, Wisconsin is located within 320 kilometers (199 miles) of the U.S.-Canada border. Commission staff has requested Canadian concurrence. The concurrence of the Canadian Government must be received before the channel can be allocated.

¹¹ We are proposing the reservation of this channel as a Tribal Allotment.

¹² 47 CFR § 1.420(j).

¹³ 47 CFR § 1.420(d).

¹⁴ 47 CFR § 1.420(g)(2).

¹⁵ 47 CFR §§ 1.415, 1.419, and 1.420.

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁶

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - o 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.
 - o U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
 - o Currently, the Commission does not accept any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.¹⁷

11. *Service.* Pursuant section 1.420 of the Rules,¹⁸ 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.¹⁹ Additionally, a copy of such comments should be served on counsel for petitioner, as follows:

Melodie A. Virtue, Esq.
Brad C. Deutsch, Esq.
c/o L.D.F. Business Development Corp.
Foster Garvey PC
1000 Potomac Street, NW
Suite 200
Washington, DC 20007
Melodie.Virtue@foster.com

¹⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁷ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

¹⁸ 47 CFR § 1.420.

¹⁹ 47 CFR § 1.420(a), (b) and (c).

Brad.Deutsch@foster.com

12. *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.²⁰ 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.²¹ 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.²² 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.²³ 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.

13. *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.

14. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,²⁴ do not apply to a rulemaking proceeding to amend the FM Table of Allotments, section 73.202(b) of the Rules.²⁵ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.²⁶ 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 2002.²⁷

15. *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).

²⁰ 47 CFR §§ 1.1200 *et seq.*

²¹ 47 CFR § 1.1208.

²² 47 CFR § 1.1204(a)(10).

²³ 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).

²⁴ 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).

²⁵ 47 CFR § 73.202(b).

²⁶ 44 U.S.C. §§ 3501-3520.

²⁷ 44 U.S.C. § 3506(c)(4).

16. *Additional Information.* For further information concerning this proceeding, contact Rolanda F. Smith, Audio Division, Media Bureau, at (202) 418-2054, Rolanda-Faye.Smith@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202-418-0500
Internet: www.fcc.gov
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DA 23-814

Released: September 6, 2023

WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES THAT TEMPORARY FIXED STATIONS IN THE 6 GHz BAND CAN NOW BE REGISTERED

ET Docket No. 18-295

By this Public Notice, the Wireless Telecommunications Bureau (WTB) announces that the Commission's Universal Licensing System (ULS) will now accept applications for temporary fixed stations in portions of the 6 GHz band. As discussed below, certain licensees in the 6 GHz band must register their temporary fixed stations in ULS before commencing operations to enable the automated frequency coordination (AFC) systems to account for these operations when providing channel information to 6 GHz unlicensed standard power-devices.

On April 23, 2020, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (*6 GHz Report and Order*) that made 1200 megahertz of spectrum available for unlicensed use in the 6 GHz band (5.925 – 7.125 GHz).¹ Recognizing that a variety of incumbent licensees operate in the band, the *6 GHz Report and Order* adopted rules for two different types of unlicensed operations—low-power indoor operations and standard-power operations—to tailor the unlicensed use to the existing incumbent operations in the band.² The *6 GHz Report and Order* authorized unlicensed standard-power operations, using an AFC system for the U-NII-5 (5.925–6.425 GHz) and U-NII-7 (6.525–6.875 GHz) sub-bands, which support a large number of point-to-point microwave links.³

AFC systems identify the frequencies on which unlicensed standard-power devices can operate without causing harmful interference to licensed microwave receivers, and then make those frequencies available for use for unlicensed standard-power operations.⁴ Unlicensed access to the U-NII-5 and U-NII-7 sub-bands for standard-power operations is only permitted on frequencies and locations determined by an AFC system based on the exclusion zones established under the rules.⁵ To calculate and establish the exclusion zones for standard-power operations, an AFC system relies on ULS for fixed microwave link data.⁶ ULS is the official licensing database for microwave links in the U-NII-5 and U-NII-7 sub-bands and contains extensive technical data for site-

¹ *Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020) (*6 GHz Report and Order*).

² *Id.* at 3856, para. 11.

³ *Id.* at 3854, paras. 3, 18. All four of the sub-bands, U-NII-5 (5.925–6.425 GHz), U-NII-6 (6.425–6.525 GHz), U-NII-7 (6.525–6.875 GHz), and U-NII-8 (6.875–7.125 GHz), can be utilized for unlicensed low power indoor operations. *Id.* at 3854, para. 18.

⁴ *Id.* at 3857, para. 12.

⁵ *Id.* at 3862, para. 22.

⁶ *Id.* at 3864, para. 30.

based licenses including transmitter and receiver locations, frequencies, bandwidths, polarizations, transmitter EIRP, antenna height, and the make and model of the antenna and equipment used. Thus, ULS contains the information necessary for AFC systems to protect fixed service links.⁷

Because the AFC system must incorporate the location of temporary fixed stations to protect them from harmful interference, the *6 GHz Report and Order* noted that the Commission eventually would require licensees to register their temporary fixed stations and supply operational details (transmitter and receiver location, antenna height, antenna azimuth, antenna make and model, etc.) in ULS prior to transmission so that an AFC system could accurately determine available channels for unlicensed standard-power operations.⁸ When the *6 GHz Report and Order* was released, ULS did not support the capability to register temporary fixed stations. By this Public Notice, WTB announces that temporary fixed stations now may be registered in ULS.⁹

To interactively register temporary fixed stations, licensees should log-in to ULS at <https://wireless2.fcc.gov/UlsEntry/licManager/login.jsp>. Once the licensee has logged in using its FRN and password or FRN and Username Password,¹⁰ it should select the call sign of its temporary fixed station license.¹¹ Along the right side of the window is a navigation column titled “Work on this License”; under this heading, the licensee should click on the “Register Links” option. From this point the licensee should fill out the screens as prompted. The licensee will be required to enter technical data including transmitter and receiver locations, frequencies, bandwidths, polarizations, transmitter EIRP, antenna height, and the make and model of the antenna and equipment. The licensee must also enter the start and end date of the temporary fixed operation, which cannot exceed six months and must be within the existing license term of the temporary fixed license.¹² Once the term of a temporary fixed station expires, the station is no longer entitled to protection from unlicensed devices, and the AFC may utilize those channels. Temporary fixed station registrations may also be batch-filed by coordinators and entities approved to file through the ULS batch-filing process. Once applications are submitted through either method, they will be processed.

We remind licensees that they remain “obligated under the terms of their licenses to keep their information filed with the Commission current and complete”¹³ after successfully registering their temporary fixed stations. Licensees must update ULS when “actual operations differ from the Commission’s licensing

⁷ *Id.*

⁸ *Id.* at 3865, para. 32.

⁹ *Id.* at 3865, para. 32 & n.85.

¹⁰ If you do not know your password, you need to create an FCC Username Account to obtain a new password. Instructions for creating an FCC Username Account, and for linking your existing FRN to that account, can be found at: <https://www.fcc.gov/licensing-databases/fcc-registration-system-cores/commission-registration-system-video-tutorials>.

¹¹ The ability to register temporary fixed stations will only be available to current licensees of active temporary fixed licenses. Temporary fixed licenses generally require the licensee to prior coordinate individual temporary fixed stations operating under the temporary fixed license. Temporary fixed stations must be located within the geographic area defined in the temporary fixed license.

¹² While a temporary fixed station is generally defined to operate at a “specified location for a short period of time, ranging up to one year,” 47 CFR § 101.3, when a temporary fixed station operates under a blanket authorization “at a single location for more than 6 months, an application for a station authorization designating that single location as the permanent location shall be filed at least 90 days prior to the expiration of the 6 month period.” 47 CFR § 101.31(a)(1)(i). Because the station becomes protected by the AFC upon the filing of the permanent application, there is no further need for a temporary fixed station registration. See *6 GHz Report and Order*, 35 FCC Rcd at 3865–66, para. 32. Accordingly, temporary registrations are limited to six months protection to ensure that licensees comply with Section 101.31(a)(1)(i) of the Commission rules.

¹³ *6 GHz Report and Order*, 35 FCC Rcd at 3865–66, para. 31.

records” so that their operations “are properly protected from harmful interference from any other spectrum users.”¹⁴

Questions regarding the application filings and temporary fixed station registration procedures outlined in this public notice should be directed to the ULS Hotline at 1-877-480-3201, Option #2, while questions regarding this Public Notice should be directed to Paul Malmud, Broadband Division, WTB at Paul.Malmud@fcc.gov.

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¹⁴ *Id.*



PUBLIC NOTICE

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

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

DA 23-815

Released: September 6, 2023

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES SECOND ROUND OF ACP TRIBAL OUTREACH GRANT PROGRAM AWARDS

WC Docket No. 21-450

The Federal Communications Commission (FCC or Commission) today is announcing final funding allocations for the Affordable Connectivity Outreach Grant Program (ACP Outreach Grant Program), Tribal Competitive Outreach Program (TCOP) Round 2. The total amount of final funds announced today for TCOP Round 2 is over \$1.2 million.

In March 2023, the FCC adopted the Affordable Connectivity Program (ACP) Fifth Report & Order making available a second funding opportunity for the ACP Outreach Grant Program.¹ The ACP plays an integral role in helping to bridge the digital divide, which remains a top priority for the Commission.² As part of its efforts to encourage participation in the ACP, the Commission established the ACP Outreach Grant Program in order to engage with partners around the country to help inform ACP-eligible households about the program in their local communities, with funding and resources to support such outreach and community engagement.³ The extensive demand for ACP outreach funding so far underscores the need for these funds and the importance of reaching the eligible households that have not yet enrolled in the ACP.⁴ This new funding opportunity for ACP outreach is intended to provide funding to five additional Tribal organizations, beyond the 20 TCOP grant recipients that were announced as part of the Commission's March 10, 2023 funding announcement.⁵

In determining funding allocations for the second round of TCOP final allocations, the FCC reviewed seven grant applications to determine the impact of proposed projects against the grant program's goal, objectives, and priorities. Submitted applications were assessed using the following three-step review process:

- 1. Eligibility** review to determine if the applicant is eligible and submitted a complete application package as required in the TCOP Round 2 Notice of Funding Opportunity (NOFO);

¹ *Affordable Connectivity Program*, Fifth Report and Order, WC Docket No. 21-450, FCC 23-15 (rel. Mar. 15, 2023) (*ACP Fifth Report and Order*).

² See *Affordable Connectivity Program*, *Emergency Broadband Benefit Program*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 21-450, 20-445, FCC 22-2, at 98, para. 211 (2022) (*ACP Order*) ("Narrowing the digital divide has been an ongoing priority for the Commission....").

³ *Affordable Connectivity Program*, Second Report and Order, WC Docket No. 21-450, FCC 22-64, at 2, para. 2 (2022).

⁴ *Id.* at 4-6, paras. 4-6 (discussing the need for and importance of ACP outreach).

⁵ *Consumer and Governmental Affairs Bureau Announces ACP Outreach Grant Program Target Funding*, Public Notice, WC Docket No. 21-450, DA 22-194 (CGB Mar. 10, 2023).

Federal Communications Commission

2. **Merit** review to determine the quality of proposed projects against program objectives, activities, and costs/budget using pre-determined criteria; and
3. **Risk** review to determine the fiscal stability of an applicant using many factors including the quality of the management systems, history of grant performance, and audit reports and findings.

At the conclusion of the three-step review process, applicants were selected for funding consistent with the funding determination process outlined in the TCOP Round 2 NOFO.

Entity-specific final funding allocations are enclosed as part of the Appendix contained within this Public Notice. Following today's announcement, the FCC's Consumer and Governmental Affairs Bureau will contact applicable entities over the course of the next few weeks to prepare for and issue Notices of Award (NOAs). Entities that have been selected for funding do not need to reach out to the FCC as the FCC will initiate outreach and coordination for award issuance. Once NOAs are issued, entities will have no more than 30 days to accept their award which will mark the start of their one-year (12 months) period of performance for TCOP Round 2.

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

– FCC –

Federal Communications Commission

The FY 2023 TCOP Round 2 funding recipients announced on September 6, 2023 and final funding amounts are provided in the table below. Eligibility for TCOP Round 2 was limited to governmental and non-governmental Tribal entities that will conduct ACP outreach and enrollment assistance to eligible households on qualifying Tribal Lands.

ACP Outreach Grant Program Tribal Competitive Outreach Program (TCOP) Round 2			
#	Applicant Name	State	Final Award Amount
1	Shoshone-Bannock Tribes	Idaho	\$305,571
2	Waimanalo Hawaiian Homes Association	Hawaii	\$309,103
3	Cheyenne River Sioux Tribe Radio	South Dakota	\$282,046
4	Burns Paiute Tribe	Oregon	\$87,360
5	Confederated Tribes and Bands of the Yakama Nation	Washington	\$231,959
TOTAL:			\$1,216,039



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 23-816
Released: August 31, 2023

THE FEDERAL COMMUNICATIONS COMMISSION ANNOUNCES THE PARTIAL DEACTIVATION OF THE DISASTER INFORMATION REPORTING SYSTEM FOR HURRICANE IDALIA

DIRS deactivated in South Carolina and parts of Florida

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (FCC), in coordination with the Department of Homeland Security Cybersecurity and Infrastructure Security Agency and the Federal Emergency Management Agency, has announced a partial deactivation of the Disaster Information Reporting System (DIRS)¹ for the following areas affected by Hurricane Idalia:

Florida: Bay, Calhoun, Charlotte, Citrus, Clay, DeSoto, Duval, Flagler, Franklin, Gadsden, Gulf, Hardee, Hernando, Hillsborough, Lake, Lee, Leon, Liberty, Manatee, Marion, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, Sumter, Taylor, Volusia, and Wakulla.

South Carolina: Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Dorchester, Georgetown, Hampton, Horry, Jasper, Marion, and Orangeburg.

Communications providers do not need to provide any additional reporting in DIRS for these areas in Florida and South Carolina with respect to Hurricane Idalia. The FCC will, however, continue to monitor the status of communications services and work with providers and government partners in these areas as needed to support remaining restoration efforts.

DIRS remains activated in the following counties in Florida:

Florida: Alachua, Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Suwannee, and Union.

The FCC appreciates the cooperation of all the communications providers that have voluntarily submitted data to DIRS in the aftermath of Hurricane Idalia. In disaster situations, information on the operational status of communications services provides critical situational awareness and supports effective emergency response and restoration efforts. The FCC expects to continue to publish daily communications status reports while DIRS remains active for any area in connection with Hurricane Idalia.

For further information, please contact:

Michael Caiafa (202) 418-1311, (540) 834-7401 (cell), michael.caiafa@fcc.gov

¹ DIRS is a voluntary, web-based system that communications providers, including wireless, wireline, broadcast, cable and Voice over Internet Protocol providers, can use to report communications infrastructure status and situational awareness information during times of crisis.

David Ahn (202) 418-0853, david.ahn@fcc.gov
John Healy (215) 847-8094 (cell), (202) 418-2448, john.healy@fcc.gov
FCC 24/7 Operations Center – 202-418-1122, fccops@fcc.gov

For more information on the FCC's response to Hurricane Idalia in Florida, please go to
<https://www.fcc.gov/Idalia>

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DA 23-817
September 7, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 20 (DISTRICT OF COLUMBIA, MARYLAND AND NORTHERN VIRGINIA)
REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

General Docket No. 93-82 and WT Docket 02-378

The Region 20 Public Safety 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold a joint planning meeting on Wednesday, October 25, 2023. The meeting will begin at 10:00 a.m., at the Department of Information Technology (first floor, conference rooms A and B), 100 Community Place, Crownsville, Maryland.

The agenda for the 700/800 MHz meeting includes:

- Call to order and welcome to all guests
- Approval of April 26, 2023 meeting minutes
- Old business
- Chairman's Remarks on issues of importance in Region 20
 - Update of FCC actions pertaining to 4.9 GHz update
 - Update on deployable trunking standardization
 - Update on interoperability enhancements in the Nation's Capital
 - Planning for 2025 Inauguration – critical importance of Region 20 interoperability code plug for deployable trunking
 - National Regional Planning Council (NRPC) – Radio interference initiative
- Updates from the Statewide Interoperability Coordinators/Maryland FiRST
- New Business
- Program topics
 - Land mobile radio and emerging Radio over Internet Protocol Technology
 - Region 20 Plan for 800 MHz modifications
- Adjourn - Next Meeting: April 24, 2024

Both Region 20 Public Safety RPC meetings are open to the public. All eligible public safety providers in Region 20 may utilize these frequencies. It is essential that eligible public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 20 should plan to attend.

For further information, please contact:

Charles V. Bryson, Chair
Region 20 700 MHz and 800 MHz Public Safety RPCs
100 Community Place
Crownsville, MD 21032
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Phone: 410-807-8102

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45 L Street, NE
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Internet: <http://www.fcc.gov>
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DA 23-818
September 7, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 1 (ALABAMA) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES
TO HOLD PLANNING MEETING

Gen. Docket 90-280 and WT Docket 02-378

The Region 1 (Alabama) 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold a joint meeting on Sunday, October 15, 2023 at 2:00 p.m. (CST). The meeting will be held at the Perdido Beach Resort, 27200 Perdido Beach Boulevard, Orange Beach, AL 36561.

The agenda for the 700/800 MHz meeting includes:

- Call to order
- Approval of Minutes
- Treasurer Report
- Revised 700 MHz Plan Status
- General Discussion
- Technical Subcommittee Report
- Election of Officers
- Adjourn

The Region 1 700 MHz and 800 MHz RPC meeting is open to the public. It is essential that public safety agencies in all areas of government, including state, municipality, county, and Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's rules, 47 CFR § 90.523, be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not oriented in the communications field should delegate someone with this knowledge to attend, participate, and represent their agency's needs.

All interested parties wishing to participate in planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 1 should plan to attend.

For further information, please contact:

Richard E. Ranson
Chairman 700 MHz and 800 MHz RPC's
The University of Alabama – Public Safety Administration – Radio Communications
7400 Richard M. Pierce Parkway
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205-347-1033 Office
rranson@ua.edu

Robert Manning
Vice Chairman 700 & 800 MHz RPC
Vice Chair Radio Network Manager,
Birmingham 911 District
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Ernie Blair
Treasurer 700 MHz RPC
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Huntsville, AL 35806-1529
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Michael Lee
Secretary 700 & 800 MHz RPC's
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PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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Internet: www.fcc.gov
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DA 23-820
September 7, 2023

**NOTICE OF INTENT TO SHARE INTERNATIONAL CIRCUIT CAPACITY DATA
FOR THE 2021 AND 2022 REPORTING PERIODS WITH THE COMMITTEE
FOR THE ASSESSMENT OF FOREIGN PARTICIPATION IN THE
UNITED STATES TELECOMMUNICATIONS SERVICES SECTOR**

IA Docket No. 23-303

Comment Date: September 18, 2023

The Commission collects annual circuit capacity data for U.S.-international submarine cable systems pursuant to section 43.82 of the Commission's rules.¹ On August 9, 2023, the Department of Justice (DOJ), in its capacity as Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee),² filed a letter requesting access to international circuit capacity data submitted to the [Commission] for the 2021 and 2022 reporting periods, including data for which confidential treatment has been requested. The Committee states that access to the data "will enhance and improve the Committee's ability to execute its mission to assess risk to the national security and law enforcement interest of the United States."³ By this public notice, the Office of International Affairs (OIA) announces its intent to share with the Committee the international circuit capacity data for the 2021 and 2022 reporting periods, including data for which confidential treatment has been requested,⁴ based on the procedures set out below.⁵ This notice initiates a pleading cycle that allows

¹ 47 CFR § 43.82.

² The members of the Committee specifically designated by the Executive Order are the Secretary of Defense, the Secretary of Homeland Security, and the Attorney General, who serves as the Chair. Executive Order No. 13913 of April 4, 2020, Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector, 85 Fed. Reg. 19643, 19643-44 § 3(b), (c) (Apr. 8, 2020) (Executive Order 13913). The advisors to the Committee specifically designated by the Executive Order are the Secretary of State, the Secretary of the Treasury, the Secretary of Commerce, the Director of the Office of Management and Budget, the United States Trade Representative, the Director of National Intelligence, the Administrator of General Services, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, the Director of the Office of Science and Technology Policy, and the Chair of the Council of Economic Advisers. *Id.*, 85 Fed. Reg. at 19644 § 3(d).

³ Letter from Lee Licata, Deputy Chief, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Denise Coca, Chief, Telecommunications and Analysis Division, Office of International Affairs, FCC at 1 (Aug. 9, 2023) (DOJ Letter); *id.* (adding that "[u]nder Section 8 of [Executive Order] 13913, the Committee may seek information from any entity as needed in furtherance of its reviews of applications and licenses.").

⁴ 47 CFR § 0.442(a).

⁵ The Commission previously provided notice of its intent to share international circuit capacity data with the Department of Justice (DOJ) and other federal agencies for the 2015 through 2020 reporting periods. *Notice of Intent to Share International Circuit Capacity Data with the Committee for the Assessment of Foreign Participation* (continued....)

any entity that provided confidential circuit capacity data for the 2021 and 2022 reporting periods to oppose such disclosure of its data to the Committee.

DOJ states that under Executive Order 13913, the Committee's primary objective is "to assist the FCC in its public interest review of national security and law enforcement concerns that may be raised by foreign participation in the United States telecommunications services sector."⁶ DOJ indicates that "the Committee regularly collects and analyzes relevant unclassified and classified information to gain a holistic understanding of the national security and law enforcement risks associated with granting such applications."⁷ DOJ also states that "the Committee frequently reviews submarine cable landing license applications for national security and law enforcement concerns."⁸ Finally, DOJ states that having circuit capacity information "provides a clearer picture of how [submarine cables] are being used, which better enables the Committee to evaluate international data flows on various cables (and related issues such as internet topography)" and that "[w]ith this data, the Committee has another tool to assess data-security risk . . . [thus providing] additional context to the Committee's risk-based analyses."⁹

The Commission receives two types of annual circuit capacity data reports regarding U.S.-international submarine cables. First, licensees of a submarine cable between the United States and any foreign point must file capacity information for each cable system as of December 31st of the current reporting period (i.e., available capacity) and two years from the current reporting period (i.e., planned capacity).¹⁰ Second, submarine cable landing licensees and common carriers that owned or leased capacity on a submarine cable between the United States and any foreign point must file capacity information as of December 31st of the current reporting period.¹¹ The Commission allows reporting entities to request confidential treatment of their data under section 0.459(a)(4) of the Commission's rules.¹² The annual aggregated data from the reports are released to the public.¹³

The Commission's regulations provide that confidential proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public's right to seek disclosure under the Freedom of Information Act and implementing regulations.¹⁴ The Commission may disclose to other Federal agencies records that have been submitted to the Commission in confidence upon another agency's request or upon the Commission's own motion.¹⁵ In general, under federal law, 44 U.S.C.

in the United States Telecommunications Services Sector, IB Docket No. 21-439, Public Notice, 37 FCC Rcd 88 (IB 2022); *Notice of Intent to Share International Circuit Capacity Data from 2018 to 2019 with the Department of Homeland Security and Other Federal Agencies*, IB Docket No. 20-194, Public Notice, 35 FCC Rcd 6533 (IB 2020); *Notice of Intent to Share International Circuit Capacity Data from 2015 to 2017 with Federal Agencies*, IB Docket No. 19-32, Public Notice, 34 FCC Rcd 561 (IB 2019).

⁶ DOJ Letter at 1 (quoting Executive Order 13913, 85 Fed. Reg. at 19643 § 3(a)).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ 47 CFR § 43.82(a).

¹¹ *Id.*

¹² 47 CFR § 43.82(b); *see Section 43.62 Reporting Requirements for U.S. Providers of International Services et al.*, IB Docket No. 17-55, Report and Order, 32 FCC Rcd 8115, 8132, para. 35 (2017).

¹³ *See* FCC, *Circuit Capacity Data for U.S.-International Submarine Cables*, <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

¹⁴ 5 U.S.C. § 552; 47 CFR §§ 0.457(d), 0.459(d).

¹⁵ 47 CFR § 0.442(d).

§ 3510, the Commission may share information it has collected with other Federal government agencies and, if it does, all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released “to the same extent and in the same manner” as they do to employees of the collecting agency.¹⁶

DOJ states that the circuit capacity data will be treated in accordance with the Commission’s rules regarding confidentiality protections, including sections 0.442, 0.457, 0.459, and 0.461, as well as the confidentiality provisions contained in Section 8 of Executive Order 13913.¹⁷ DOJ also states that “should a third party request such information pursuant to the Freedom of Information Act, absent court order or other applicable overriding legal authority to the contrary, [DOJ] will withhold the information pursuant to the procedures promulgated in 28 C.F.R. §§ 16.1 *et seq.*”¹⁸

Any entity that provided the circuit capacity data for the 2021 and/or 2022 reporting periods with a request for confidential treatment will have ten (10) calendar days from the date of this public notice to oppose disclosure to the Committee, on or before **September 18, 2023**.¹⁹ If disclosure is opposed and the Commission decides to make the circuit capacity data available, the procedures in section 0.442(d)(4) will apply.²⁰ If we receive no opposition, OIA will disclose this circuit capacity information to the Committee. The Committee will be subject to the requirements of 44 U.S.C. section 3510 and the confidentiality protections contained in the Commission’s regulations and Section 8 of Executive Order 13913.²¹ For purposes of this Public Notice, the Committee includes the members and advisors specifically identified in Executive Order 13913.²² If the Committee seeks to share the circuit capacity data with a newly identified executive department or agency, or Assistant to the President, the Committee must file a separate request for access to circuit capacity data.²³

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, entities that submitted circuit capacity data for the 2021 and 2022 reporting periods with a request for confidential treatment may file objections to this planned disclosure of such circuit capacity data by filing in IA Docket 23-303 on or before **September 18, 2023**.²⁴ 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.

¹⁶ 44 U.S.C. § 3510(b)(1).

¹⁷ DOJ Letter at 2.

¹⁸ *Id.*

¹⁹ 47 CFR § 0.442(d)(1).

²⁰ 47 CFR § 0.442(d)(4) (“If disclosure is opposed and the Commission decides to make the records available to the other agency, the party who furnished the records to the Commission will be afforded ten calendar days from the date of the ruling to move for a judicial stay of the Commission’s action. If the party does not move for stay within this period, the records will be disclosed.”).

²¹ 44 U.S.C. § 3510; 47 CFR § 0.441 *et seq.*; Executive Order 13913, 85 Fed. Reg. at 19646 § 8.

²² See *supra* note 2.

²³ Executive Order 13913, 85 Fed. Reg. at 19643-44 § 3(b), (d).

²⁴ 47 CFR §§ 1.415, 1.419.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020); <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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

Parties should also send a courtesy copy of their filing to Stacey Ashton, Telecommunications Data Analyst, Telecommunications and Analysis Division, Office of International Affairs at Stacey.Ashton@fcc.gov.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.²⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Stacey Ashton, Telecommunications Data Analyst, Telecommunications and Analysis Division, Office of International Affairs at Stacey.Ashton@fcc.gov.

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²⁵ 47 CFR §§ 1.1200 *et seq.*



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 23-821

Released: September 8, 2023

WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THEIR OCTOBER 9, 2023 STATUS UPDATE FILING OBLIGATION

WC Docket No. 18-89

The Wireline Competition Bureau (Bureau) reminds Recipients¹ in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file status updates with the Federal Communications Commission every 90 days, beginning on the date on which the Bureau approved Recipients' applications, until the obligation to file expires.² All Recipients were required to file the last status update on July 10, 2023.³ Accordingly, all Recipients must file their next status update on October 9, 2023.⁴ For additional information about Reimbursement Program filing requirements, please refer to the *Initial Status Update PN*.⁵

Recipients will submit status updates through the online portal, <https://fccprod.servicenowservices.com/scrp> (Supply Chain Reimbursement Program Online Portal) by

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

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

³ *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their July 10, 2023 Status Update Filing Obligation*, WC Docket No. 18-89, Public Notice, DA 23-502 (WCB June 12, 2023) (*June 2023 Status Update PN*). The *June 2023 Status Update PN* and other Reimbursement Program releases are available on the Commission's website via <https://www.fcc.gov/supplychain/reimbursement>.

⁴ Because 90 days after July 10, 2023—October 8, 2023—falls on a Sunday, the deadline to file the next status update is October 9, 2023. *See* 47 CFR § 1.4(e)(1), (j) (describing the computation of Commission deadlines that would fall on a holiday, and defining "holiday" to include weekend days).

⁵ *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their Status Update Filing Obligation*, WC Docket No. 18-89, Public Notice, DA 22-967 (WCB Sept. 16, 2022) (*Initial Status Update PN*).

completing FCC Form 5640 Part K: Status Updates. Requests for confidential treatment must be submitted by filing a written request electronically in WC Docket No. 18-89 in the Commission's Electronic Comment Filing System (ECFS), <https://www.fcc.gov/ecfs>.

Additional Information and Resources. Recipients with questions may contact the Fund Administrator Help Desk by email at SCRPFundAdmin@fcc.gov or by calling (202) 418-7540 from 9:00 AM ET to 5:00 PM ET, Monday through Friday, except for Federal holidays. General information and Commission documents regarding the Reimbursement Program are available on the Reimbursement Program webpage, <https://www.fcc.gov/supplychain/reimbursement>.

-FCC-



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. 23-822

Report No. SAT-01757

Friday September 8, 2023

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-MOD-20230224-00040	E S2912	Planet Labs PBC	
Modification			
Grant of Authority			Effective Date: 09/01/2023

Nature of Service: Earth Exploration Satellite Service

On September 1, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Planet Labs PBC for modification of its license to specify: (1) operational altitudes for the SkySat satellites 16-18 up to an altitude of 450 km (± 10 km); (2) operational altitudes of SkySat satellite 19 up to an altitude of 425 km (± 10 km); and (3) operations of SkySat satellites 3-21 in orbits with a perigee altitude below 400 km, with imaging data communications limited to altitudes above 345 km.

SAT-STA-20230621-00144	E S2715	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 07/25/2023

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

SAT-STA-20230712-00166	E S2408	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 09/06/2023

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

SAT-STA-20230717-00175	E S2422	Intelsat License LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 09/06/2023

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

SAT-STA-20230809-00196	E	S2408	Intelsat License LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 09/06/2023

On September 6, 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 to operate the Intelsat 904 space station with new C-band coverage areas at the 29.5° W.L. orbital location.

SAT-STA-20230816-00204	E	S2422	Intelsat License LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 09/06/2023

On September 6, 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 to maintain the Galaxy 12 space station at the 137.1° W.L. orbital location and to provide fixed-satellite service (FSS) from that location. Galaxy 12 operates in the FSS using the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) frequency bands, and conducts telemetry, tracking, and command using the following center frequencies: 4198.0 MHz and 4199.875 MHz (space-to-Earth), and 6424.5 MHz (Earth-to-space).

SAT-T/C-20230630-00158	E		Spaceflight Federal, LLC
Transfer of Control			
Grant of Authority			Effective Date: 09/07/2023

Current Licensee: Spaceflight Federal, LLC
FROM: M&Y Space Co., Ltd.
TO: Spaceflight, Inc.

No. of Station(s) listed: 1

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: <https://www.fcc.gov>

DA 23-823

Released: September 8, 2023

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS EAS AND WEA PARTICIPANTS OF REQUIREMENT TO TRANSMIT ACCESSIBLE ALERTS DURING NATIONWIDE ALERTING TEST ON OCTOBER 4, 2023, AND COMPLY WITH ETRS REPORTING REQUIREMENTS

PS Docket Nos. 15-91 and 15-94

The Public Safety and Homeland Security Bureau (PSHSB) of the Federal Communications Commission (Commission or FCC) reminds 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 a nationwide Emergency Alert System (EAS) and Wireless Emergency Alert (WEA) test on October 4, 2023, with a back-up date of October 11, 2023.³

WEA Nationwide Test. FEMA will initiate the WEA test at 2:18 pm EDT on October 4, 2023, using the National Alert classification of Alert Message.⁴ While subscribers can opt out of receiving many types of WEA messages, they cannot opt out of receiving a National Alert.⁵ As a result, all subscribers with WEA-capable devices should receive the test message, which will be accompanied by the WEA attention signal and vibration cadence.⁶ The WEA test message will read as follows:

“THIS IS A TEST of the National Wireless Emergency Alert System. No action is needed.”

Participating CMS Providers and equipment manufacturers should take the necessary steps to ensure accessibility of WEA messages to individuals with disabilities, in compliance with sections 10.520

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 *Public Safety and Homeland Security Bureau Announces Nationwide Tests of the Emergency Alert System (EAS) and Wireless Emergency Alerts on October 4, 2023*, Public Notice, PS Docket Nos. 15-91, 15-94, DA 23-653 (PSHSB August 3, 2023) (*Test Announcement Public Notice*). In the event FEMA, in consultation with the National Weather Service, identifies severe weather conditions in some parts of the nation that may require activation of the EAS, the test will be conducted on October 11, 2023.

⁴ See 47 CFR § 10.400(a).

⁵ See 47 U.S.C. § 1201(b)(2)(E).

⁶ 47 CFR §§ 10.520, 10.530.

and 10.530 of the Commission's rules,⁷ by enabling their WEA-capable devices to include unique audio and vibration attention signals. Further, WEA messages should be preserved in a consumer-accessible format and location for at least 24 hours or until deleted by the subscriber.⁸

Nationwide EAS Test. FEMA will transmit the nationwide EAS test at 2:20 pm EDT on October 4, 2023 using the Integrated Public Alert and Warning System (IPAWS). EAS Participants must file ETRS Form Two on or before October 5, 2023,⁹ and ETRS Form Three on or before November 20, 2023.¹⁰ Additional information, including instructional videos and answers to frequently asked questions about entering data into the ETRS forms, can be found at <https://www.fcc.gov/general/eas-test-reporting-system>.

The Bureau reminds EAS Participants to take steps, in coordination with their State Emergency Communication Committees, to make this test accessible.¹¹ This preparation includes upgrading EAS equipment software and firmware to the most recent version and ensuring that EAS equipment can receive and process the National Periodic Test code, the "six zeroes" national location code, and otherwise operate in compliance with the Commission's rules. EAS Participants are also reminded to review their State EAS Plans for monitoring assignments and ensure that EAS equipment is accurately configured to monitor those sources.

The EAS test message will be transmitted 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."

EAS Participants should take necessary steps, in compliance with section 11.51 of the Commission's rules,¹² to ensure that individuals who are deaf or hard of hearing and individuals who are blind or visually impaired have full access to EAS messages. Section 11.51 requires analog and digital television broadcast stations, analog and digital cable systems, wireless cable systems, wireline video systems, and direct broadcast satellite providers to broadcast national-level alerts in a manner that allows individuals with and without disabilities to access the full content.

⁷ *Id.*

⁸ 47 CFR § 10.500(h).

⁹ EAS Participants are required to file "day of test" data within 24 hours of any nationwide EAS test or as otherwise required by the Bureau. 47 CFR § 11.61(a)(3)(iv)(B).

¹⁰ EAS Participants are required to file detailed post-test data within 45 days following a nationwide EAS test. 47 CFR § 11.61(a)(3)(iv)(C).

¹¹ See *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, FCC 22-75, 2022 WL 4927401 at *10, paras. 30-42 (2022) (amending rules prescribing the language to be used in audible and viewable messages generated from three national EAS alert codes). See also *Public Safety and Homeland Security Bureau Announces Effective Date and Compliance Dates for Certain Emergency Alert System (EAS) Rules*, Public Notice, DA 22-1189, 2022 WL 16918837 (PSHSB 2022) (notifying EAS Participants that they, *inter alia*, will be required to display a standard script for nationwide EAS test alerts issued in legacy format by December 12, 2023).

¹² 47 CFR § 11.51 *passim*.

The EAS text must be displayed as follows:

- At the top of the television screen or where it will not interfere with other visual messages (e.g., closed captioning),
- In a manner (i.e., font size, color, contrast, location, and speed) that is readily readable and understandable,
- Without overlapping lines or extending beyond the viewable display (except for video crawls that intentionally scroll on and off of the screen), and
- In full at least once during any EAS message.¹³

The audio portion of an EAS message must be played in full at least once to ensure it is accessible to viewers who are blind or have low vision.¹⁴ The test message audio and text elements will be designed to be identical and will state: “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.”¹⁵

What steps should EAS Participants take to ensure their compliance with the visual and audio requirements?¹⁶

EAS Participants should take necessary steps, in compliance with Section 11.51 of the Commission’s rules, to ensure that individuals who are deaf or hard of hearing and individuals who are blind or visually impaired have full access to EAS messages. For example:

- Visual messages must be readily readable. Text should scroll at a speed that allows the viewer to read and understand the message. For example, to the extent possible, the crawl speed should allow viewers to read the crawl as if they were going to read it aloud.
- The background and text colors should sufficiently contrast to allow for readability. For example, a bright green background with white text may not provide sufficient contrast. Green and red should also be avoided as viewers who are color blind have difficulty seeing these colors.
- Audio messages should be spoken at a pace that allows for a listener to understand the content.

To learn more about the Commission’s accessibility requirements for EAS, please visit: <https://www.fcc.gov/eas-faq-accessibility>. To learn more about WEA, please visit: <https://www.fcc.gov/consumers/guides/wireless-emergency-alerts-wea>, and <https://www.fcc.gov/wea-accessibility>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *Test Announcement Public Notice* at 3.

¹⁶ See *Enforcement Bureau Reminds EAS Participants of the Obligation to Ensure That Emergency Alerts Are Accessible to Persons with Disabilities*, Public Notice, 36 FCC Rcd 11276, 11277 (EB 2021).

Public Feedback and Complaints. For accessibility questions regarding the emergency alerting tests, please contact the FCC by e-mail at dro@fcc.gov, 202-418-2517 (voice) or 844-432-2275 (videophone). To file an accessibility complaint regarding the EAS Test, please visit www.fcc.gov/accessibilitycomplaintsform. General feedback about the test should be directed to the FCC's Public Safety Support Center at <https://www.fcc.gov/general/public-safety-support-center> and submitted through the "Alerting Test Feedback" form.

-FCC-

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

In the Matter of)	
)	
3.7-4.2 GHz Band Transition Clearinghouse	)	WT Docket No. 21-333
Dispute Referrals and Appeals)	
	)	File No. 1
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 8, 2023

Released: September 8, 2023

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, the Wireless Telecommunications Bureau (WTB or Bureau) denies Mongoose Works, Ltd.'s (Mongoose) appeal¹ of the 3.7-4.2 GHz band (C-band) Relocation Payment Clearinghouse's (RPC) decision which adjusted downward part of Mongoose's reimbursement claim based upon its August 12, 2020 lump sum election.² We find that Mongoose failed to meet its burden of proof to demonstrate that the RPC made an incorrect determination in its June 1, 2022 decisional memorandum³ (RPC Decisional Memorandum) regarding Mongoose's reimbursement claim. Based on the record before the Bureau, we separately and independently find that the RPC both correctly interpreted relevant Commission rules, guidance, and policies and applied them to the reimbursement claim in question. We further find that Mongoose's procedural arguments are unavailing.

II. BACKGROUND

2. *3.7-4.2 GHz Proceeding.* In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use throughout the contiguous United States by transitioning existing services out of the lower portion of the band and into the upper 200 megahertz of the C-band.⁴ The Commission required new 3.7 GHz Service licensees to reimburse the reasonable relocation costs of eligible Fixed Satellite Service (FSS) space station operators, incumbent FSS earth station operators, and incumbent Fixed Service licensees (collectively, incumbents) to transition out of the band.⁵ The *3.7 GHz Report and Order* also specified that incumbent FSS earth

¹ Mongoose Appeal of RPC Decision, WT Docket No. 21-333, File No. 1 (filed Aug. 1, 2022) (Mongoose Appeal).

² Mongoose Works, Ltd. Lump Sum Election for 3.7-4.2 GHz Band Relocation Expenses, IB Docket No. 20-205 (filed Aug. 12, 2020) (Mongoose Lump Sum Election).

³ Response of Relocation Payment Clearinghouse LLC, WT Docket No. 21-333, File No. 1 (filed Aug. 22, 2022) (RPC Response); *see also id.* at Appx. Tab 5 (RPC Decisional Memorandum).

⁴ *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, 2345, para. 4 (2020) (*3.7 GHz Report and Order*), *appeal and petition for review dismissed sub nom. PSSI Global Services, L.L.C. v. FCC*, 983 F.3d 1 (D.C. Cir. 2020).

⁵ *3.7 GHz Report and Order*, 35 FCC Rcd at 2391, 2465-66, paras. 111, 326; 47 CFR § 27.4. The *3.7 GHz Band Report and Order* defines the incumbents that will be eligible to be reimbursed for their reasonable relocation costs. 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

(continued....)

station operators may accept either: (1) reimbursement for their actual, reasonable relocation costs; or (2) a lump sum reimbursement “based on the average, estimated costs of relocating all of their incumbent earth stations” to the upper 200 megahertz of the C-band.⁶

3. The *3.7 GHz Report and Order* further provided for the creation of an independent clearinghouse to administer, subject to the Commission’s rules and oversight, the cost-related aspects of the transition in a fair and transparent manner, “to mitigate financial disputes among stakeholders, and to collect and distribute payments in a timely manner.”⁷ To provide the clearinghouse, incumbents, and new 3.7 GHz Service licensees with a range of reasonable transition costs, the *3.7 GHz Report and Order* directed the Bureau to establish a cost catalog of the types of expenses that incumbents are likely to incur.⁸ The Commission directed the clearinghouse to presume as reasonable all actual cost reimbursement submissions that fall within the estimated range of costs in the *Final Cost Catalog Public Notice* produced by the Bureau, which also specified the lump sum amount available per incumbent earth station, as well as the process for electing lump sum payments.⁹ Incumbents seeking reimbursement for their actual costs are not precluded from including costs that exceed the amounts in the *Final Cost Catalog Public Notice*, so long as those costs are reasonably necessary to the transition, and incumbents provide justification to the clearinghouse.¹⁰ By contrast, incumbent FSS earth station operators opting to receive a lump sum amount were required to make an irrevocable election and accompanying certification with the Commission by September 14, 2020¹¹ with the proviso that the information contained in such

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 § 27.1411(b)(3). Incumbent Fixed Service licensees are defined as “[i]ncumbent licensees of point-to-point Fixed Service links that relocate out of the 3.7-4.2 GHz band by December 5, 2023.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2465, para. 326. The process by which costs will be determined to be reimbursable is defined in 47 CFR § 27.1416.

⁶ *3.7 GHz Report and Order*, 35 FCC Rcd at 2427-28, paras. 202-203. The *3.7 GHz Report and Order* directed the Bureau to “announce the lump sum that will be available per incumbent earth station as well as the process for electing lump sum payments,” and to identify lump sum amounts for various classes of earth stations as appropriate. *See id.* at 2428, para. 203.

⁷ *Id.* at 2446, para. 255; 47 CFR § 27.1414. A search committee appointed by the Commission selected CohnReznick LLP and subcontractors Squire Patton Boggs (US) LLP, and Intellicom Technologies, Inc., to serve as the clearinghouse; the Bureau subsequently determined that the search committee’s selection satisfied the criteria set forth in section 27.1414 of the Commission’s rules and described in the *3.7 GHz Report and Order*. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, Order, 35 FCC Rcd 11859 (2020); *see* 47 CFR § 27.1414; *3.7 GHz Report and Order*, 35 FCC Rcd at 2450-52, paras. 273-80.

⁸ *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2448, para. 262; 47 CFR § 27.1416(a).

⁹ 47 CFR § 27.1416(a). The Commission engaged a third-party contractor, RKF Engineering Solutions, LLC, to assist FCC staff in developing a cost catalog. After soliciting and considering public comments, on July 31, 2020, the Bureau released the *Final Cost Catalog Public Notice*. *Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses and Announces Process and Deadline for Lump Sum Elections*, GN Docket No. 18-122, IB Docket No. 20-205, Public Notice, 35 FCC Rcd 7967, 7972-75, paras. 9-13 (2020) (*Final Cost Catalog Public Notice*).

¹⁰ *See 3.7 GHz Report and Order*, 35 FCC Rcd at 2447-48, paras. 260-62; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7968, para. 2.

¹¹ The original lump sum election filing deadline of August 31, 2020 was later extended to September 14, 2020. *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, IB Docket No. 20-205, Order, 35 FCC Rcd 8856 (2020).

election would be “subject to verification as part of the [c]learinghouse’s role to prevent waste, fraud, and abuse” through its claims review process.¹²

4. All reimbursement claims – whether for actual costs or lump sum amounts – must be submitted to the clearinghouse for review pursuant to section 27.1416 of the Commission’s rules.¹³ The clearinghouse “will determine in the first instance whether costs submitted for reimbursement are reasonable” and whether they comply with the requirements adopted in the *3.7 GHz Report and Order*.¹⁴ To the extent a claimant or one or more responsible 3.7 GHz Service licensees wish to dispute the clearinghouse’s determination with respect to a submitted claim, they must file a notice of objection as required by section 27.1421(a) of the Commission’s rules.¹⁵ The clearinghouse may in the first instance mediate any disputes or refer the disputant parties to alternative dispute resolution fora.¹⁶ Subsequent appeals to the Bureau may be submitted pursuant to the procedures set forth in the *RPC Appeals Procedures Public Notice*.¹⁷

5. *Mongoose’s Lump Sum Election and RPC Claim.* Mongoose filed a lump sum election with the Commission on August 12, 2020¹⁸ for eight incumbent earth station antennas, and on August 16, 2021, filed a claim with the RPC seeking \$356,052 as its lump sum payment.¹⁹ Specifically, Mongoose requested a lump sum payment for six Small Multi-beam (2-4 beams) Earth Station Antennas (SMBEAs) at \$42,062 each and two Large Multi-beam (5+ beams) Earth Station Antennas (LMBEAs) at \$51,840 each.²⁰ After review of Mongoose’s claim and supplemental information provided by the claimant, the RPC Decisional Memorandum was issued on June 1, 2022, fully approving Mongoose’s claim for six SMBEAs.²¹ The RPC classified the two remaining antennas as Receive-Only ES Multi-feed Antennas

¹² *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7991, para. 40.

¹³ 47 CFR § 27.1416. The Commission identified a “need to establish measures to prevent waste, fraud, and abuse with respect to reimbursement disbursements” and as a result specifically allocated to the clearinghouse responsibility for collecting from all incumbents seeking reimbursement “a showing of their relocation costs for the transition as well as a demonstration of the reasonableness of those costs.” *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 260. See also C-band RPC, *RPC C-band Handbook (version 1.5)*, available at <https://cbandrpc.com/resources/> (RPC Handbook).

¹⁴ *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, para. 260; see also 47 CFR § 27.1416.

¹⁵ 47 CFR § 27.1421(a)-(c). See also C-band RPC, *Dispute Resolution Plan (version 2.0)*, available at <https://cbandrpc.com/resources/> (RPC DRP).

¹⁶ 47 CFR § 27.1421(b).

¹⁷ 47 CFR § 27.1421(c). The Bureau released the *RPC Appeals Procedures Public Notice* on March 21, 2022, which established the procedures for the filing and processing of challenges to decisions made by the clearinghouse. *Wireless Telecommunications Bureau Announces Procedures for Appeals of Relocation Payment Clearinghouse Decisions*, WT Docket No. 21-333, Public Notice, DA 22-300 (WTB Mar. 21, 2022) (*RPC Appeals Procedures Public Notice*).

¹⁸ Mongoose Lump Sum Election. Mongoose also has two antennas which it identified in that filing but excluded from its lump sum election because they are not used for C-Band reception. *Id.* at 1-3, Appendix A (listing antenna IDs 1.8 and T90 as “not eligible”); Mongoose Appeal at 9 (“Two antennas are exclusively used to receive Ku-band signals and Mongoose disqualified these antennas for lump sum payments.”). Six of the eight antennas which Mongoose did include in its election exclusively receive C-band signals, while the other two are used to receive both C-band and Ku-band signals. See *id.* at 10-12. Because Mongoose acknowledges that two of its antennas are only used for Ku-band reception, the Space Bureau will remove those two antennas not used for C-band reception from its incumbent earth station list when the next update is released.

¹⁹ Mongoose Appeal at 3, 11; RPC Decisional Memorandum at 1.

²⁰ Mongoose Lump Sum Election at 3, Appx A; RPC Decisional Memorandum at 1.

²¹ RPC Decisional Memorandum at 1; see also Mongoose Appeal at 14, Appx. I.

rather than LMBEAs and adjusted Mongoose's claim amount for those antennas from \$103,680 down to \$33,994.²² Mongoose filed a notice of objection with the RPC for the downward adjusted portion of its claim on June 25, 2022, seeking restoration of the full amount.²³ On July 7, 2022, Mongoose received payment for the undisputed amount of \$286,366.²⁴

6. *Mongoose Appeal.* Mongoose filed a single-party appeal on July 31, 2022, asking the Bureau to order the RPC to restore the disallowed amount of \$69,686.²⁵ Mongoose believes that the two antennas at issue (IDs 2.6A and 2.6B) should be classified as LMBEAs instead of Receive-Only ES Multi-feed Antennas.²⁶ In support of its claim, Mongoose argues that the *Final Cost Catalog Public Notice* did not specify that only C-band feeds should be counted in assessing whether or not an antenna should be classified as a LMBEA, and contends that only one feed per antenna must receive C-band signals for the antenna to qualify for a particular lump sum category.²⁷ Mongoose asserts that there are two potential approaches for determining the appropriate lump sum categories for its earth station antennas and, under either approach, it is entitled to the full requested reimbursement amount because the two antennas at issue would be classified as LMBEAs.²⁸ Under its "Innate Antenna Approach" Mongoose claims that to be classified as a LMBEA an antenna need only have an innate ability to receive five or more feeds, at least one of which is receiving in the C-band, even if the antenna is not configured to have the active capability of receiving more than one C-band signal.²⁹ Alternatively, under its "Beam Counting Approach," Mongoose asserts that all types of feeds mounted on an antenna must be counted towards the antenna classification regardless of whether those feeds receive C-band signals.³⁰

7. To the extent the Bureau finds neither of these approaches valid, Mongoose requests in the alternative a ruling that it is entitled to set its own "benchmark date" as the date on which the status of its antennas should be evaluated.³¹ While Mongoose disputes use of this concept in the RPC Decisional Memorandum, and notes that the Commission did not itself establish a benchmark date, Mongoose contends in any event that April 19, 2018 (the date for determining incumbent earth station status for the C-band transition) is the appropriate date, rather than August 12, 2020 (the date of Mongoose's lump sum election as used in the RPC Decisional Memorandum).³²

²² RPC Decisional Memorandum at 1.

²³ Mongoose Appeal at 14; *see also* Mongoose Appeal, Appx. J. No 3.7 GHz Service licensees joined Mongoose's dispute.

²⁴ *Id.* at 14.

²⁵ *Id.* at 4.

²⁶ *Id.* at 10-12.

²⁷ *Id.* at 16-17.

²⁸ *Id.* at 15-25.

²⁹ *Id.* at 16-21 ("The Cost Catalog . . . makes the important distinction that a multi-beam antenna 'can [emphasis added] receive signals from multiple orbital slots . . . ' vs. a single-feed antenna is one 'receiving a signal...' and a multi-feed antenna 'receives two polarizations.' Thus the multi-beam antenna classification only requires a[n] innate ability, rather than an active capability."). *See id.* at 20 ("The actual frequency bands received are not important, as long as at least one is in the C-band.").

³⁰ *Id.* at 22-25.

³¹ *Id.* at 24, 31-37.

³² *Id.* at 24, 31-37.

8. *RPC Response.* The RPC filed its response, including a copy of the RPC Decisional Memorandum, on August 22, 2022,³³ stating that there is no factual dispute between the parties that the two relevant antennas each had only one C-band feed, and as such, Mongoose is not eligible for the lump sum payment for LMBEAs.³⁴ The RPC specifically rebuts Mongoose's "Innate Antenna Approach," stating that it is not enough that the antennas *could* be modified to add more C-Band feeds as reimbursing "innate abilities" would have an "indeterminate impact on both the length and costs of the C-band relocation program."³⁵ The RPC further rejects Mongoose's "Beam Counting Approach" by noting that non-C-band feeds "are not directly used to transition incumbent earth stations to the upper 200 MHz of the C-Band," and the Commission made clear that lump sum payments are limited to C-band equipment and services.³⁶ The RPC also asserts that it properly selected a "benchmark date" corresponding to the date of Mongoose's lump sum election.³⁷ Finally, the RPC notes that when Mongoose chose to file an irrevocable lump sum election, it assumed the risk that the resulting payment might not cover all relocation costs, and it is therefore irrelevant whether Ku-band equipment is reimbursable.³⁸

9. *Further Responsive Pleadings.* Mongoose filed its reply on August 29, 2022, reiterating the primary points raised in its appeal and rebutting the RPC's response.³⁹ The RPC supplemented its response with an attestation on September 2, 2022.⁴⁰

III. DISCUSSION

10. At the outset, we reiterate that the Commission designated an independent clearinghouse to manage, pursuant to Commission rules and oversight, the cost-related aspects of the C-band transition and charged it with conducting the initial review and processing of cost reimbursement claims. This remit affords the RPC with flexibility to request information from claimants and to assess the unique facts and circumstances associated with each claim before it, including the verification of any information contained in an underlying lump sum election. The RPC remains subject to both the Commission's rules and oversight, and eligible parties may dispute the RPC's decisions and, subject to certain procedural requirements, appeal such decisions to the Bureau.

11. Here, we find that Mongoose satisfied the necessary procedural requirements by timely filing both a notice of objection with the RPC and a single-party dispute appeal with the Bureau.⁴¹ In the *RPC Appeals Procedures Public Notice*, the Bureau established that the burden of proof for a single-party

³³ RPC Response. The Bureau issued a public notice establishing the pleading cycle for the Mongoose Appeal on August 10, 2022. *Pleading Cycle Established for C-Band Relocation Payment Clearinghouse Single Party Appeal*, WT Docket No. 21-333, Public Notice, DA 22-845 (WTB Aug. 10, 2022).

³⁴ See RPC Response at 7-11.

³⁵ See *id.* at 9-10.

³⁶ See *id.* at 10-11, n.37; see also *id.* at 6, 8 (citing *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, 36 FCC Rcd 13925, 13927 (2021) (*IB Inactive Incumbent Earth Station PN*); *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7975, para. 14, n.57; *3.7 GHz Report and Order*, 35 FCC Rcd at 2423, para. 194).

³⁷ See RPC Response at 11-13.

³⁸ See *id.* at 13, n.50 ("As the RPC Decisional Memorandum noted, the FCC expressly cautioned incumbent earth station operators making a lump sum election that they assumed the risk that the lump sum payment might not cover all of their relocation costs.").

³⁹ Mongoose Reply to Relocation Payment Clearinghouse, WT Docket No. 21-333, File No. 1 (Aug. 29, 2022) (Mongoose Reply).

⁴⁰ Relocation Payment Clearinghouse LLC Supplement, WT Docket No. 21-333, File No. 1 (Sept. 2, 2022) (RPC Supplement).

⁴¹ Mongoose Appeal at 14, Appx. J.

dispute appeal lies with the appealing party to demonstrate that the RPC decision was incorrect.⁴² As further discussed below, we deny Mongoose's appeal because it has not met its burden of proof in demonstrating that the RPC erred in its classification of, and reimbursement for, the two antennas at issue. Based on the record before the Bureau, we separately and independently find that the RPC both correctly interpreted the relevant Commission rules, guidance, and policies and applied them to the antennas in question. Thus, Mongoose's appeal is without merit. We further find that Mongoose's procedural arguments are unavailing.

A. Mongoose Has Failed to Demonstrate that the RPC Decision is in Error

12. The key question presented in Mongoose's appeal is what is the correct lump sum categorization for the two earth station antennas in question—LMBEAs or Receive-Only ES Multi-feed Antennas. Both Mongoose and the RPC agree that the antennas in question have one C-band feed each and multiple Ku-band feeds.⁴³ While Mongoose's lump sum election claimed these antennas as LMBEAs,⁴⁴ upon review of Mongoose's reimbursement claim, lump sum election, and additional supporting materials provided by the claimant, the RPC determined as part of its claims review and lump sum verification process that the latter category was the correct one.⁴⁵ In making this determination, the RPC stated that it “considers C-band feeds receiving signals from C-band orbital slots for the purpose of determining which antenna category from the Cost Catalog applies to a claim” and it “does not consider equipment that is not directly used to transition incumbent earth stations to the upper 200 MHz of the C-band.”⁴⁶ In support of its view, the RPC cited multiple instances of Commission guidance that reimbursement should only be sought for reasonable costs necessary to effectuate the C-band transition.⁴⁷

⁴² *RPC Appeals Procedures Public Notice* at 3.

⁴³ Mongoose specified that as of October 15, 2021, these antennas “simultaneously receiv[e] signals from nine orbital slots, one in the C-band and eight in the Ku-band.” Mongoose Appeal at 12. The RPC Decisional Memorandum stated that the two antennas at issue each only had “one C-band feed receiving two polarizations from one C-band orbital slot and multiple Ku-band feeds.” RPC Decisional Memorandum at 1 (noting that the RPC requested photographs of the antennas on October 6, 2021 and that, as depicted in those photographs, the antennas had only one C-band feed each); *see also* RPC Response at 7-8 (stating that Mongoose acknowledged that “at the time of the lump sum filing the feed configurations of [the antennas] were that each was receiving one C-band orbital location and 8 Ku-band orbital locations”).

⁴⁴ Mongoose Lump Sum Election at 3; *see also* Mongoose Appeal at 10-12.

⁴⁵ *See* RPC Decisional Memorandum at 1, 3-4; *see also* RPC Response at 7-11.

⁴⁶ RPC Decisional Memorandum at 4 (*citing* *3.7 GHz Report and Order*, 35 FCC Rcd at 2428; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7976, para. 16).

⁴⁷ *See* RPC Response at 5, 8-11; *see also* *3.7 GHz Report and Order*, 35 FCC Rcd at 2423, 2427, 2428, paras. 194, 204, n.547 (“In contrast, we do not anticipate allowing reimbursement for equipment upgrades beyond what is necessary to clear the band. For example, if an incumbent builds additional functionalities into replacement equipment that are not needed to facilitate the swift transition of the band, it must reasonably allocate the incremental costs of such additional functionalities to itself and only seek reimbursement for the costs reasonably allocated to the needed relocation” and “[w]e stress that lump sum payments will only be calculated for the costs of transitioning to the upper 200 megahertz.”); *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7975-76, paras. 14, n.57, 16 (“[W]e would expect that . . . satellite operators [with non-C-band transponders] would ‘reasonably allocate the incremental costs of’ any functionalities ‘that are not needed to facilitate the swift transition of the band’ to themselves and ‘only seek reimbursement for the costs reasonably allocated to the needed relocation’” and “[c]onsistent with the *3.7 GHz Report and Order*, the lump sum payment amounts are based on the average, estimated costs of transitioning incumbent earth stations to the upper 200 megahertz of the C-band”). The RPC also noted the then International Bureau's statement that “antennas that operate in other bands but do not receive in the 3.7 GHz band would not qualify for incumbent status under the C-band transition rules.” *IB Inactive Incumbent Earth Station PN*, 36 FCC Rcd at 13927; RPC Response at 6

13. In its appeal, Mongoose challenges the RPC's determination by suggesting two alternative rationales, neither of which is supported by Commission rules, guidance, or policies. First, Mongoose asserts that pursuant to its "Innate Antenna Approach," the appropriate test for whether the antennas at issue should be classified as LMBEAs is whether they have the ability to receive five feeds or more, at least one of which is in the C-band, even if the antenna was not configured to have the active ability to receive more than one C-band signal.⁴⁸ We disagree. Nothing in the Commission's rules or guidance supports the position that the fact that the antennas at issue *could* be modified to add more C-band feeds justifies classification as LMBEAs, and in fact such position would directly conflict with the Commission's stated goal of tailoring reimbursements to those reasonable costs necessary to transition *existing* C-band operations.⁴⁹ Mongoose's proposed interpretation of the Commission's rules and guidance would also substantially increase the costs associated with the C-band transition, and runs counter to the Commission's stated intent to avoid gold plating in the reimbursement process.⁵⁰ As an alternative, Mongoose argues that the antennas at issue could be categorized as LMBEAs utilizing a "Beam Counting Approach" whereby every type of feed mounted on an antenna would be counted regardless of whether they receive C-band signals.⁵¹ This approach likewise conflicts with the Commission's goals for this transition as it would allow for reimbursement of relocation costs associated *not only* with C-band equipment and services *but also* Ku-band equipment and services—the latter of which are not necessary for the transition of existing operations out of the lower 300 megahertz of the C-band.⁵² These alternative rationales leading to Mongoose's preferred outcome—which are unsupported and run counter to the Commission's rules, guidance, and stated policy goals for the C-band transition—represent insufficient grounds to demonstrate error in the RPC Decisional Memorandum.⁵³

14. In its Reply, Mongoose further suggests in support of its "Innate Antenna Approach" that the RPC's determination was faulty in misunderstanding the unique configuration of Mongoose's antennas that allows Mongoose to add, move, or remove a feed's orbital slot in a short period of time.⁵⁴ Mongoose specifies that it "has configured each [antenna] to simultaneously receive up to seven C-band orbital slots, thirteen Ku-band orbital slots, and a wide variety of combinations of the bands."⁵⁵ Based on the record before the Bureau, we find these assertions to be both unsupported and irrelevant as both Mongoose and the RPC are in agreement on the specific configuration of the antennas at the time of

⁴⁸ See Mongoose Appeal at 16-21.

⁴⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2428, para. 204 ("We reiterate that compensable relocation costs are only those that are reasonable and needed to transition *existing* operations in the contiguous United States out of the lower 300 megahertz of the C-band.").

⁵⁰ See RPC Response at 9-10; *3.7 GHz Report and Order*, 35 FCC Rcd at 2423, para. 195 ("Let us be clear: Incumbents will not receive more reimbursement than necessary, and we require that, to qualify for reimbursement, all relocation costs must be reasonable.").

⁵¹ See Mongoose Appeal at 22-25.

⁵² See *3.7 GHz Report and Order*, 35 FCC Rcd at 2422-23, 2426, 2428, paras. 193-4, 200, 204; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7975-7976, paras. 14, n.57, 16; see generally *IB Inactive Incumbent Earth Station PN*, 36 FCC Rcd at 13927.

⁵³ Contrary to Mongoose's assertion, it is not incumbent on the RPC to show that its rationale is the only valid one, as that would effectively reverse the burden of proof standard established in the *RPC Appeals Procedures Public Notice*. Mongoose Reply at 5-8. In any event, Mongoose's two proposed rationales directly conflict with the Commission's stated goals for the C-band transition reimbursement process, and thus are not valid alternatives to the RPC's rationale as Mongoose suggests. *Id.* at 9-12.

⁵⁴ Mongoose Reply at 9.

⁵⁵ *Id.* at 9 ("From early 2017 through mid-summer 2020 each was configured with feeds to simultaneously receive from two C-band and six Ku-band orbital slots. Subsequently each was changed to simultaneously receive from one C-band and eight Ku-band orbital slots.").

Mongoose's lump sum election, which only included one C-band feed on each antenna.⁵⁶ To the extent that Mongoose believed that unique considerations existed involving its incumbent earth stations antennas that might impact its eventual reimbursement claim, it had the option to pursue reimbursement of its actual costs in lieu of a lump sum amount.⁵⁷ The Commission repeatedly cautioned incumbent earth station operators that electing for lump sum payments was an irrevocable choice, and that if chosen, the incumbent "takes on the risk that the lump sum will be insufficient to cover all its relocation costs."⁵⁸ The Commission also reminded incumbents that if their transitions are more complex or the "average, estimated costs" are not reflective of their particular transition, the incumbent could choose to seek reimbursement for their actual relocation costs rather than electing the lump sum.⁵⁹ Mongoose thus had the choice to determine the best way to seek reimbursement for its C-band transition costs, a point it concedes in its appeal.⁶⁰ Mongoose opted to make an irrevocable lump sum election, which is subject to validation by the RPC, and in doing so it assumed the risk that some or all of its potential transition costs may not be covered by the reimbursement claim amount approved by the RPC. In sum, Mongoose has neither demonstrated a rationale nor a factual error in the RPC Decisional Memorandum, and thus failed to meet the applicable burden of proof standard in its appeal.

B. The RPC Properly Classified Mongoose's Antennas Based on Commission Guidance

15. We separately and independently find that the RPC acted in accordance with Commission rules, guidance, and policies in the RPC Decisional Memorandum with respect to Mongoose's claim for the two antennas in question. Specifically, the RPC correctly interpreted Commission statements evidencing its intent that reimbursements be limited to those reasonable costs necessary to transition existing C-band operations.⁶¹ In an effort to combat fraud, waste, and abuse, the Commission "defined clearly the migration in this context as the costs of transitioning C-band services to the upper 200 megahertz of the band (e.g., reporting, retuning, and replacing antennas, and installing filters and compression hardware)."⁶² Further, the *Final Cost Catalog Public Notice* specified that "lump sum payment amounts are based on the average, estimated costs of transitioning incumbent earth stations to the upper 200 megahertz of the C-band."⁶³ This rationale necessarily extends to selection and verification of the appropriate lump sum category for specific incumbent earth station equipment, otherwise it would lead to unintended results by effectively allowing reimbursement for non-C-band equipment, such as that used by Mongoose to receive Ku-band services. We therefore find that the RPC correctly interpreted this

⁵⁶ Mongoose Lump Sum Election at 4, Appx. A; Mongoose Appeal at 12, 20; RPC Decisional Memorandum at 1; RPC Response at 7-8.

⁵⁷ In an effort to give incumbent earth station operators flexibility in the transition process, the Commission gave operators a choice—incumbents could either "accept reimbursement for the reasonable relocation costs by maintaining satellite reception or they may accept a lump sum reimbursement for all of their incumbent earth stations based on the average, estimated costs of relocating all of their incumbent earth stations." *3.7 GHz Report and Order*, 35 FCC Rcd at 2427, para. 202.

⁵⁸ *3.7 GHz Report and Order*, 35 FCC Rcd at 2427, para. 202; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7990, para. 36.

⁵⁹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2427, para. 202; *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7990, para. 36.

⁶⁰ Mongoose Appeal at 10, Appx. B, at 92 ("If Mongoose had chosen the actual cost route instead of a lump sum payment, Mongoose, the RPC, and the overlay licensees would have endured a lengthy, complex, and potentially adversarial path of engineering, accounting, and legal filings to ultimately arrive at Mongoose's true transition costs.").

⁶¹ *3.7 GHz Report and Order*, 35 FCC Rcd at 2428, para. 204.

⁶² *Id.* at 2426, n.539.

⁶³ *Final Cost Catalog Public Notice*, 35 FCC Rcd at 7976, para. 16.

precedent by only considering the active C-band feeds on the two antennas in question for lump sum classification purposes, and categorizing them as Receive-Only ES Multi-feed Antennas.

16. We further find that use of a “benchmark date” in the RPC Decisional Memorandum was an appropriate best practice to prevent waste, fraud, and abuse as part of its claims review and lump sum verification process.⁶⁴ Specifically, the RPC utilized as the reference point for its review of Mongoose’s reimbursement claim and lump sum election the date when the lump sum election was submitted to the Commission—August 12, 2020—at which time Mongoose certified that its election was true and accurate.⁶⁵ As part of its review of lump sum elections and related reimbursement claims, the RPC was charged with verifying that Mongoose’s certification was true and accurate, that its lump sum election complied with all of the Commission requirements at the time it was submitted to the Commission, and that the corresponding reimbursement claim for such equipment was reasonable and necessary to the C-band transition.⁶⁶

17. Mongoose contends that the RPC made an arbitrary, *ex post facto* decision beyond its authority by establishing a benchmark date, suggesting that the RPC invented this concept because it interpreted the *Final Cost Catalog Public Notice* to require that an incumbent earth station antenna’s lump sum category be determined by its active feed configuration on a particular date.⁶⁷ In the alternative, Mongoose proposes that April 19, 2018 (the date the Commission set for determining incumbent earth station status for the C-band transition) is the more appropriate benchmark date.⁶⁸ We disagree and find Mongoose’s attempt to point to past configurations of its equipment, which it suggests incorporated multiple C-band feeds, as both unpersuasive and irrelevant, and in no way demonstrates an error in the RPC Decisional Memorandum. The configuration of Mongoose’s equipment on the date of its lump sum election is not in dispute, and Mongoose certified to this point both in terms of the accuracy of its election and the truthfulness of the information contained in its appeal.⁶⁹ As such, we find that the RPC’s use of Mongoose’s lump sum election date as a benchmark was a reasonable and appropriate best practice in verifying Mongoose’s lump sum election and processing the related reimbursement claim, as part of the RPC’s designated role and remit to prevent waste, fraud, and abuse in the C-band transition reimbursement process.⁷⁰

⁶⁴ 3.7 GHz Report and Order, 35 FCC Rcd at 2451, para. 276.

⁶⁵ RPC Decisional Memorandum at 4; *see also* RPC Response at 11. While Mongoose asserts that there was pre-decisional confusion by RPC staff regarding the applicable benchmark date, we do not find this persuasive in showing an error as the RPC Decisional Memorandum was clear in its use of Mongoose’s lump sum election date as the relevant reference point. Mongoose Appeal at 30-36; RPC Decisional Memorandum at 4.

⁶⁶ Mongoose Lump Sum Election at 3-4, Appx. A; RPC Response at 2.

⁶⁷ Mongoose Appeal at 24-25, 27, 30-36, 72.

⁶⁸ Mongoose claims that because the Commission did not “recognize[] or assign[] a Benchmark Date . . . only Mongoose is allowed to designate its Benchmark Date.” Mongoose Appeal at 24. According to Mongoose, on April 19, 2018, the two antennas at issue “each fielded two C-band and six Ku-band feeds” which would allow their classification as “Small Multi-beam ES Antennas,” thereby reducing Mongoose’s original claim from \$356,052 to \$336,496, and entitle Mongoose to an additional \$50,130 above the amount it has already received. *Id.* at 24-25, 27, 30-36, 72.

⁶⁹ Indeed, both parties agree that when the lump sum election was filed only one C-band feed was active on each of the antennas at issue. Mongoose Lump Sum Election at 4, Appx. A; Mongoose Appeal at 12, 20; RPC Decisional Memorandum at 1; RPC Response at 7-8.

⁷⁰ 3.7 GHz Report and Order, 35 FCC Rcd at 2447, para. 260 (“The Clearinghouse shall review reimbursement requests to determine whether they are reasonable and to ensure they comply with the requirements adopted in this Report and Order. The Clearinghouse shall give parties the opportunity to supplement any reimbursement claims that the Clearinghouse deems deficient.”); *id.* at 2448, para. 262 (“If the Clearinghouse determines that the amount sought for reimbursement is unreasonable, it shall notify the party of the amount it deems eligible for

(continued....)

C. Mongoose's Procedural Issues are Unavailing

18. *Pre-decisional Communications.* Mongoose points to pre-decisional communications between itself and the RPC to suggest confusion and error in the RPC's decision making processes.⁷¹ We find that any pre-decisional communications between the RPC and Mongoose, which are an expected part of the claims review process,⁷² are ultimately not dispositive as to the resolution of Mongoose's reimbursement claim. We further find that the RPC Decisional Memorandum reflects the RPC's formal determination in this matter. In any event, for the reasons articulated above, Mongoose has failed to demonstrate that the RPC Decisional Memorandum was in error.

19. *Attestation.* In its reply, Mongoose points out that the RPC failed to adhere to the *RPC Appeals Procedures Public Notice* when the RPC submitted its response without an attestation.⁷³ We find that the RPC did not act in bad faith and promptly cured what Mongoose itself acknowledges was likely an "unintentional[] omission"⁷⁴ by filing a supplement to the RPC's response.⁷⁵

IV. ORDERING CLAUSES

20. 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, and the *3.7 GHz Report and Order*, the Appeal submitted by Mongoose Works, Ltd. is DENIED.

21. This Memorandum Opinion and Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

reimbursement."); *id.* at 2449, paras. 268-9 (the Clearinghouse will serve "in an administrative role and in a function similar to a special master in a judicial proceeding" and "may mediate any disputes regarding cost estimates or payments that may arise in the course of band reconfiguration; or refer the disputant parties to alternative dispute resolution fora."). See 47 CFR § 27.1416.

⁷¹ Mongoose Appeal at 38-44, Appendices A, B.

⁷² Indeed, the Commission directed the clearinghouse to "give parties the opportunity to supplement any reimbursement claims that the Relocation Payment Clearinghouse deems deficient." See 47 CFR § 27.1416(a); *3.7 GHz Report and Order*, 35 FCC Rcd at 2447, paras. 260.

⁷³ Mongoose Reply at 48; *see also* RPC Response.

⁷⁴ 47 CFR § 1.17; *see also Appeals Procedures Public Notice* at 5-6. Mongoose stated that ordinarily "it would be sensible to assume [the attestation] was unintentionally omitted." Mongoose Reply at 48.

⁷⁵ RPC Supplement.

**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
)	
Wireless Telecommunications Bureau Announces)	
Procedures for Appeals of Relocation Payment	)	WT Docket No. 21-333
Clearinghouse Decisions)	
)	

ORDER

Adopted: September 8, 2023

Released: September 8, 2023

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, the Wireless Telecommunications Bureau (WTB or Bureau) denies AT&T Services Inc.'s petition for reconsideration or clarification¹ (AT&T Petition) of the *RPC Appeals Procedures Public Notice*, which established procedures for the filing and processing of challenges to decisions made by the 3700-4200 MHz (C-band) Relocation Payment Clearinghouse (Clearinghouse or RPC).² Specifically, we deny AT&T's request to change the RPC's 20-day deadline for the filing of notices of objection to Clearinghouse decisions, to reclassify the WT Docket 21-333 as permit-but-disclose, and to change the burden of proof standard for multi-party appeals.

II. BACKGROUND

2. In the *RPC Appeals Procedures Public Notice*, the Bureau established procedures for the filing and processing of challenges to decisions made by the Clearinghouse to the Bureau.³ The Bureau clarified that before it will consider any appeal, the eligible party or parties must first timely file a notice of objection with the Clearinghouse, as required by the Commission's rules and pursuant to the process established in the RPC's Dispute Resolution Plan (RPC DRP).⁴ The RPC DRP requires initial notices by eligible parties within 20 days of invoice issuance after Clearinghouse review of lump sum or reimbursement claims, and affords an additional 10 days for other eligible parties to file their own notices and become a party to the initial objection.⁵ The *RPC Appeals Procedures Public Notice* also designated

¹ Petition of AT&T Services, Inc. for Reconsideration and/or Clarification, WT Docket No. 21-333, at 1-2, 4-5 (filed Apr. 20, 2022 (AT&T Petition)).

² *Wireless Telecommunication Bureau Announces Procedures for Appeals of Relocation Payment Clearinghouse Decisions*, WT Docket No. 21-333, Public Notice, DA 22-300 (Mar. 21, 2022) (*RPC Appeals Procedures Public Notice*).

³ *RPC Appeals Procedures Public Notice* at 1-6.

⁴ *Id.* at 1-2.

⁵ *Id.* at 2; see C-band RPC, *Dispute Resolution Plan (version 2.0)*, <https://cbandrpc.com/resources/> (last visited Sept. 8, 2023) (RPC DRP). While version 1.2 of the RPC DRP was the version of the document available at the time of adoption and release of the *RPC Appeals Procedures Public Notice*, the Bureau clarified that potential appellants

(continued....)

WT Docket 21-333 and each appeal as a restricted proceeding under the Commission's *ex parte* rules, and established that the burden of proof in a multi-party dispute appeal "is on each party to demonstrate that their view is correct."⁶

3. In April 2022, AT&T filed a petition for reconsideration or clarification of certain portions of the *RPC Appeals Procedures Public Notice*, which it says "unintentionally complicate the dispute resolution process [and/or] undermine parties' due process rights."⁷ AT&T asks the Commission to: (1) clarify that the current 20-day deadline for the filing of an initial notice of objection with the RPC should be tolled until an objecting party knows, or through reasonable diligence should know, of the basis for its objection;⁸ (2) reclassify WT Docket No. 21-333 as permit-but-disclose and specify that each appeal in the docket is a separate and independent restricted proceeding;⁹ and (3) modify the burden of proof in a multi-party dispute appeal to be always with the eligible incumbent seeking reimbursement.¹⁰ On May 23, 2022, the Commission sought comment on the AT&T Petition.¹¹ Intelsat and SES filed oppositions, to which AT&T submitted a reply.¹²

III. DISCUSSION

4. In this order, we deny the AT&T Petition and affirm that the appeal procedures set forth in the *RPC Appeals Procedures Public Notice* will serve the public interest by ensuring that appeals of Clearinghouse decisions are considered both fairly and expeditiously.¹³ Specifically, we find that maintaining the requirement that appellants first file a timely notice of objection with the Clearinghouse is consistent with the Commission's stated goals for this proceeding and serves the public interest.¹⁴ We also find that reclassification of WT Docket No. 21-333 is not necessary as we have already clarified that the instant petition for reconsideration and all related filings are permit but disclose.¹⁵ Finally, we maintain the current burden of proof in multi-party dispute appeals as it is consistent with applicable Commission precedent and furthers the Commission's objectives for the C-band transition.¹⁶

should consult the most recent version of the RPC DRP available at the Clearinghouse's website at the time their dispute arises. *RPC Appeals Procedures Public Notice* at n.7.

⁶ *RPC Appeals Procedures Public Notice* at 4, 6.

⁷ AT&T Petition at 1.

⁸ *Id.* at 3.

⁹ *Id.* at 6.

¹⁰ *Id.* at 7.

¹¹ *Petition for Reconsideration of Action in Proceeding*, WT Docket No. 21-333, Public Notice, Report No. 3187 (2022).

¹² Opposition of Intelsat License, LLC, WT Docket No. 21-333 (rec. June 17, 2022) (Intelsat Opposition); Comments and Partial Opposition of SES Americom, Inc., WT Docket No. 21-333 (rec. June 17, 2022) (SES Opposition); AT&T Services, Inc. Reply, WT Docket No. 21-333, at 3 (rec. Jun. 27, 2022) (AT&T Reply).

¹³ See 47 C.F.R. § 1.429(b); *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122, et al., Order on Reconsideration, 27 FCC Rcd 898, 901, para. 8 (2012) (Reconsideration "may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters.")

¹⁴ *RPC Appeals Procedures Public Notice* at 2.

¹⁵ *Id.* at 3-5; *Petition for Reconsideration of Action in Proceeding*, WT Docket No. 21-333, Public Notice, Report No. 3187 (2022); *Pleading Cycle Established for C-Band Relocation Payment Clearinghouse Single Party Appeal*, WT Docket No. 21-333, Public Notice, DA 22-845 (WTB 2022) (*Pleading Cycle Public Notice*).

¹⁶ *RPC Appeals Procedures Public Notice* at 4.

5. *Filing Deadline.* AT&T argues that the Commission should clarify that the current 20-day limit on filing initial notices of objection with the RPC is subject to the “discovery rule” which would toll such deadline until an objecting party knows, or through reasonable diligence should know, of the basis for its objection.¹⁷ AT&T asserts that the Commission’s rules do not mandate a 20-day deadline and that the current deadline in the RPC’s DRP does not provide licensees sufficient time to gather information on a claim.¹⁸ AT&T also contends that the RPC should have the authority to waive the 20-day deadline, upon request, in cases of good cause such as complex or interconnected invoices.¹⁹ Intelsat and SES oppose AT&T’s position and argue that the current 20-day deadline is sufficient to discover objections and promotes expedient dispute resolution.²⁰ However, Intelsat also states that objections should be allowed outside of the 20-day period if the licensee: (1) can show demonstrable, extraordinary circumstances; and (2) files the objection within a year of the invoice.²¹ For the reasons set forth below, we reject AT&T’s argument that the RPC should adjust its DRP and decline to revise the appeal procedures established in the *RPC Appeals Procedures Public Notice*.

6. In the *3.7 GHz Report and Order*, the Commission found that establishing an independent Clearinghouse to oversee the cost-related aspects of the C-band transition in a fair and transparent manner, pursuant to Commission rules and oversight, would best serve the public interest by mitigating financial disputes among stakeholders and collecting and distributing payments in a timely manner.²² In anticipation of potential disputes, the Commission required that parties disputing a cost estimate, cost invoice, or payment or cost-sharing obligation must file an objection with the Clearinghouse and empowered the RPC to, in the first instance, mediate any such disputes or refer them to alternative dispute resolution fora while allowing any decision of the RPC to be ultimately appealed to the Bureau.²³ In implementing its part of this process, the Clearinghouse established in its RPC DRP a 20-day limit on filing initial notices of objection to its claim and other payment decisions to ensure the fair and expeditious processing of disputes and disbursements, in accordance with the Commission’s objectives for the C-band transition.²⁴ The *RPC Appeals Procedures Public Notice* in turn referenced the RPC DRP’s timing requirements as a prerequisite for the subsequent filing of an appeal with the Bureau and specifically noted that interlocutory appeals, before a timely notice of objection is filed with the Clearinghouse, will not be considered by the Bureau.²⁵ This appeal-related requirement ensures that any related appeals to the Bureau will be filed in a timely manner, in furtherance of both the public interest and the Commission’s stated goals for the C-band transition.

¹⁷ AT&T Petition at 3 (*citing MCI Telecomm. Corp. v. FCC*, 59 F.3d 1407 (D.C. Cir. 1995); *Sprint Communications Co. v. FCC*, 76 F.3d 1221 (D.C. Cir. 1996)) (asserting the discovery rule has been used in previous proceedings and is a “well-established” rule and “ubiquitous” civil law); *see also* AT&T Reply at 3.

¹⁸ AT&T Petition at 3.

¹⁹ *Id.* at 4.

²⁰ Intelsat Opposition at 3-4; SES Opposition at 2-4. SES asserts that the “20-day objection rule is clear, equitable, and advances the Commission’s goal of achieving an expeditious transition of the 3.7 GHz band.” SES Opposition at 3.

²¹ Intelsat Opposition at 2.

²² *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Proposed Modification*, 35 FCC Rcd 2343, 2446, para. 255 (2020) (*3.7 GHz Report and Order*); The *3.7 GHz Report and Order* also states that the Commission’s goal in transitioning the C-band is “rapidly introducing mid-band spectrum into the marketplace.” *Id.* at 2454, para. 288.

²³ 47 CFR § 27.1421(a)-(c).

²⁴ RPC DRP at Section 8.1; *3.7 GHz Report and Order*, 35 FCC Rcd at 2446, para. 255.

²⁵ *RPC Appeals Procedures Public Notice* at 2.

7. We are unpersuaded by AT&T's arguments that the RPC's notice timeframe provides inadequate time for an objecting party to decide whether they object to a specific Clearinghouse decision. As SES notes in its opposition, "3.7 GHz Service Licensees have access to the transition plans and quarterly reports filed by each eligible space station operator, as well as the lump sum payment elections filed by incumbent earth station operators," which "identify the necessary transition activities that each operator will undertake and the estimated relocation costs that each operator intends to assert through the claim reimbursement process."²⁶ We agree with SES and find that, given the wealth of public information related to the transition plans and expenses of satellite and earth station operators, including the Bureau's *Final Cost Catalog Public Notice*,²⁷ the 20-day window in the RPC DRP provides licensees with sufficient time to determine whether to object to a specific Clearinghouse decision.²⁸ We also find that broad application of AT&T's "discovery rule"²⁹ and RPC waiver proposals³⁰ would add uncertainty and complexity to the dispute resolution and disbursement processes and potentially delay the completion of the transition without demonstrable benefit. That said, to the extent that an eligible party believes that unique or extraordinary circumstances prevented it from filing a timely notice of objection with the RPC we note that it remains free to seek a waiver directly from the Bureau of our appeal procedures. We caution, however, that any such waiver must demonstrate good cause and will not be granted in the normal course.

8. *Docket Reclassification.* AT&T asks the Commission to reclassify WT Docket No. 21-333 as permit-but-disclose and to treat each appeal with its own file number as a separate restricted proceeding.³¹ In addition, AT&T seeks clarification that appeal-specific pleadings in this docket need only be served on the parties to the appeal, and that the electronic filing of other pleadings constitutes "service" on all parties who also filed pleadings in the overall docket.³² In its opposition, SES supports reclassification of the docket as permit-but-disclose in order to establish the docket as the appropriate forum for stakeholders to file presentations of general applicability, and classifying individual appeals as restricted, thereby limiting service to the appropriate parties to a given appeal.³³

9. We do not believe reclassification of the docket is necessary as we have already clarified that the instant petition for reconsideration and all related filings are permit but disclose.³⁴ All other

²⁶ SES Opposition at 3.

²⁷ To provide the Clearinghouse, incumbents, and new 3.7 GHz Service licensees with a range of reasonable transition costs, the *3.7 GHz Report and Order* directed the Bureau to establish a cost catalog of the types of expenses that incumbents are likely to incur. See *3.7 GHz Report and Order*, 35 FCC Rcd at 2448, para. 262; 47 CFR § 27.1416(a). The Commission engaged a third-party contractor, RKF Engineering Solutions, LLC, to assist FCC staff in developing a cost catalog. After soliciting and considering public comments, on July 31, 2020, the Bureau released the *Final Cost Catalog Public Notice*, which also specified the lump sum amount available per incumbent earth station, as well as the process for electing lump sum payments. See *Wireless Telecommunications Bureau Releases Final Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses and Announces Process and Deadline for Lump Sum Elections*, GN Docket No. 18-122, Public Notice, 35 FCC Rcd 7967 (2020). The Clearinghouse shall presume as reasonable all reimbursement submissions that fall within the estimated range of costs in the *Final Cost Catalog Public Notice*. 47 CFR § 27.1416(a).

²⁸ SES Opposition at 3.

²⁹ AT&T Petition at 3; AT&T Reply at 3.

³⁰ AT&T Petition at 4.

³¹ *Id.* at 5-7.

³² *Id.* at 7.

³³ SES Opposition at 2.

³⁴ *Petition for Reconsideration of Action in Proceeding*, WT Docket No. 21-333, Public Notice, Report No. 3187 (2022); *Pleading Cycle Established for C-Band Relocation Payment Clearinghouse Single Party Appeal*, WT (continued....)

filings in WT Docket No. 21-333 are meant to be limited to specific appeals, and the *RPC Appeals Procedures Public Notice* clearly stated that only parties to specific appeals need be served with any relevant pleadings.³⁵ We reiterate that the service requirements relating to any enumerated appeal in this docket are restricted to the parties to that specific appeal. To the extent that interested parties wish to make presentations of general applicability to the Commission, they may continue to do so in the primary rulemaking docket for the C-band proceeding, GN Docket No. 18-122.

10. *Burden of Proof.* Finally, AT&T argues that only an incumbent seeking reimbursement can produce the receipts and work orders that prove whether reimbursement is valid, and thus, the burden of proof in multi-party dispute appeals should always rest with the incumbent.³⁶ AT&T further believes that the Bureau should not give deference to the RPC's decision by placing the burden of proof on both parties.³⁷ SES and Intelsat oppose AT&T's proposal and argue that any burden of proof should lie with the party that challenges the RPC's assessment.³⁸

11. We maintain the burden of proof standard established in the *RPC Appeals Procedures Public Notice* such that each party to a multi-party dispute appeal must demonstrate that its view is correct.³⁹ This standard is consistent with past Commission precedent in similar transitions where incumbent costs were reimbursed. Notably, in the 800 MHz transition proceeding,⁴⁰ the Bureau required each party to prove that its proposed facilities were either "comparable" to existing facilities or that the claimed cost of relocation was "the minimum necessary" for comparable facilities, respectively.⁴¹ Similarly, in the instant context, each party to a multi-party dispute appeal must prove that its cost assertions are correct—either that the claimed expenses were reasonable or that they were excessive or unnecessary. We also note the potential for multi-party appeals relating to payment or cost sharing

Docket No. 21-333, Public Notice, DA 22-845 (WTB 2022) (*Pleading Cycle Public Notice*) ("In particular, all information submitted through the Commission's Electronic Comment Filing System will become publicly available.").

³⁵ *RPC Appeals Procedures Public Notice* at 3-5.

³⁶ AT&T Petition at 7-8.

³⁷ AT&T Reply at 7-8 (*citing* 47 CFR § 27.1421(c)(2)) ("Upon receipt of such record and advice, the Bureau will decide the disputed issues based on the record submitted. The Bureau is directed to resolve such disputed issues or designate them for an evidentiary hearing before an Administrative Law Judge. If the Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for *de novo* review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.").

³⁸ SES Opposition at 5-7 ("Where the eligible incumbent seeking reimbursement is the one to challenge the assessment of the Clearinghouse, the eligible incumbent should bear the burden of proof to demonstrate where the Clearinghouse has erred" while "where multiple parties raise challenges to a decision by the Clearinghouse on different grounds, the burden of proof should fall on each respective 'plaintiff' to demonstrate that their view is correct"); Intelsat Opposition at 2, 7 ("[T]he Commission should clarify that the burden of proof in all proceedings before the Bureau rests with the party or parties seeking to overturn Clearinghouse decisions.").

³⁹ *RPC Appeals Procedures Public Notice* at 4.

⁴⁰ *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969, 15706-07 (2004).

⁴¹ "Sprint Nextel shall bear the burden of demonstrating that proposed facilities are 'comparable' within the meaning of the 800 MHz Report and Order. The licensee shall bear the burden of demonstrating that the cost of relocation is 'the minimum necessary to provide facilities comparable to those presently in use' within the meaning of the 800 MHz Report and Order. Any party alleging bad faith on the part of another party shall bear the burden of proceeding and the burden of proof. The burden of proceeding and proof on any other issues shall be specified by order of the Chief, PSCID." *Wireless Telecommunications Bureau Announces Procedures for De Novo Review in the 800 MHz Public Safety Proceeding*, WT Docket No. 02-55, Public Notice, 21 FCC Rcd 758 (WTB 2006).

obligations among 3.7 GHz Service Licensees that do not directly involve claimants, to which AT&T's proposed burden of proof standard would be inapplicable.

12. The burden of proof standard established in the *RPC Appeals Procedures Public Notice* also furthers the public interest and the Commission's goal of preventing waste, fraud and abuse as part of the C-band transition reimbursement process.⁴² Indeed, SES contends that allowing an eligible party to challenge a Clearinghouse decision without a commensurate burden of proof would create the potential for abuse and baseless disputes.⁴³ We agree with SES that allowing such challenges would undermine confidence in the overall reimbursement and dispute resolution process and lead to delays in the processing of disbursements and the completion of the C-band transition. We therefore affirm the burden of proof standard adopted in the *RPC Appeals Procedures Public Notice* as consistent with past practice and in furtherance of both the public interest and the Commission's goals for the C-band transition.

13. ACCORDINGLY, IT IS ORDERED pursuant to Sections 4(i), 4(j), 5, 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155, 303(r), and 405, as well as delegated authority in Sections 0.131 and 0.331 of the Commission's rules, 47 CFR § 0.131, 0.331, that Petition for Reconsideration or Clarification filed by AT&T Services, Inc. on April 20, 2022 IS DENIED.

14. IT IS FURTHER ORDERED that this ORDER SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

⁴² 3.7 GHz Report and Order, 35 FCC Rcd at 2447, para. 259.

⁴³ SES Opposition at 7.

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

In the Matter of)	
)	
Amendment of Section 73.622(j),	)	MB Docket No. 22-347
Table of TV Allotments, Television Broadcast	)	RM-11932
Stations (Lincoln, Nebraska))	

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: September 8, 2023

Released: September 8, 2023

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau), has before it a Notice of Proposed Rulemaking¹ issued in response to a Petition for Rulemaking filed by The University of Nebraska (Petitioner),² the licensee of noncommercial educational (NCE) television station KUON-TV (KUON-TV or Station), channel *12, Lincoln, Nebraska.³ The Petitioner has requested the substitution of UHF channel *27 for VHF channel *12 in the Table of TV Allotments.⁴ The Petitioner filed comments in support of the petition, as required by the Commission's rules (rules),⁵ reaffirming its commitment to apply for channel *27.⁶

2. We believe the public interest would be served by substituting channel *27 in place of channel *12 at Lincoln, Nebraska. In support of its channel substitution request, the Petitioner states that

¹ *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Lincoln, Nebraska)*, MB Docket No. 22-347, Notice of Proposed Rulemaking, DA 22-1009 (MB Sept. 26, 2022) (*NPRM*).

² Petition for Rulemaking filed by The University of Nebraska on September 14, 2022 (LMS File No. 0000199898) (Petition).

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

⁴ 47 CFR § 73.622(j).

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

⁶ Comments of The University of Nebraska at 1 (filed Oct. 20, 2022) (The University of Nebraska Comments). On November 7, 2022, Flood Communications of Omaha, LLC (Flood), the licensee of low power television stations KOHA-LD, Omaha, Nebraska and KFDY-LD, Lincoln, Nebraska (Flood Stations) filed comments in opposition to the Petition arguing that the Flood Stations would be displaced. See Comments of Flood Communications of Omaha, LLC (filed Nov. 7, 2022) (Flood Comments). Petitioner submitted reply comments on November 21, 2022 replying to the Flood Comments. See Reply Comments of The University of Nebraska (filed Nov. 21, 2022). Flood later requested the withdrawal of the Flood Comments, and the parties entered into a settlement agreement to resolve Flood's concerns. See Withdrawal of Opposition filed by Flood Communications of Omaha, LLC (filed Aug. 17, 2023); see also Joint Request for Approval of Settlement Agreement, between The University of Nebraska and Flood Communications of Omaha, LLC (filed Aug. 18, 2023) (Joint Request for Approval of Settlement Agreement) (requiring, among other things, Flood to promptly file displacement applications for the Flood Stations and establishing a timeframe by which The University of Nebraska would wait to commence operations on channel *27). The Bureau has approved the Joint Request for Approval of Settlement Agreement simultaneously with the adoption of this Report and Order. See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Derek Teslik, Esq. and Seth Williams, Esq. (Sept. 8, 2023).

the Station has a history of severe reception problems as a result of its operation on a VHF channel.⁷ The Petitioner also discussed the challenges and characteristics of VHF channels that have been recognized by the Commission regarding viewer reception.⁸ Thus, the Petitioner asserts that the proposed channel substitution will improve viewers' access to the Station's PBS and other public television programming by improving reception issues.⁹ According to the Petitioner, although the channel *27 facilities would result in a reduction in the Station's predicted population served within its noise limited service contour (NLSC), almost all of the predicted loss area is served by other PBS stations licensed to communities in Nebraska and Iowa, which largely air the same NCE programming as KUON-TV.¹⁰ According to the Petitioner, once terrain-limitations are factored into the analysis, the new loss area that would be created by the proposed channel substitution would contain only 342 persons, which it asserts is *de minimis*.¹¹

3. As proposed, channel *27 can be substituted for channel *12 at Lincoln, Nebraska, in compliance with the principal community coverage requirements of section 73.625(a) of the rules,¹² at coordinates 41° 08' 18.0" N and 096° 27' 21.0" W. Although the Petitioner's proposal would result in a loss of PBS network programming to a limited number of viewers, we find that the overall benefits of the proposed channel change by resolving reception issues outweighs any possible harm to the public interest. When taking into account terrain limitations and the ability of viewers to obtain PBS programming from other nearby stations, we find that the Petitioner's proposal would result in a loss of NCE service to a *de minimis* number of persons.¹³ In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:

⁷ See *NPRM* at para. 2.

⁸ See Petition at 3 (discussing VHF channel characteristics that pose challenges for their use in providing digital television service).

⁹ See *id.* at 2.

¹⁰ See *NPRM* at para 2; Petition at 2 and Engineering Statement at Attachment C. These stations are KXNE-TV, Norfolk, Nebraska, and KHNE-TV, Hastings, Nebraska, licensed to the Nebraska Educational Telecommunications Commission, and KHIN, Red Oak, KBIN-TV, Council Bluffs, and KSIN-TV, Sioux City, Iowa, licensed to the Iowa Public Broadcasting Board.

¹¹ See *NPRM* at para 2; Petition at 2, citing *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding loss population of approximately 556 persons to be *de minimis*). The Commission has also previously stated that it is "generally most concerned where there is a loss of an area's only network or NCE TV service, or where the loss results in an area becoming less than well-served, *i.e.*, served by fewer than five full-power over-the-air signals." *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) (internal citations omitted). We note that the Petitioner used V-Soft Probe software to prepare its application, rather than the Commission's *TVStudy* software. While *TVStudy* is not required by Commission rules for determining viewer loss in this context, it is the Bureau's preferred software as it is used by staff to verify the information that is submitted. Utilizing the Commission's *TVStudy* software, a staff analysis confirms that the number of persons that would lose service, after factoring in the availability of PBS programming from other stations, would be *de minimis*.

¹² 47 CFR § 73.625(a).

¹³ See *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Roanoke, Virginia)*, MB Docket No. 23-14, Report and Order, DA 23-221, para. 3 (MB Mar. 15, 2023) (granting channel substitution and finding that although the petitioner's proposal would result in a loss of PBS network programming to a limited number of viewers, when taking into account the service provided by two NCE stations to petitioner's NLSC area, only a *de minimis* number of persons were predicted to lose access to the station's programming); *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding loss population of approximately 556 persons to be *de minimis*).

<u>City and State</u>	<u>Channel</u>	<u>Power (kW)</u>	<u>Antenna</u>	<u>HAAT (m)</u>	<u>Service Pop.</u>
Lincoln, Nebraska	*27	650	253		1,291,032

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.¹⁴ An expedited effective date is necessary in this case to ensure that KUON-TV can operate with improved service to its viewers as quickly as possible.

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

<u>City and State</u>	<u>Channel No.</u>
Lincoln, Nebraska	8, 10, 15, *27

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this Order, The University of Nebraska shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel *27.

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

8. **IT IS FURTHER ORDERED**, That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 22-347 and RM-11932 **SHALL BE TERMINATED** and its docket closed.

9. For further information concerning the proceeding listed above, contact Emily Harrison, Video Division, Media Bureau, Emily.Harrison@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁴ 5 U.S.C. § 553(d)(3).



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 23-828
Released: September 8, 2023

**DOMESTIC SECTION 214 APPLICATION FILED
FOR THE TRANSFER OF CONTROL OF PCCW GLOBAL, INC.**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-264

Comments Due: September 22, 2023
Reply Comment Due: September 29, 2023

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by HKT (International) Limited (HKT) and Infratil Digital Exchange Limited (Infratil Digital), (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of PCCW Global, Inc. (PCCW Global) from HKT to Infratil Digital.²

PCCW Global, a Delaware corporation, provides communications services and other services in multiple states.³ HKT, a Hong Kong entity, provides communications services in Hong Kong.⁴ PCCW Global and HKT are wholly-owned, indirect subsidiaries of HKT Limited, a publicly held Cayman Islands company listed on the Hong Kong Stock Exchange.⁵ HKT Limited is

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

² Application for Consent to Transfer Control of Domestic Section 214 Authorization Filed by Alink Services, LLC and Element8 Technology Investment Group Inc., WC Docket No. 23-264 (filed Aug. 4, 2023) (Application). Applicants filed a supplement to the Application on August 30, 2023 and September 1, 2023. Letter from Joshua M. Bobek, Counsel for Infratil Digital Exchange Limited, to Marlene H. Dorth, Secretary, FCC, WC Docket No. 23-264 (filed Aug. 30, 2023) (Aug. 30 Supplement Letter); Letter from Jennifer L. Kostyu et al., Counsel to HKT (International) Limited, and Andrew D. Lipman et al., Counsel for Infratil Digital Exchange Limited, to Marlene H. Dorth, Secretary, FCC, WC Docket No. 23-264 (filed Sept. 1, 2023) (Sept. 1 Supplement Letter). Applicants also filed applications for consent to transfer international authorizations. Any action on the domestic 214 application is without prejudice to other pending applications.

³ These states include Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin. Application at 3, n.5

⁴ *Id.* at 3.

⁵ *Id.*

indirectly majority owned by PCCW Limited, a publicly held Hong Kong company listed on the Hong Kong Stock Exchange.⁶ PCCW Limited is a global investment company that holds interests in other communications businesses.⁷

Infratil Digital, is a newly formed New Zealand company, is wholly-owned by Infratil Limited (Infratil), a New Zealand company.⁸ Infratil has no parent company and is widely held, with the vast majority of its shares held by retail New Zealand investors or New Zealand institutional investors.⁹ Infratil is an active global infrastructure investor.¹⁰ Applicants state that Infratil's Board of Directors retained Morrison & Co. (Morrison), a New Zealand limited company, as its outside management company; however, Morrison has "no special rights or power to carry or block any shareholder or board action."¹¹

Pursuant to the terms of the proposed transaction, HKT will "undertake an internal restructuring that will include, among other things, the formation of several new wholly owned indirect subsidiaries including Console Connect and its subsidiary PCCW Global TechCo UK Pte Ltd., a corporation formed under the laws of the United Kingdom, and the transfer of the entire issued share capital of PCCW Global from its current direct parent company, BtN Holdings Limited, to PCCWG TechCo."¹² Applicants state that Infratil Digital would acquire a controlling stake in PCCW Global through the acquisition of a 60-80 percent equity interest in Console Connect.¹³ As a result, Infratil Digital will thereby hold an indirect 60-80 percent voting and equity interest in PCCW Global.¹⁴ HKT will hold the remaining direct, non-controlling 20-40 percent voting and equity interest in Console Connect and thus indirectly PCCW Global.¹⁵

Because the proposed transaction is more complex than those accepted for streamlined treatment, and in order to analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.¹⁶

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20230802-00097, are being referred to the relevant Executive Branch agencies for their views on

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ *Id.* at 4, 13. Applicants state that the following individuals are members of the Board of Directors of Infratil Limited: Jason Boyes (New Zealand Citizen); Phillipa M. Harford (New Zealand Citizen); Alison R. Gerry (New Zealand/Australia Citizen); Andrew J. Clark (New Zealand Citizen); Anne J. Urlwin; (New Zealand Citizen); Kristy McTaggart (United Kingdom Citizen); Paul Gough (United Kingdom Citizen); and Peter M. Springford (United Kingdom Citizen). Mr Boyes and Ms. Harford are the sole Directors on the Board of Infratil Digital. Aug. 30 Supplement Letter at 1.

¹² Console Connect is a Singapore company. Application at 5.

¹³ Supplement Letter at 1-2.

¹⁴ *Id.*

¹⁵ *Id.* See Sept. 1 Supplement Letter for additional ownership information and charts. Sept. 1 Supplement Letter at Exh. 1 (Post-Closing Ownership).

¹⁶ 47 CFR § 63.03(c)(1)(v).

any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.¹⁷

Domestic Section 214 Application Filed for the Transfer of Control of PCCW Global, Inc.,
WC Docket No. 23-264 (filed August 2, 2023).

GENERAL INFORMATION

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

Interested parties may file comments **on or before September 22, 2023**, and reply comments **on or before September 29, 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.¹⁸ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

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

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

- 1) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 2) David Krech, Office of International Affairs, david.krech@fcc.gov; and

¹⁷ 47 CFR § 1.40001. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927 (2020), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

¹⁸ 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).

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

For further information, please contact Dennis Johnson at (202) 418-0809.

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¹⁹ See 47 CFR § 1.45(c).



PUBLIC NOTICE

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

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

DA 23-829
Released: September 8, 2023

**DOMESTIC SECTION 214 APPLICATION FILED
FOR THE TRANSFER OF CONTROL OF ATLINK SERVICES, LLC TO
ELEMENT8 TECHNOLOGY INVESTMENT GROUP INC.**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-268

Comments Due: September 22, 2023
Reply Comment Due: September 29, 2023

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by AtLink Services, LLC (AtLink) and Element8 Technology Investment Group Inc. (Element8), (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent to transfer control of AtLink to Element8.²

AtLink, an Oklahoma limited liability company, currently provides voice and broadband service to approximately 10,000 Oklahomans in rural communities and urban areas throughout the state using fixed wireless and fiber-to-the-home technologies.³ On January 24, 2019, the Oklahoma Corporation Commission (OCC) designated AtLink as an ETC for the Oklahoma census blocks where it was the auction winner for CAF support.⁴ On July 15, 2019, the Bureau authorized AtLink

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

² AtLink Services, LLC and Element8 Technology Investment Group Inc. Application Filed for Consent to Transfer Control of Domestic Section 214 Authorization, WC Docket No. 23-268 (filed Aug. 4, 2023) (Application). Applicants filed a supplement to the Application on September 1, 2023. Letter from Trey Hanbury, Counsel to Element8, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-268 (filed Sept. 1, 2023) (Supplement Letter). Applicants filed an application for the transfer of certain spectrum licenses and a petition for declaratory ruling (Petition) asking the Commission to find that it would serve the public interest to permit foreign ownership of the proposed controlling U.S. parent, Digital Alpha, to exceed the 25% benchmark in section 310(b)(4) of the Commission's rules, 47 U.S.C. §310(b)(4). See ICFS File No. ISP-PDR-20230807-00007 (amended and restated Aug. 30, 2023). Any action on the Application is without prejudice to Commission action on other related, pending actions.

³ Application at 3. AtLink participates in the Lifeline program, the Affordable Connectivity Program. Applicants state that the proposed transaction will not affect AtLink's participation in these programs. *Id.* at 6.

⁴ *Id.* at 3-4.

to receive \$4,762,647.20 in Connect America Fund (CAF) Phase II Auction (Auction 903) for 12,491 locations in Oklahoma.⁵ In addition, AtLink was authorized to receive, pursuant to approvals of 214 transfer applications, an additional \$594,975.00 in Auction 903 support to serve an additional 1,166 locations in Oklahoma acquired from Cherokee Telephone Company,⁶ and an additional \$1,948,205.00 in Auction 903 support to serve 3,013 locations in Oklahoma acquired from Redwire, Inc.⁷

Element8, a Texas corporation, provides broadband services. Element8 is supported by a substantial investment from the Digital Alpha family of funds, which focuses on investing in the digital infrastructure.⁸ Applicants state that “a U.S. citizen holds ultimate control of the Digital Alpha family of funds; however, non-U.S. investors hold insulated, non-voting, equity interests equal to an aggregate total of approximately 54% of the equity of the Digital Alpha funds seeking to invest in AtLink.”⁹ Applicants estimate that, post-consummation, non-U.S. entities will hold 37.97% of AtLink’s equity interests.¹⁰

Pursuant to the terms of the proposed transaction, Element8 will acquire control of AtLink.¹¹ As a result, AtLink will become a subsidiary of Element8.¹² Applicants state that AtLink would continue to exist and operate under the same name and would continue to provide service pursuant to then-existing rates, terms, and conditions for the near term.¹³

Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity.¹⁴ Because the proposed transaction would involve the assumption of Universal Service Fund high-cost mechanism obligations, we accept the Application for non-streamlined

⁵ See *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, Public Notice, AU Docket No. 17-182 and WC Docket No. 10-90, DA 19-657 at Attach. A (WCB July 15, 2019).

⁶ *Authorization of AtLink Services, LLC to Receive Connect America Fund (CAF) Phase II Auction Support Transferred from Cherokee Telephone Company Pursuant to a Commission Approved Transaction*, 37 FCC Rcd 6158 (WCB 2022); *Domestic 214 Application Granted for the Transfer of Certain Authorizations of Cherokee Telephone Company to AtLink Services, LLC*, WC Docket No. 21-423, 37 FCC Rcd 701 (WCB 2022).

⁷ *Transfer of Connect America Phase II Auction Support to AtLink Services, LLC et al.*, WC Docket Nos. 22-55 et al., Public Notice, DA 22-1260 (WCB Dec. 2, 2022); *Domestic 214 Application and Waivers Granted for the Transfer of Connect America Fund Phase II Auction Support Obligations from Redwire, Inc. to AtLink Services, LLC et al.*, WC Docket No. 22-55 et al., Public Notice, DA 22-652 (WCB June 17, 2022).

⁸ Application at 4.

⁹ Supplement Letter at 1-2. Applicants submitted a chart illustrating AtLink’s post-transaction ownership. Supplement Letter at Exh. 1 (Post-Closing Ownership).

¹⁰ *Id.* at 2, Exh. 1 (Post-Closing Ownership).

¹¹ Application at 2.

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ *Id.* at 7.

processing in order to sufficiently analyze whether the proposed transaction would serve the public interest.¹⁵

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application and the Petition, ICFS File No. ISP-PDR-20230807-00007, are being referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicants.¹⁶

Domestic Section 214 Application Filed for the Transfer of Control of
AtLink Services, LLC to Element8 Technology Investment Group Inc.,
WC Docket No. 23-268 (filed August 4, 2023).

GENERAL INFORMATION

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

Interested parties may file comments **on or before September 22, 2023**, and reply comments **on or before September 29, 2023**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by paper.

- **Electronic Filers:** Comments may be filed electronically by accessing ECFS at <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.¹⁷ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

¹⁵ See 47 CFR § 63.03(c)(1)(v).

¹⁶ 47 CFR § 1.40001. See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927 (2020), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020); see also *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

¹⁷ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

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

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

- 1) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) David Krech, Office of International Affairs, david.krech@fcc.gov;
- 4) Linda Ray, Wireless Telecommunications Bureau, linda.ray@fcc.gov; and
- 5) 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.¹⁸ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Dennis Johnson at (202) 418-0809.

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¹⁸ 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>

DA 23-830

Released: September 8, 2023

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

WC Docket No(s). 23-276

Comments Due: September 25, 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 **October 9, 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 **September 25, 2023**.⁵ Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁶ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

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

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

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

⁵ Comments are normally due 15 days after the Commission releases public notice of the proposed discontinuance. 47 CFR § 63.71(a). For purposes of computation of time, if the comment deadline falls on a weekend or officially recognized Federal legal holiday, however, comments will be due on the next business day. See 47 CFR § 1.4(e) and (j).

⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁷ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁸ 47 CFR § 1.1200 *et seq.*

otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

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

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

– FCC –

Appendix

1) Applicant(s): TDS Metrocom, LLC

WC Docket No. 23-276, Comp. Pol. File No. 1857

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2223-276*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-276*%22)))

Affected Service(s) – all retail voice and data services provided over Unbundled Network Elements to 233 commercial customers

Service Area(s) – Appleton, De Pere, Fond du Lac, Green Bay, Neenah, and Oshkosh, Wisconsin

Authorized Date(s) – on or after October 10, 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)
Cybersecurity Labeling for Internet of Things) PS Docket No. 23-239

NOTICE OF PROPOSED RULEMAKING

Adopted: August 6, 2023

Released: August 10, 2023

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Simington issuing separate statements.

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I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we propose measures to improve consumer confidence and understanding of the security of their connected devices – commonly known as Internet of Things (IoT) devices – that are woven into the fabric of their everyday lives.¹ Consumers have

¹ In launching this NPRM, we conclude our consideration of IoT cybersecurity labeling issues related to the Notice of Inquiry in ET Docket No. 21-232 and EA Docket No. 21-233, and close that proceeding as to those issues. *See Authorization Program; Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, ET Docket No. 21-232, EA Docket No. 21-233, Notice of Proposed Rulemaking and Notice of Inquiry, 36 FCC Rcd 10578, para. 104 (2021) (*Supply Chain NOI*). That NOI raised IoT cybersecurity labeling in the specific context of our existing equipment authorization program, and although we do not formally rule out building on our equipment authorization program at this stage, we believe that our proposals

(continued....)

come to rely on the functionality and convenience of their smart devices, which run the gamut from home office routers to personal digital assistants, Internet-connected home security cameras, voice-activated shopping devices, Internet-connected appliances, fitness trackers, GPS trackers, medical devices, garage door openers, and baby monitors. These devices bring enormous benefits by making our homes smarter and more efficient and making our lives easier. But, with this increased interconnection comes risk, including the potential for nefarious actors to access and use these devices to their own ends. With more than 25 billion connected IoT devices predicted to be in operation by 2030,² consumers need tools that allow them to understand the relative security risk that an IoT device or product may pose, to compare IoT devices, and to have a level of confidence whether the IoT devices they ultimately purchase meet certain cybersecurity standards. Responsibly using smart devices takes informed consumers.

2. To provide consumers with the peace of mind that the technology being brought into their homes is reasonably secure, and to help guard against risks to communications, today we propose a voluntary cybersecurity labeling program that would provide easily understood, accessible information to consumers on the relative security of an IoT device or product, and assure consumers that manufacturers of devices bearing the Commission's IoT cybersecurity label adhere to widely accepted cybersecurity standards. In this regard, our cybersecurity labeling program would help consumers compare IoT devices and make informed purchasing decisions, drive consumers toward purchasing devices with greater security, incentivize manufacturers to meet higher cybersecurity standards to meet market demand, and encourage retailers to market secure devices. The proposed IoT label would offer a trusted, government-backed symbol for devices that comply with IoT cybersecurity standards.

II. BACKGROUND

A. The Internet of Things (IoT) Landscape

3. As the world continues to become even more interconnected, malicious cyber campaigns become bolder and continue to threaten our network security and privacy. Today, there are a wide range of consumer IoT products on the market that communicate over wired and wireless networks. These products are made up of various devices, and are based on many technologies, each of which presents a set of security challenges.³ Consumer IoT products and their component devices are susceptible to a wide range of relatively common security vulnerabilities including the continued use of default passwords, lack of regular security updates, and weak encryption and insecure authentication. Some IoT products and devices even lack any type of physical security.⁴ These vulnerabilities can be exploited by attackers to

for a voluntary labeling program building on the efforts of NIST and others as reflected in this NPRM represent the most appropriate, and targeted, approach to IoT cybersecurity labeling that we want to explore at this time. We believe that closing the *Supply Chain NOI* with respect to IoT cybersecurity labeling issues will focus commenters on this proceeding and spur comments that better reflect that distinct focus. Thus, although we hereby incorporate relevant comments in those dockets into this proceeding, PS Docket 23-239, we also request that, going forward, interested parties use PS Docket 23-239 for any filings. We direct OET to provide public notice of the closed issues in ET Docket Nos. 21-232, 21-233.

² Lionel Sujay Vailshery, *Number of IoT connected devices worldwide 2019-2021, with forecasts to 2030* (Nov. 22, 2022), <https://www.statista.com/statistics/1183457/iot-connected-devices-worldwide/> (last visited July 17, 2023); see also CTA, *Public-Private Collaboration is Critical to Consumer IoT Security, U.S. Innovation, Says CTA* (Mar. 22, 2021), <https://www.cta.tech/Resources/Newsroom/Media-Releases/2021/March/IOT-Device-Security-White-Paper-Release> (stating “the number of IoT devices worldwide will nearly triple by 2023, surpassing 40 billion units”).

³ Many IoT technologies exist today, as the field is constantly evolving, and new technologies are being developed all the time. Some of the common technologies used by IoT devices include Zigbee, Bluetooth, Wi-Fi, Narrowband IoT (NB-IoT), LoRaWAN, Sigfox, Cellular IoT (e.g., 2G, 3G, 4G, 5G), and Thread.

⁴ IoT devices are often installed in public spaces or remote locations, which makes them susceptible to theft, tampering, vandalism, or unauthorized access. Therefore, it is important for IoT device developers, manufacturers, and security professionals to be aware of these risks and to consider taking appropriate physical security measures to
(continued....)

gain unauthorized access to the device or its data, launch denial of service (DoS) attacks,⁵ use the device as part of a larger botnet,⁶ or use the device as an interference generator.⁷ Compromised devices could also be forced to transmit at times and intervals selected by the attacker to interfere with other devices, either causing them to function improperly or causing a denial of service.⁸

4. The proliferation of consumer IoT devices has opened the door to cyberattacks on consumer products that can have serious privacy and national security consequences, ranging from theft of personal information to disruption of critical infrastructure. In just the first six months of 2021, for example, it was estimated “that more than 1.5 billion attacks have occurred against IoT devices.”⁹ Cybersecurity vulnerabilities in IoT products and their devices also open a gateway to larger and more significant intrusions that may threaten national security.¹⁰

B. Public and Private IoT Security Efforts

5. Significant work has already been conducted in the realm of IoT cybersecurity.¹¹ There are also ongoing efforts to address IoT security labeling across both private and public sectors. In the

protect IoT devices, such as implementing tamper-evident packaging, monitoring for signs of tampering or theft, using secure communication protocols to prevent unauthorized access, encrypting sensitive data stored on the device, and secure boot procedures. It is also important that the Joint Test Action Group (JTAG) port or interface -- used for debugging and programming purposes -- be disabled or physically locked prior to releasing the device or product into the market. JTAG can be a potential security risk, as it provides a backdoor into the device that could be exploited by attackers.

⁵ A Denial of Service (DoS) attack is a type of cyber-attack that aims to disrupt the normal operation of a network, server, or website by flooding it with large amounts of traffic or by exploiting vulnerabilities in the application or operating system or using a botnet to automate the attack.

⁶ A botnet is a network of Internet-connected devices that have been infected with malware and are under the control of a malicious actor. Once a device is infected, it becomes part of the botnet and can be used to carry out a variety of malicious activities, including launching a DoS attack, spreading spam emails, and stealing sensitive data.

For example, the Mirai botnet that used IoT devices to launch one of the largest distributed denial-of-service (DDoS) attacks to date was powered by a list of 61 default passwords. Following the release of the botnet’s source code by its creator, security researchers noticed that the botnet leverages a list of more than 60 combinations of usernames and weak default passwords to scan the Internet for insecure IoT devices. See Marcos Colon, *Mirai Botnet Propagates By Leveraging Weak Default Passwords* (Oct. 4, 2016), <https://www.scmagazine.com/news/content/mirai-botnet-propogates-by-leveraging-weak-default-passwords>.

⁷ Zhifei Xu *et al.*, *Inaudible Attack on Smart Speakers With Intentional Electromagnetic Interference*, Vol. 69 IEEE Transactions on Microwave Theory and Techniques (2021).

⁸ See *SimpliSafe Alarm Bypassed With a \$2 Device From Amazon*, YouTube, (Aug. 7 2019), <https://www.youtube.com/watch?v=UINkQJzw4oA> where a transmitter (potentially any compromised IoT device transmitting on the correct frequency) suppressed the alarm of a security system by transmitting on the same frequency. Or more generally where increased traffic by a compromised device can raise the noise environment degrading communication for other devices. Wetzker, Ulf & Splitt, Ingmar & Zimmerling, Marco & Römer, Kay & Boano, Carlo Alberto. (2016). *Troubleshooting Wireless Coexistence Problems in the Industrial Internet of Things*. 10.1109/CSE-EUC-DCABES.2016.167.

⁹ David Paul, *IoT Devices See More Than 1.5bn Cyberattacks so Far This Year*, DIGIT NEWS, (Sept. 13, 2021), <https://www.digit.fyi/iot-security-kaspersky-research-attacks/>.

¹⁰ Trend Micro, *IoT Security Issues, Threats, and Defenses* (July 22, 2021), <https://www.trendmicro.com/vinfo/us/security/news/internet-of-things/iot-security-101-threats-issues-and-defenses>.

¹¹ We observe that NIST issued several guidelines on cybersecurity for Internet-connected devices, stressing an engineering-based approach that builds security systems directly into IoT technology. See, NIST, *Systems Security Engineering: Considerations for a Multidisciplinary Approach in the Engineering of Trustworthy Secure System*, NIST Special Pub. 800-160 (Nov. 2016), <https://doi.org/10.6028/NIST.SP.800-160>. See also NIST, NISTIR 8259, *Foundational Cybersecurity Activities for IoT Device Manufacturers* at 15 (2020),

(continued....)

private sector, for example, the Consumer Technology Association (CTA) convened an IoT working group tasked with supporting the advancement of the consumer IoT industry,¹² and produced a white paper addressing the current regulatory approach to IoT.¹³ CTA has also convened with various organizations to discuss IoT baseline security capabilities.¹⁴ In addition, researchers at Carnegie Mellon University (CMU) conducted significant research into consumer IoT purchasing and concluded there is a need to “provide consumers with readily accessible information to help them make informed decisions about what they bring into their homes.”¹⁵ International efforts have also advanced in the IoT labeling space.¹⁶

<https://nvlpubs.nist.gov/nistpubs/ir/2020/NIST.IR.8259.pdf>. The Department of Homeland Security (DHS) also recently released its own cybersecurity policy for IoT devices, delineating six strategic principles that it believes will help stakeholders stop unauthorized intruders from tampering with connected devices. See U.S. Dept. of Homeland Security, *Strategic Principles for Securing the Internet of Things (IoT)*, Version 1.0 (Nov. 15, 2016), <https://www.dhs.gov/securingtheIoT>. NIST and the National Telecommunications and Information Administration (NTIA) developed a risk management framework for addressing cybersecurity issues. See NIST, *Framework for Improving Critical Infrastructure Cybersecurity* (2014), <https://www.nist.gov/sites/default/files/documents/cyberframework/cybersecurity-framework-021214.pdf>. The Communications Security, Reliability, and Interoperability Council IV (CSRIC IV) developed a segment-specific analysis of the application of the Cybersecurity Framework, as well as recommendations for voluntary efforts to address cybersecurity concerns. See CSRIC IV, Working Group 4, *Cybersecurity Risk Management and Best Practices, Final Report* (2015), https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG4_Final_Report_031815.pdf. In addition, the Commission’s Technical Advisory Council issued its report on applying security to consumer IoT devices. See Federal Communications Commission Technical Advisory Council (FCC TAC), Cybersecurity Working Group, *Technical Considerations White Paper* (2015), <https://transition.fcc.gov/oet/tac/tacdocs/reports/2015/FCC-TAC-Cyber-IoT-White-Paper-Rel1.1-2015.pdf>. See also FTC Report on Internet of Things Urges Companies to Adopt Best Practices to Address Consumer Privacy and Security Risks (Jan. 27, 2015), <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things-privacy/150127iotrpt.pdf> (proposing privacy and cybersecurity best practices associated with IoT); U.S. Dept. of Health and Human Services, Radio Frequency Wireless Technology in Medical Devices: Guidance for Industry and Food and Drug Administration Staff (Aug. 14, 2013), <http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm077272.pdf> (guidance to the industry on considerations for the safe and effective development and use of RF technology in medical devices).

¹² Consumer Technology Association CES, *IoT Working Group*, <https://www.cta.tech/Membership/Member-Groups/IoT-Working-Group> (last visited July 17, 2023).

¹³ ANSI/CTA, *Standard Baseline Cybersecurity Standard for Devices and Device Systems ANSI/CTA-2088-A* (May 2022), <https://shop.cta.tech/products/https-cdn-cta-tech-cta-media-media-shop-standards-2020-ansi-cta-2088-a-final-pdf>. See also Consumer Tech Association, *Smart Policy to Secure our Smart Future: How to Promote a Secure Internet of Things for Consumers* (2021), (available at <https://www.cta.tech/Resources/Newsroom/Media-Releases/2021/March/IOT-Device-Security-White-Paper-Release>) (CTA Cybersecurity White Paper); see also *Supply Chain NOI*, 36 FCC Rcd 10578, para. 104 (the Commission sought comment on the CTA Cybersecurity White Paper).

¹⁴ Council to Secure the Digital Economy, *The C2 Consensus on IoT Device Security Baseline Capabilities* (2019), https://csde.org/wp-content/uploads/2019/09/CSDE_IoT-C2-Consensus-Report_FINAL.pdf; see also Council to Secure the Digital Economy, *The C2 Consensus on IoT Device Security Baseline Capabilities – 2021 Supplement* (2021), https://csde.org/wp-content/uploads/2021/04/C2-Tech-Report_2021_final.pdf.

¹⁵ Carnegie Mellon University, *CyLab presents IoT privacy and security label research at White House summit* (Oct. 19, 2022), <https://www.cylab.cmu.edu/news/2022/10/19-cylab-presents-at-white-house-iot-security-summit.html>.

¹⁶ For example, in June 2018, the European Telecommunications Standards Institute (ETSI) published the European standard (i.e., EN 303 645) that specifies cybersecurity requirements for consumer IoT devices and products to provide a common baseline for IoT security across the European Union. The standard defines a set of 13 high-level provisions for IoT device manufacturers to ensure the security and privacy of their products. These provisions cover (continued....)

6. In May 2021, Executive Order No. 14028 also emphasized the importance of IoT cybersecurity, noting the “persistent and increasingly sophisticated malicious cyber campaigns that threaten the public sector, the private sector, and ultimately the American people’s security and privacy.”¹⁷ Indeed, securing the Internet of Things forms a significant pillar in the recently-released National Cybersecurity Strategy, which noted in particular the need to advance the goals of the EO’s IoT labeling efforts so that “consumers will be able to compare the cybersecurity protections offered by different IoT products, thus creating a market incentive for greater security across the entire IoT ecosystem.”¹⁸

7. In this respect and pursuant to that EO,¹⁹ in 2022 the National Institute of Standards and Technology (NIST) issued a White Paper that identified labeling criteria for cybersecurity capabilities of IoT consumer devices, informed by existing consumer product labeling programs and input provided by diverse stakeholders, and issued a summary report about creating a cybersecurity labeling program for consumer IoT products.²⁰ Additionally, NIST produced a final report, *Profile of the IoT Core Baseline for Consumer IoT Products (NISTIR 8425)*, which identifies cybersecurity capabilities commonly needed for the consumer IoT sector, thereby providing a starting point for what consumers should consider when purchasing IoT products.²¹ From these efforts, NIST identified key elements of a labeling program, including encouraging innovation, and being practical and not burdensome, among other elements.²² In addition, NIST initiated a pilot IoT cybersecurity labeling program, in which it solicited contributions from stakeholders regarding how current and future-planned labeling efforts could align with the NIST recommendations.²³ NIST describes a potential program that would educate the public on IoT

several areas, including secure communication, access control, and software updates. Compliance with the standard is voluntary. See, ETSI, Cyber Security for Consumer Internet of Things: Baseline Requirements (2020), https://www.etsi.org/deliver/etsi_en/303600_303699/303645/02.01.01_60/en_303645v020101p.pdf. In October 2020, the Cyber Security Agency of Singapore (CSA) launched its baseline cybersecurity requirements for IoT devices and products. To date, CSA has accredited 14 third party labs, including Underwriters’ Laboratories (UL), to test and certify IoT devices and products that meet its standards. See, e.g., Cyber Security Agency of Singapore, *Updates*, <https://www.csa.gov.sg/our-programmes/certification-and-labelling-schemes/cybersecurity-labelling-scheme/updates> (last visited July 17, 2023).

¹⁷ Exec. Order No. 14028, *Improving the Nation’s Cybersecurity*, 86 Fed. Reg. 26633, 26633 (May 12, 2021) (*IoT Executive Order*).

¹⁸ *National Cybersecurity Strategy* at 3.2, p. 20, <https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf> (Mar. 2, 2023); see also *IoT Cybersecurity Improvement Act of 2020*, 15 U.S.C. § 278g-3a to § 278g-3e (establishes minimum cybersecurity requirements for IoT technology procured by the U.S. government and directs federal agencies to only procure devices that comply with NIST guidelines (NIST SP 800-213 and 213A) and establishes vulnerability reporting requirements for products sold to the U.S. government).

¹⁹ *Id.*

²⁰ See NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer IoT Products* (Feb. 4, 2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>; (*NIST Cybersecurity White Paper*) and NIST, *Cybersecurity Labeling for Consumers: Internet of Things (IoT) Devices and Software* (May 24, 2022), <https://www.nist.gov/itl/executive-order-14028-improving-nations-cybersecurity/cybersecurity-labeling-consumers-0> (*NIST IoT Cybersecurity Criteria for Consumer Labeling Program Overview*).

²¹ NIST, *NISTIR 8425, Profile of the IoT Core Baseline for Consumer IoT Products* (Sept. 20, 2022), <https://csrc.nist.gov/publications/detail/nistir/8425/final> (*NISTIR 8425*).

²² NIST, *IoT Cybersecurity Criteria for Consumer Labeling Program Overview* (last updated May 24, 2022), <https://www.nist.gov/itl/executive-order-14028-improving-nations-cybersecurity/cybersecurity-labeling-consumers-0>.

²³ See *Report for the Assistant to the President for National Security Affairs (APNSA) on Cybersecurity Labeling for Consumers: Internet of Things (IoT) Devices and Software A summary review of labeling actions called for by Executive Order (EO) 14028: Improving the Nation’s Cybersecurity* at p. 7 (May 10, 2022) (available at <https://www.nist.gov/system/files/documents/2022/05/24/Cybersecurity%20Labeling%20for%20Consumers%20un> (continued....))

cybersecurity capabilities, thereby allowing and enabling consumers in the marketplace to make informed choices about their IoT purchases.²⁴

8. The foregoing priorities and efforts, Commission experience guiding compliance assessment programs,²⁵ and prior Commission action in this space (including the recent *Spectrum Requirements for Internet of Things* Notice of Inquiry, and efforts to address the potential for reprogrammed communications equipment to operate outside of authorized device parameters with the attendant risk of harmful interference²⁶) provide important building blocks for our analysis and inform our proposals today.

III. DISCUSSION

A. Establishing a Voluntary Cybersecurity Labeling Program

9. We propose to establish a voluntary cybersecurity labeling program. Given the nature of the IoT market, we believe that the success of a cybersecurity labeling program will be dependent upon a willing, close partnership and collaboration between the federal government, industry, and other stakeholders. While this proposed program would be voluntary, entities that choose to participate in the Commission's program would be required to ensure their IoT devices and products comply with the Commission's program requirements we propose to codify in our rules. As described below, we propose the use of certain baseline cybersecurity criteria and the development of product standards informed by those criteria, as well as the parameters for labeling of IoT products that conform with those standards and associated informational requirements. IoT products qualifying for the program would be authorized to use the Commission's proposed new distinctive label signifying their participation in the program and adherence to the standards set. We anticipate that devices or products bearing the Commission's cybersecurity label will be valued by consumers, particularly by those who may otherwise have difficulty determining whether a product they are thinking of buying meets basic security standards. We seek comment on this proposed approach.

B. Eligible Devices or Products

10. We seek comment on the scope of IoT devices or products for sale in the United States that should be eligible for inclusion in the Commission's labeling program. To help inform our program's scope, we observe that our practical goal is to provide consumers with a clear, easily understood indicator that the IoT devices displaying the Commission's label satisfy certain baseline cybersecurity requirements and have specific cybersecurity capabilities. In assessing scope, we seek to ensure that our program would be sufficiently inclusive to be of value to consumers in this regard.

11. We seek comment on whether to focus the program initially on IoT "devices" (as defined in this document) and specifically those wireless devices that intentionally emit radio frequency (RF) energy. We begin by considering NIST's definition of IoT devices. NIST defines IoT devices as those

der%20Executive%20Order%2014028%20on%20Improving%20the%20Nation%27s%20Cybersecurity%20Report%20%28FINAL%29.pdf). See also NIST Recommendation Criteria (relying upon the NISTIR 8259 family of documents, e.g., NISTIR 8259, NISTIR 8259A, and NISTIR 8259B).

²⁴ See NISTIR 8425 at 16; see also NIST, *Consumer Cybersecurity Labeling Pilots: The Approach and Contributions*, <https://www.nist.gov/itl/executive-order-14028-improving-nations-cybersecurity/consumer-cybersecurity-labeling-pilots> (last updated May 24, 2022); *IoT Executive Order*.

²⁵ See, e.g., 47 CFR Part 2, Subpart J (equipment authorization); 47 CFR § 20.19 (hearing aid compatibility); 47 CFR §§ 2.1091, 2.1093 (radiofrequency radiation exposure); Part 68 (connection of terminal equipment to the telephone network).

²⁶ See *Spectrum Requirements for the Internet of Things*, ET Docket No. 21-353, Notice of Inquiry, 36 FCC Rcd 14165 (2021); *Supply Chain NOI*, 36 FCC Rcd 10578, (2021); Report and Order, Order, and Further Notice of Proposed Rulemaking, FCC 22-84 (Nov. 11, 2022); *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 13-49, First Report and Order, 29 FCC Rcd 4127, 4143, para. 54 (2014).

devices that have at least one transducer (sensor or actuator)²⁷ for interacting directly with the physical world and at least one network interface (e.g., Ethernet, Wi-Fi, Bluetooth) for interfacing with the digital world.²⁸ We propose two modifications to the NIST definition for purposes of our labeling program. First, we propose to add “Internet-connected” to our definition because, as NIST observes, a key component of IoT is the usage of standard Internet protocols for functionality, which expose IoT to related security threats and challenges caused by being Internet-connected.²⁹ Second, because the Commission’s relevant statutory authorities recognize the more extensive risks of harmful interference associated with devices that intentionally emit RF energy,³⁰ we propose to include the premise that an IoT device must be capable of intentionally emitting RF energy. In this respect, we are referring to an IoT device, with a wireless interface, that intentionally uses RF energy to communicate or interact with the physical world. Accordingly, incorporating our modifications, we propose, for purposes of the IoT labeling program, to define an IoT device as: (1) an Internet-connected device capable of intentionally emitting RF energy that has at least one transducer (sensor or actuator) for interacting directly with the physical world, coupled with (2) at least one network interface (e.g., Wi-Fi, Bluetooth) for interfacing with the digital world. We seek comment on our proposed definition.

12. We propose to focus the scope of our program on intentional radiators that generate and emit RF energy by radiation or induction.³¹ Such devices – if exploited by a vulnerability – could be manipulated to generate and emit RF energy to cause harmful interference. While we observe that any IoT device may emit RF energy (whether intentionally, incidentally, or unintentionally), in the case of incidental and unintentional radiators, the RF energy emitted because of exploitation may not be enough to be likely to cause harmful interference to radio transmissions.³² We seek comment on this view. Does this proposed definition unduly limit the devices that should be eligible for participation in the cybersecurity labeling program? Are there specific unintentional radiators or incidental radiators that should be included in the program, or should they be included generally?³³ Alternatively, should we consider adding these devices to the program at a later date? We also seek comment on any other ways in which our proposal might be limiting or should otherwise be expanded. For example, would the exclusion of wired-only IoT devices impact the success, usefulness and effectiveness of this labeling program and confuse consumers, rather than adequately informing them on IoT devices with appropriate network security standards?

²⁷ See *NISTIR 8259* at 27 (defining a transducer as “[a] portion of an IoT device capable of interacting directly with a physical entity of interest”).

²⁸ NIST Internal Report, NIST IR 8425, *Profile of the IoT Core Baseline for Consumer IoT Products* (Sept. 2020) at 23 (<https://nvlpubs.nist.gov/nistpubs/ir/2022/NIST.IR.8425.pdf>).

²⁹ *Id.* at 1.

³⁰ See *infra* section IIIF, Legal Authority.

³¹ 47 CFR § 15.3(o) (definition of “intentional radiator”); see generally 47 CFR § 15.3 for relevant definitions. The Commission’s regulations governing RF devices can be found in Part 15 of our rules, 47 CFR §§ 15.1 *et seq.*

³² 47 U.S.C. § 302a(a)(1) (“The Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations . . . governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications; . . .”).

³³ Under our Part 15 rules, an “unintentional radiator” is “[a] device that intentionally generates radio frequency energy for use within the device, or that sends radio frequency signals by conduction to associated equipment via connecting wiring, but which is not intended to emit RF energy by radiation or induction” 47 CFR § 15.3(z). An “incidental radiator” is “[a] device that generates radio frequency energy during the course of its operation although the device is not intentionally designed to generate or emit radio frequency energy. Examples of incidental radiators are dc motors, mechanical light switches, etc.” 47 CFR § 15.3(n). Certain digital and other devices are also exempted from “the specific technical standards and other requirements” of part 15, ostensibly due to the minimal risk of harmful interference that they pose. 47 CFR § 15.103.

13. To ensure that our program is able to be of greatest value to the consumer, we also seek comment on whether we should focus our cybersecurity labeling program on to IoT “products,” rather than IoT devices as defined above. For such purposes we could define an IoT product consistent with the NIST definition as follows: An IoT device and any additional product components (e.g., backend, gateway, mobile app, etc.) that are necessary to use the IoT device beyond basic operational features.³⁴ We seek comment on this proposed definition of an IoT product eligible for an IoT label.

14. Further, we seek comment on whether a program that addresses products (as opposed to just devices) would be more consumer friendly, as the public may find it easier to understand that the product (as a whole) they are looking to purchase meets the IoT security standards, rather than trying to parse which devices (i.e., parts of the product) meet applicable standards. Likewise, would limiting the label to devices create confusion with consumers who may not fully understand the label does not apply to the entire product? If the program only encompasses devices, should we differentiate our labeling in situations where a product contains multiple devices, and some devices are labeled and some are not? If so, how could we make this differentiation without causing consumer confusion? How do we mitigate consumer confusion if a device label is used in a common packaging environment? We seek comment on these issues.

15. We also seek comment on whether either definition fully accounts not only for the IoT device or product itself, but also the other components that make the IoT device functional and may be vulnerable to attack. For example, there is a category of IoT devices that do not connect directly to the customer’s home Wi-Fi network; instead, they connect to an intermediate communication device (i.e., Wi-Fi Gateway) which connects to the home Wi-Fi network.³⁵ What are the risks and vulnerabilities inherent in the communication between these types of IoT devices or products and their environment?³⁶ Are there other IoT devices or products that similarly have vulnerabilities that would be outside the scope of our proposed definition? Should such concerns be considered when adopting a definition for devices and/or products that would be eligible for the labeling program? If so, how?

16. Finally, we recognize that IoT devices and products have proliferated not only in the non-enterprise space, but also in the workplace from office settings to field settings, from medical settings to industrial settings. As such, we seek comment on whether to focus our IoT labeling program on consumer IoT devices or products intended for consumer use or include “enterprise” devices or products intended for industrial or business use, or to otherwise tailor the scope of devices and products covered by the labeling program based on their usage. If commenters propose that the program include a broader array of devices or products beyond the non-enterprise setting, what additional considerations should we take into account for these products or devices, including the relative sophistication and specific needs of the purchasers of these devices?

17. *IoT Products Excluded from the Commission’s Labeling Program.* Pursuant to the Secure and Trusted Communications Networks Act of 2019,³⁷ and the Commission’s rules,³⁸ the Commission’s Public Safety and Homeland Security Bureau (PSHSB) publishes and regularly updates a list of communications equipment and services produced or provided by specified entities (“Covered List”), which have been determined to pose an unacceptable risk to the national security of the United

³⁴ NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer IoT Products* at 3-4 (2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>.

³⁵ See, e.g., Govee, *Govee Wi-Fi Water Sensors Alarm*, <https://us.govee.com/products/wireless-water-leak-detector> (last visited July 17, 2023).

³⁶ See Internet Research Task Force (IRTF), *Request for Comments: 8576, Internet of Things (IoT) Security: State of the Art and Challenges* (IETF RFC8576) (Apr. 2019), <https://www.rfc-editor.org/rfc/pdf/rfc8576.txt.pdf>.

³⁷ Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601-1609 (*Secure Networks Act*)).

³⁸ 47 CFR §§ 1.50002, 1.50003.

States or the security and safety of United States persons (“Covered List”).³⁹ Beginning on February 6, 2023, the Commission no longer permits authorization of any applications for equipment certification of any equipment that has been identified as “covered” equipment on the Commission’s Covered List.⁴⁰ This decision did not, however, revoke any previously authorized equipment that now constitutes “covered” equipment, although it may do so in the future.⁴¹ In this proceeding, we propose to exclude from the labeling program any such previously authorized “covered” equipment. We seek comment on this proposal.

18. In light of this prohibition, we similarly propose to exclude from the program any communications equipment that now, or in the future, has been placed on the Covered List. We also propose to exclude any IoT device that is produced by an entity identified on the Covered List as producing “covered” equipment. Furthermore, we propose to exclude from the Commission’s labeling program any device or product from a company named on the Department of Commerce’s Entity List,⁴² the Department of Defense’s List of Chinese Military Companies,⁴³ or similar lists. The cybersecurity label has the potential to convey important information about a device or product’s security. We find it could be harmful to consumers to portray such a message on devices or products made by companies that our sister agencies have identified publicly as part of their national security review. We seek comment on this proposal and on other government lists we should consider. How can the Commission ensure any such proposed exclusion is implemented? Should applicants be required to include a written and signed attestation that the particular equipment for which they seek approval is not “covered” equipment (i.e., is not communications equipment that has been identified and placed on the Commission’s Covered List)? Are there other products or categories of products that we should explicitly exclude from the program?

C. Oversight and Management of the Proposed IoT Cybersecurity Labeling Program

19. As discussed above, we believe that close partnership and collaboration between the federal government, industry, and other stakeholders is vital to ensuring the success of the proposed voluntary IoT cybersecurity labeling program. Moreover, a collaborative environment that can leverage the expertise, incentives, and authority of various constituencies in this context would allow for the swift establishment and maturity of the program with broad industry and consumer acceptance that could adapt to a rapidly evolving threat landscape. As such, we propose a public-private partnership in the oversight and administration of this labeling program, subject to ultimate Commission supervision.

20. In seeking comment on the proposed IoT labeling program, we note that NIST identified several key elements of a potential labeling program. These include the use of certain recommended baseline product criteria (including both technical product criteria that promotes cybersecurity-related

³⁹ See *List of Equipment and Services Covered By Section 2 of The Secure Networks Act*, <https://www.fcc.gov/supplychain/coveredlist> (last updated Sept. 20, 2022).

⁴⁰ 47 CFR § 2.903. See, *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program*, EA Docket No. 21-233; ET Docket No. 21-232, Report and Order, FCC 22-84 (2022). In addition, as of February 6, 2023, new “covered” equipment can no longer qualify under part 15 rules as exempted from the need from an equipment authorization, and thus is prohibited from being imported, marketed, sold, or operated in the United States. *Id.*

⁴¹ *Id.*

⁴² See, e.g., Bureau of Industry and Security, U.S. Department of Commerce, *Supplement No. 4 to Part 744 – Entity List*, <https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file> (May 19, 2023).

⁴³ See, e.g., Entities Identified as Chinese Military Companies Operating in the United States in Accordance with Section 1260H of the William M. (“Mac”) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), Tranche 2, U.S. Department of Defense, <https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF> (Oct. 5, 2022).

capabilities and non-technical criteria providing important product information),⁴⁴ the use or development of requirements and/or standards that are informed by the recommended product criteria,⁴⁵ the establishment of a conformity assessment program to assess whether particular products satisfy the developed requirements and/or standards,⁴⁶ and the creation of labeling requirements for IoT products (a single label indicating that a product has met the baseline standard, as well as a means to access additional label information for the specific IoT product) that will aid in IoT purchasing decisions by enabling comparisons among products and providing important information about cybersecurity considerations.⁴⁷ NIST also noted that “one size does not fit all,” and that multiple solutions might be offered.⁴⁸

21. We propose to establish a program where the Commission would create and own a new distinctive trademark to be used in a voluntary program for IoT cybersecurity labeling and would take appropriate steps to authorize its overall use in a way that ensures the integrity of the mark and the label. We also propose to have third parties play integral roles in the management and administration of the labeling program. These entities would, for example, be authorized to conduct activities such as development of requirements or standards for consideration by the Commission, and assessment of IoT devices and products for conformity with those requirements or standards subject to supervision of the Commission. Subject to Commission oversight, third parties could evaluate and authorize the use of the Commission’s trademark on an IoT device or product. In this regard, we propose to incorporate and leverage the specialized expertise of third parties, where appropriate, into our standards, application and review procedures.

22. *Oversight and Management of the Labeling Program.* In NIST’s White Paper on a cybersecurity labeling program for consumer IoT products, it discussed the need for management and oversight of the overall labeling program. Specifically, it contemplated that there would be one entity (the “labeling scheme owner”) that would manage the labeling program, determine its structure and management, and perform oversight to ensure that the program is functioning consistently in keeping with overall objectives; further, this entity would be responsible for defining the conformity assessment requirements, developing the label and associated information, and conducting consumer outreach and education.⁴⁹ We seek comment on the appropriate entity or entities to serve in the oversight and management of the labeling program. Should the Commission be the scheme owner to oversee as well as manage the labeling program? If the Commission takes on the role of overseeing the labeling program,

⁴⁴ See, e.g., NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products* at 3-10 (2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>; NIST, *Report for the Assistant to the President for National Security Affairs (APNSA) on Cybersecurity Labeling for Consumers: Internet of Things (IoT) Devices and Software, A summary review of labeling actions called for by Executive Order (EO) 14028: Improving the Nation’s Cybersecurity* at 4-5 (2022), <https://www.nist.gov/system/files/documents/2022/05/24/Cybersecurity%20Labeling%20for%20Consumers%20under%20Executive%20Order%2014028%20on%20Improving%20the%20Nation%27s%20Cybersecurity%20Report%20%28FINAL%29.pdf> (NIST Summary Report).

⁴⁵ NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products* at 16 (2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>; NIST, *A summary review of labeling actions called for by Executive Order (EO) 14028: Improving the Nation’s Cybersecurity* at 1 (2022), <https://www.nist.gov/system/files/documents/2022/05/24/Cybersecurity%20Labeling%20for%20Consumers%20under%20Executive%20Order%2014028%20on%20Improving%20the%20Nation%27s%20Cybersecurity%20Report%20%28FINAL%29.pdf>.

⁴⁶ NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products* at 21 (2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>.

⁴⁷ *Id.* at 18-19.

⁴⁸ *Id.* at 1.

⁴⁹ NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer IoT Products* at 2 (2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>; see also NIST, *IoT Product Criteria* (May 24, 2022), <https://www.nist.gov/itl/executive-order-14028-improving-nations-cybersecurity/iot-product-criteria>.

should one or more third-party administrators, as detailed below, manage the tasks identified above or some portion of them? Or, should one or more third-party administrators be designated as the scheme owner(s), and if so, how should the Commission retain and exercise its oversight responsibilities?

23. *Use of Third-Party Administrator(s).* We seek comment on how one or more third-party administrator(s) might be utilized to manage some or all of the functions outlined above as NIST ascribed to the labeling program scheme owner, or how such an entity, or entities, might otherwise manage all or some elements of the envisioned labeling program to ensure effectiveness, efficiency, consistency, and timely implementation, subject to ultimate Commission supervision. We seek comment on the best approach for utilizing the respective levels of expertise that reside in the Commission, other federal government entities, industry, and other stakeholders. In particular, we seek comment on whether there are existing stakeholders, public or private, who are well situated to convene and develop the IoT security standards among stakeholders as to a particular IoT device or product, or classes of IoT devices or products, to ensure the consistency and fair administration of the proposed labeling program. Further, could a third-party administrator approve, or submit to the Commission for approval, more specific standards for conformance assessment of the proposed criteria, or for otherwise evaluating program applicants? Could a third-party administrator set the requirements for testing laboratories? Should the Commission consider designating a third-party administrator or other outside entity(ies) to authorize the use of the envisioned cybersecurity label, and if so, what oversight should it exercise, for example, to ensure the integrity of the mark and label?

24. If the Commission were to utilize one or more third-party administrator(s), we seek comment on how we should select such administrator(s). What qualifications should a third-party administrator possess, and how should the Commission intake and evaluate applications? What national security considerations are relevant to such qualifications? Should a third-party administrator(s) be required to have previous experience administering an IoT product or similar conformity assessment program? Given the diversity in IoT devices and products, would it be preferable for third party administrators to have varying areas of expertise? What level of control or oversight should the Commission retain, and what level of guidance should be provided? Are there entities in this space that should be considered for this role and, if so, why? Are there benefits to utilizing multiple third-party administrators versus a single administrator? If there are multiple administrators, how could the Commission ensure standards are consistently applied across similar devices and avoid conflict among administrators? How could the Commission reconcile the functionalities of each administrator to avoid conflict? Are there other attributes or qualities that the Commission should require of an administrator? For example, should the administrator be required to be a non-profit entity? Should the administrator establish that it would be neutral and independent, with no conflicts of interest (financial or organizational) on the part of the organization or its officers, directors, employees, contractors, or significant subcontractors? Should we direct PSHSB, coordinating with the Office of the Managing Director and the Office of Engineering and Technology, to develop and implement a selection or qualifications review process?⁵⁰

25. *Cybersecurity Labeling Authorization Bodies.* We seek comment on how IoT devices or products can demonstrate compliance with the IoT security standards, once they are developed. In the

⁵⁰ The Commission has exercised its right to delegate authority in other circumstances involving such technical matters. See, e.g., *Facilitating Shared Use in the 3100-3550 MHz Band*, Second Report and Order and Order on Reconsideration and Order of Proposed Modification, 36 FCC Rcd 5987, para. 163 (2021) (Commission delegated to the Wireless Telecommunications Bureau (WTB) authority to develop and implement a clearinghouse selection process and the authority to seek notice and comment on what adjustments to the procedures adopted by the Commission would be required to tailor them to the relocation in the proceeding); see also *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Systems*, Ninth Report and Order and Order, 21 FCC Rcd 4473, 4518, para. 83 (2006) (Commission delegated "to the WTB the authority to select one or more entities to create and administer a neutral, not-for-profit clearinghouse to administer the cost-sharing plan for the [Fixed Microwave Service] incumbents in the 2.1 GHz band").

context of the Commission's existing equipment authorization process, Telecommunications Certification Bodies (TCBs),⁵¹ which are accredited third parties recognized by the Commission,⁵² certify RF equipment based in part on testing for compliance with applicable technical RF requirements on behalf of the Commission and in accordance with the Commission's rules and standards. TCBs may then be subject to international Mutual Recognition Agreements which determine acceptance of their conformity assessment results by other countries. We anticipate that we could draw from this type of program's organizational structure to assess IoT devices and products for compliance with the IoT cybersecurity standards, once they are developed. In the context of IoT labeling, instead of RF-based testing and certification, we envision that third parties with expertise in security and compliance testing, as described below, could fill this role. We refer to these entities as Cybersecurity Labeling Authorization Bodies (CyberLABs) for purposes of this discussion. We seek comment on this proposal.

26. *CyberLABs Accreditation or Recognition.* We propose that the Commission or one of its authorized third-party administrators would evaluate, accredit, or recognize the CyberLABs based on their qualifications, resources, and procedures. If the Commission were to authorize third party administrators to evaluate, accredit or recognize these entities, what oversight would the Commission exercise over these entities or over the process? We seek to ensure that CyberLABs have the necessary expertise and resources to properly test and assess IoT devices and products compliance with the IoT security standards. To become accredited or recognized for the proposed IoT labeling program, we propose that a CyberLAB submit an application demonstrating that it meets the following requirements:

- **Qualifications:** The CyberLAB has technical expertise in cybersecurity testing and conformity assessment of IoT devices and products.
- **Resources:** The CyberLAB has the necessary equipment, facilities, and personnel to conduct cybersecurity testing and conformity assessment of IoT devices and products.
- **Procedures:** The CyberLAB has documented procedures for conformity assessment.
- **Continued competence:** Once accredited or recognized, CyberLABs would be periodically audited and reviewed to ensure they continue to comply with the IoT security standards and testing procedures.⁵³

We seek comment on this proposed process and accompanying qualifications. Are they an appropriate fit for our objectives? Are there other options we should consider? For example, could device manufacturers be allowed to perform testing and self-assessment subject to review by a third-party administrator or other entity? What additional qualifications, if any, should we seek in a CyberLAB seeking to perform such as testing and conformity assessments? What additional controls might be necessary, if any, to ensure a CyberLAB remains impartial when testing and assessing IoT devices and products with relevant standards? Should the Commission take into account any national security considerations, or adopt Character Qualifications for CyberLABs?⁵⁴ If so, what should these include? Would this accreditation or recognition process impact our existing, or future, Mutual Recognition

⁵¹ Telecommunications Certification Bodies (TCBs) are private entities that are recognized by the FCC to test and certify electronic devices on behalf of the FCC. TCBs are responsible for testing electronic devices to ensure that they comply with FCC regulations related to radio frequency emissions and safety. TCBs issue certifications to electronic device manufacturers that demonstrate compliance with FCC rules.

⁵² 47 CFR § 2.962(e).

⁵³ In addition to periodic audits, the FCC or its third-party administrator would also conduct random inspections of CyberLABs to ensure that they are complying with the IoT security standards and testing and label authorization procedures. Additionally, existing standards, e.g., ISO/IEC 17025 could be leveraged for developing qualifications for a CyberLAB. *General requirements for the competence of testing and calibration laboratories*, ISO/IEC 17025:2017 (Nov. 2017) (available at <https://www.iso.org/standard/66912.html>).

⁵⁴ See e.g., *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179 (1986), recon. granted in part and denied in part, 1 FCC Rcd 421 (1986) ("Character Policy").

Agreements and, if so, how might it be remedied to avoid such impact?⁵⁵ Should CyberLABs be located only in the United States? If the Commission should consider CyberLABs located outside the United States, what additional scrutiny, if any, should these entities be given during the Commission's accreditation process? Given the sensitive information that will be shared with CyberLABs, should accreditation or recognition include reviewing CyberLABs internal security practices? If requested by participating firms, should CyberLABs be required to provide information on their own security or internal practices to firms?

D. Development of IoT Cybersecurity Criteria and Standards

27. *Applying the Baseline NIST Criteria.* We seek comment on the adoption of the NIST's recommended IoT criteria as the basis for the proposed labeling program.⁵⁶ The NIST IoT criteria are based on product-focused cybersecurity outcomes, rather than specific requirements. NIST contemplates that "the outcome-based approach allows for the flexibility required by a diverse marketplace of IoT products" and the "role of the scheme owner is critical to ensure that supporting evidence demonstrates that the product meets the expected outcomes."⁵⁷ The NIST criteria include: (1) asset identification; (2) product configuration; (3) data protection; (4) interface access control; (5) software update; (6) cybersecurity state awareness; (7) documentation; (8) information and query reception; (9) information dissemination; and (10) product education and awareness.⁵⁸ NIST has noted that while the first six of these criteria generally concern certain technical product criteria, the last four concern non-technical product criteria.⁵⁹ How could NIST's IoT criteria, such as product configuration, interface access control, product education and awareness, data production, asset identification, software updates, cybersecurity state awareness, documentation, information and query reception, etc., be leveraged to inform minimum IoT security requirements and standards in a manner that is suitable for conformity assessments (e.g., for technical-related testing and non-technical verification) in appropriate circumstances, or for self-attestation in others? Are there other criteria we should consider? Are there separate criteria that should be considered for higher risk IoT devices or classes of devices?

28. *Standards Development Based on NIST Criteria.* We recognize that this conformity assessment program must be based on IoT security standards and testing requirements that the IoT devices and product must satisfy to be eligible to receive and use the label. We propose that the IoT security standards be developed jointly with the industry and other stakeholders. In this regard, there may be a number of expert Standards Development Organizations (SDOs), industry groups and government agencies that have both the technical expertise and other requisite experience to contribute to this task. We seek comment on whether the Commission or an outside entity is in the best position to convene these stakeholders, and to timely develop the more specific detail that would allow the consistent and replicable testing necessary to ensure the outcome based NIST IoT labeling criteria are fulfilled. Would the Federal Advisory Committee Act (FACA)⁶⁰ limit the Commission's ability to convene these stakeholders? We seek comment on this proposal.

⁵⁵ See *Equipment Authorization – Mutual Recognition Agreements*, <https://www.fcc.gov/general/equipment-authorization-mutual-recognition-agreements> for a list of current equipment authorization Mutual Recognition Agreements.

⁵⁶ See Appendix A (describing the NIST criteria).

⁵⁷ NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products* at 14 (Feb. 4, 2022), <https://doi.org/10.6028/NIST.CSWP.02042022-2>.

⁵⁸ *NIST White Paper* at 4-10 (Feb. 4, 2022); *NIST Summary Report* at 4.

⁵⁹ *NIST Summary Report* at 4-5.

⁶⁰ Federal Advisory Committee Act (FACA) of 1972, Pub. L. 92-463, 86 Stat. 770 (Oct. 6, 1972); Pub. L. 105-153 111 Stat. 2689 (Dec. 17, 1997) (codified at 5 U.S.C. ch. 10); 41 CFR pt 102-3 (Federal Advisory Committee Management).

29. We propose that the IoT security requirements and standards would be developed and implemented through the following process:

- Collecting information: Conduct research, consult with experts, and review existing standards such as those developed and in use by international organizations.
- Establishing requirements: Informed by the new data, develop requirements that will help meet NIST core baseline criteria.
- Develop the standard: With the requirements established, the standard can be developed. This will involve creating a document that outlines the requirements in a clear and concise manner and a clear mapping between the standards and the device or product criteria.
- Reviewing and improving: Ensure that the standard is comprehensive, clear, and suitable for lab testing.
- Implementation: Conduct training, testing, and monitoring to ensure that the requirements are satisfied.

We seek comment on the scope of this work and on this proposed process. What additional factors should be included or otherwise factored into this process? How can the Commission ensure that the views of small, women- and minority-owned businesses, including small IoT manufacturers, are considered in this process? Considering the amount of work that the industry, NIST, and international community have already completed in this area, how could this work be leveraged to promote the swift development of standards for IoT cybersecurity labeling? How long might this work take to complete? We seek comment on the shortest but most thorough path to accomplishing this work and the minimum amount of time it should take to develop the standards. We recognize there are other IoT security standards already available and seek comments on whether and why the Commission should consider their adoption. Are there standards for particular IoT devices or classes of IoT devices that are already sufficiently mature such that they could be readily – or more quickly – adopted? Should the program start with those devices or products?

30. We recognize that while the IoT cybersecurity label would not constitute a guarantee that the participating IoT product can withstand every single cyberattack, it should provide meaningful assurance to consumers that the IoT devices and products that display the label satisfy certain minimum cybersecurity standards and have specific cyber capabilities that demonstrably reduce relevant vulnerabilities appropriate to the class of device. As such, while participation in the IoT labeling program would be voluntary, the Commission proposes to require those who choose to participate to adhere to the specific standards described above, and as recognized by the Commission.

31. We observe that in other contexts, the Commission periodically incorporates by reference various standards established by standards-setting bodies including,⁶¹ but not limited to, the American National Standards Institute (ANSI), Accredited Standards Committee C63 (ANSC C63),⁶² and the

⁶¹ Incorporating external standards within the Commission's rules has been a longstanding practice that reflects our desire, where appropriate and consistent with the Administrative Procedure Act and other statutes, to harmonize the rules with international standards and aligns the Commission's rules with general federal agency guidance which urges government agencies to use industry-developed standards rather than develop their own. *See, e.g., Procedure for measuring electromagnetic emissions from digital devices*, GEN Docket No. 89-44, Further Notice of Proposed Rule Making, 6 FCC Rcd 600, 601, paras. 7-8 (1991); *see also* OMB Circular A-119, Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities (updated Jan. 27, 2016), <https://www.whitehouse.gov/omb/information-for-agencies/circulars/>. *See also* 47 CFR §§ 2.910, 2.950, 15.38. *See generally* Administrative Conference of the United States, Recommendation 2011-5, Incorporation by Reference.

⁶² American National Standards Institute, Accredited Standards Committee C63 is a standards organization that is responsible for developing electromagnetic compatibility (EMC) measurement standards and testing procedures.

(continued....)

International Organization for Standardization; and the International Electrotechnical Commission.⁶³ As the Commission has noted, use of industry-based standards in this context is intended to ensure the integrity of the measurement data associated with an equipment authorization. We recognize that, in addressing cybersecurity standards, timely adoption and speed are a prime benefit of a multi-stakeholder, industry-led approach, which militate in favor of a more streamlined process than the full Commission-level review described above. Accordingly, we propose if standards are developed by outside bod(ies), that they submit the IoT security standards for acceptance by the Commission prior to utilization for testing and other conformity evaluation. In this regard, we propose to direct PSHSB to place the standards on Public Notice for comment in accordance with the rulemaking requirements of the Administrative Procedure Act and, subsequent to reviewing any comments received, accept the standards as proposed or with amendments as warranted by the record. Is this sufficient, or do commenters believe a Commission-level rulemaking is needed? Alternatively, could an outside body adopt the standards and attest their conformity with the broader NIST criteria in a manner acceptable to the Commission, without the need for further action by the Commission? What other streamlined processes might be appropriate for prompt review and validation of IoT security standards?

32. *Conformity Assessments.* We seek comment on the process for assessing conformity of consumer IoT products and devices under the Commission's IoT labeling program. While we expect that third-party assessment (testing and other required assessment via CyberLAB, as discussed above) would provide an avenue for conformity assessment, we propose that other approaches also be considered. For example, NIST describes how different IoT conformity assessment activities could be leveraged to demonstrate that consumer IoT devices conform to technical requirements, either exclusively or in combination. In addition to third-party testing, assessment activities could also include the supplier's declaration of conformity/self-attestation of the consumer IoT device where a statement is issued based on a comprehensive review that an IoT device or product comply with the IoT security standards.⁶⁴ While the Commission's equipment authorization program has evolved over the years, as currently administered the program includes two procedures for equipment authorizations – certification and Supplier's Declaration of Conformity (SDoC).⁶⁵ Relevant technical RF-based standards listed in section 2.910 of the Commission's rules are incorporated by reference in Part 2.⁶⁶ The rules specify the obligations of the "responsible party" (e.g., the manufacturer or importer), including warranting that each unit of equipment marketed under the grant of certification or SDoC is materially identical to the unit that was tested or measured.⁶⁷ We seek comment on the extent to which any of these same procedures may be appropriate

ANSC C63's standards are published by the American National Standards Institute under the ANSI nomenclature. The Commission's rules have referenced various versions of ANSC C63-originated standards for more than a quarter century.

⁶³ The International Organization for Standardization (ISO) is an independent, non-governmental international organization that develops voluntary international standards. See *ISO*, <https://www.iso.org/home.html> (last visited July 17, 2023). The International Electrotechnical Commission (IEC) develops international standards for all electrical, electronic, and related technologies. See *International Electrotechnical Commission*, <https://www.iec.ch> (last visited July 17, 2023).

⁶⁴ NIST, Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products at 21 (2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>.

⁶⁵ Self-certification/attestation and SDoC are two different methods by which one can demonstrate compliance with regulations and standards. Self-certification is a process in which the manufacturer/supplier takes full responsibility for ensuring that their product is compliant, and they may conduct their own testing and evaluation to ensure compliance. SDoC is a document issued by a supplier of a product stating that the product complies with the relevant regulations and standards. In this process, the supplier typically relies on the testing and evaluation conducted by an accredited third-party laboratory such as a TCB.

⁶⁶ 47 CFR § 2.910.

⁶⁷ 47 CFR §§ 2.906 - 2.1077.

for the IoT labeling program. Are there other alternative procedures that are more suitable for the IoT labeling program context?

33. *Third-Party Compliance Testing and Assessment.* We propose that conformity assessments for IoT devices and products be based on compliance assessment (any testing and other requisite assessment) that includes supporting documentation and data submitted by the manufacturer or importer of the IoT device or product in question to a third-party such as a CyberLAB, and that the third party administrator could authorize the use of the IoT security label only for devices that meet the established IoT security standards. Should all IoT devices or products be required to pursue third party compliance assessment, or are there classes of IoT devices or products that should allow for self-attestation?

E. Administering the IoT Labeling Program

34. *Commission to Obtain Trademark.* We propose that the Commission utilize a certification mark to identify those products that meet the Commission's IoT labeling requirements. A certification mark is a type of trademark that is used to show consumers that particular goods and/or services, or their providers, have met certain requirements.⁶⁸ Specifically, the mark indicates that: (1) the owner of the mark controls who may use the mark; (2) the owner of the mark has determined that the user complies with a specific standard described by the owner of the mark; and (3) the owner of the mark does not itself produce the goods or services covered by the mark.⁶⁹ The Commission has applied for a mark with the United States Patent and Trademark Office (USPTO), and as the owner of the mark, should this proposal be adopted, will ensure that the IoT products and devices bearing the mark meet FCC-approved cybersecurity labeling program requirements. We also seek comment on whether the Commission should permit outside entities to authorize use of the mark where the terms of the program are met and what measures are necessary to ensure that the Commission is effectively controlling the use of the mark for purposes of trademark law.

35. *Commission IoT Label.* We propose to implement a single binary label with layering.⁷⁰ Under a binary label construct, products or devices will either qualify to carry the label or not qualify (i.e., not be able to carry the label)⁷¹ and "layers" of the label would include the Commission's IoT mark representing that the product or device has met the Commission's baseline consumer IoT cybersecurity standards and a scannable code (e.g., QR code) directing the consumer to more detailed information of the particular IoT product.⁷²

36. We seek comment on where authorized program participants should affix the security IoT label. If the Commission's program addresses devices (rather than products), should it be affixed on each IoT device or on the product packaging? Should equipment that includes a user display screen be

⁶⁸ 15 U.S.C. § 1127; United States Patent and Trademark Office, *Mark applications*, <https://www.uspto.gov/trademarks/apply/certification-mark-applications> (last visited July 17, 2023).

⁶⁹ 15 U.S.C. § 1064(5); Trademark Manual of Examining Procedure (TMEP) § 1306.01(a).

⁷⁰ NIST, Recommended Criteria for Cybersecurity Labeling of Consumer Software at 25 (2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-1.pdf> (recommending that "a binary label (a single label indicating a product has met a baseline standard) should be adopted for a software cybersecurity label").

⁷¹ The ENERGY STAR program provides a single binary label if products meet the energy efficiency requirements set forth in ENERGY STAR product specifications. For example, with the ENERGY STAR program, "[i]f the rated home is 15% more energy efficient than a home built to the 2004 International Residential Code (IRC), then it receives the label; if it is not more than 15% more efficient than the 2004 IRC, then it does not receive the label." Department of Energy, *Rating Review Process* (June 1, 2010), https://www.energy.gov/sites/prod/files/2013/11/f5/existing_labels.pdf.

⁷² QR codes have become increasingly popular as a way to provide quick access to information, such as website URLs, product information, and contact details. QR codes are made up of black and white squares arranged in a square grid and can represent much more information than traditional barcodes.

permitted to display the label on the user display screen rather than on the device itself? Should there be limitations or prescriptions on how companies and third-party resellers can use the mark in advertising or sales displays, products or websites? We also seek comment on other approaches with regard to what the label should display and where the label should be placed.⁷³

37. *Layered Information.* We seek comment on the use of a QR code or URL to enable consumers to access more detailed information about the device or product, including specific security information, such as the device manufacturers' level of support, software update history, privacy policy, and similar information. To provide consumers with uniform information and minimize the potential for consumer confusion, we propose that there be a single IoT device or product registry associated with the Commission's IoT cybersecurity labeling program, and that any QR code or URL included with the FCC IoT mark provide a link to the IoT product's specific webpage within this IoT registry. We propose to prohibit any additional QR codes or URLs be placed in connection with the Commission's IoT mark. We believe that this would help ensure the integrity of the Commission's IoT label. If third parties are authorized by the Commission to grant use of the cybersecurity IoT label, should the Commission also permit them to generate and specify the QR code and the URL that can be placed next to the FCC IoT mark and require them to prevent the program participants from affixing other QR codes or URLs next to the FCC mark? Should the use of the IoT mark be prohibited without the associated QR code or URL? What information must a company include if they reference the IoT mark in product listings or descriptions? What alternative approaches should we consider?

38. *QR Code.* We propose that the FCC IoT label include a QR code that contains consumer-friendly information that is available without Internet connection in addition to a URL to the device's or product's registry page, which is discussed below.⁷⁴ In order to prevent consumer confusion and allow for easy comparison among devices or products, we also propose that the information contained within the QR code for each certified device or product be uniform and include information that is helpful to non-expert, home users of IoT devices and products. In this way, the label would be able to impact consumer purchasing decisions, which are oftentimes made under time pressure while the consumer is at the store choosing between products. We propose the QR code include a description of the device's security (e.g., easy to understand explanation of what security standards the device meets, and how these standards protect the consumer). We also propose the QR code include a statement that while the label indicates the device or product meets certain cyber security criteria that reduce risk, it does not eliminate risk entirely and the label does not imply product endorsement by the label program and that the consumer is encouraged to visit the product registry linked by the URL provided therein to get the most up-to-date security and other information related to the IoT device or product. We seek comment on this proposal and what additional or other information should be embedded in the QR code to be of benefit to consumers.

39. Given the static nature of the information stored in the QR code, we urge commenters to consider the types of information that would be appropriate for consumer decision-making without

⁷³ The OPEN Government Data Act, Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), requires agencies to use a machine-readable format when making data publicly available. See 44 U.S.C. § 3506(b)(6); *id.* §§ 3502(17), (20), (22) (defining "data asset," "open Government data asset," and "public data asset"). The term "machine-readable," when used with respect to data, means "data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost." 44 U.S.C. § 3502(18).

⁷⁴ While we think the use of a QR code is appropriate in conjunction with the layered labeling approach we are proposing here, we acknowledge that we previously rejected its use in other contexts, such as the required labeling under our equipment authorization rules. We are not proposing to revisit those decisions in the context of this proceeding. Similarly, we intend our proposals to operate distinct and separate from the provisions for the electronic labeling of radiofrequency devices contained in our equipment authorization rules (47 CFR § 2.935), and seek comment on whether we need to adopt or modify our rules accordingly.

needing to have the information stored in the QR code updated. Alternatively, the QR code could merely provide a link to the IoT registry page for the device or product in question, discussed below.

40. We propose to require that the manufacturer disclose the guaranteed minimum support period for an IoT device or product, during which the manufacturer commits to identify and patch security vulnerabilities in the product.⁷⁵ While we recognize the length of such a support period is at the discretion of the manufacturer, and may even be zero, we seek comment on the benefits and drawbacks of requiring a manufacturer to disclose, via the label or associated registry entry, the length of time that an IoT device or product would be supported, and the level of support provided. Should they also be required to disclose whether all or only critical patches will be supported, the regularity with which such patches are made available, whether they are automatically deployed, or what additional steps a consumer may need to take to remain secure when support ends? Should we require the manufacturer to provide notice when that support ends? How can we ensure this information is meaningful to consumers? We seek comment on these options and any alternatives to help provide consumers with necessary, accurate, and timely information.

41. *IoT Registry.* We propose the use of an IoT registry where the public may access a catalog of devices or products that are approved pursuant to the Commission's IoT labeling program. This IoT registry would be accessible via the Internet and serve as a one-stop reference for the public to understand which products in the market bear the IoT label (e.g., consumers could check the registry before they shop). The IoT registry could contain IoT security-related information that is sortable and searchable by manufacturer or brand, device or product vendor, device or product name, model number, firmware/software build version, and other identifying variables, such as a unique asset identification number. We seek comment on this approach. Are there any similar product registries that have already been established or that are being initiated, and that might be leveraged for these purposes? Should the Commission consider selecting and overseeing a third-party IoT registry administrator, and if so, how could such an administrator be funded? Should there be more than one administrator or more than one registry, and if so, how should we ensure that accurate, up to date, and complete information is contained in each of them? Should it be the same third-party administrator contemplated to manage the other aspects of the labeling program as described herein?

42. The QR code and/or the URL associated with the IoT label would include a link to the IoT registry, which would provide detailed information on the IoT product through the product's webpage within the IoT registry. We seek comment on what information should be included within the IoT registry and associated with the QR codes. If the URL is the sole piece of information associated with the QR code, how should registry information be presented or organized to ensure consumer-friendliness?

43. We propose that, among other information, the IoT registry might provide the following information for each approved device or product: 1) how to operate the device securely (e.g., basic cyber hygiene to include changing default passwords) and, if applicable, what level of security the device or product has achieved; 2) whether the product's security settings are protected against unauthorized changes, including disabling its security; 3) where the device was manufactured; and 4) when the registry information for the device was last updated. What other information should be included? Would the information included in the CMU IoT Security and Privacy Label (CMU Label) be an appropriate model for each IoT product's listing provided within the IoT registry?⁷⁶ CMU Labels are divided into three major sections: 1) security mechanisms, 2) data practices, and 3) more information, with various data fields under these sections (e.g., security updates, access control, sensor type, privacy policy,

⁷⁵ See NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer IoT Products*, at 10 (Feb. 4, 2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>.

⁷⁶ See, generally, Carnegie Mellon University, *IoT Security & Privacy Label*, iotsecurityprivacy.org; see also, Pardis Emami-Naeni, Yuvraj Agarwal, & Lorrie Cranor, Carnegie Mellon University, *CMU IoT Security and Privacy Label*, https://iotsecurityprivacy.org/downloads/CMU_IoTLabel_handout.pdf.

manufacturer contact information, and platform compatibility).⁷⁷ CMU Labels often link to external sites, such as manufacturers' websites, to provide more detailed information. Would linking to external websites, over which the Commission would have no oversight or control, be appropriate for the Commission's IoT labeling program and the IoT registry? How could we ensure the content of the information provided in the external links is accurate and up-to-date? Are there additional exemplary labels that the Commission should consider? What other additional details should be disclosed to inform consumers of cybersecurity risks underlying the IoT product? What details can potentially be omitted? How can the Commission otherwise ensure the information provided in the IoT registry is meaningful and understandable by consumers?

44. We further ask whether such IoT registry might also be used by retailers to assist them with choosing products that carry the IoT label for sale in their stores and whether retailers may use the registry to confirm that the products that they market legitimately bear the FCC's IoT label. If so, should the registry maintain different sets of information for general consumers and retailers? What additional information would retailers want to see but is not relevant to general consumers?

45. *Updating Information.* We seek comment on how to ensure consumers are not misled by the meaning of the IoT label and can obtain up-to-date information about their device or product. Unlike other labeling programs, such as the Commission's Broadband Consumer Label,⁷⁸ or the ENERGY STAR label,⁷⁹ the Commission's labeling program addresses cybersecurity risk, which is constantly changing and requires constant updating. For example, if a new vulnerability is discovered, the product would remain insecure until that newly discovered vulnerability is patched. We propose that consumers be made aware of any vulnerabilities or updated product information through the IoT registry. That way, once the product's webpage within the IoT product registry is updated to indicate that the authorization to use the mark is outdated, and/or the device is no longer maintained/updated, the consumer can understand this information by accessing the webpage using the QR code and/or the URL provided next to the FCC IoT label. Should we impose a duty on manufacturers or importers of the IoT devices and products to notify the IoT registry operator when they become aware of an unpatched vulnerability that poses security risks to their IoT devices and products? Are there other events that should trigger IoT product manufacturers or importers to notify the registry operator that their IoT registry device or product page should be updated?

46. We seek comment on these proposals, and on any other ways to ensure consumers have up-to-date information regarding IoT devices or products labeled under the program, as well as have an understanding that the FCC cybersecurity label is not a guarantee against all cybersecurity threats. What additional information might be warranted to help minimize the potential for customer confusion?

47. *Application/Renewal.* We propose that IoT label applicants file for renewal each year, together with supporting evidence that the products still meet the FCC's IoT requirements, as tested and administered by the CyberLABs or as self-attested. In this regard, we seek to ensure consumers have up-to-date information regarding the participating device or product, and to address end-of-life issues for devices previously approved, but that no longer warrant continued authorization to use the label. Should the label include the specific date, or the year, the label was awarded to help notify consumers how fresh the authorization is? Should the FCC IoT labels on the device or product have an expiration date? How

⁷⁷ In the security mechanisms section, certain key security information such as security updates, access control, vulnerability disclosure and management, encryption and key management are disclosed. In the data practices section, certain privacy related information such as types of sensors used, data storage policy, and data retention policy and other privacy policy are disclosed. In the more information section, additional information such as phone number and email address for the device manufacturer and information on product compatibility is provided.

⁷⁸ *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (2022) (*Broadband Label Order*).

⁷⁹ Dept. of Energy, *How a Product Earns the ENERGY STAR Label*, <https://www.energystar.gov/products/how-product-earns-energy-star-label> (last visited July 17, 2023).

do we ensure consumers are aware of when a device with an FCC IoT label is no longer maintained and/or updated by manufacturers, and may no longer meet up-to-date cybersecurity requirements?

48. We seek comment on this proposal to employ a renewal process. Should the Commission consider other timeframes on a shorter or longer basis? Should there be an event in the product's life-cycle or a security event that should trigger the applicant to file for an early renewal? When would such an event trigger early renewal, versus filing updated information with the program administrator and updating the IoT registry? Similarly, are there incidents or developments that might warrant the removal of the IoT cybersecurity label, and what might those circumstances be? After the IoT device or product is authorized for the first time, what supporting documents should the program participants provide to validate and renew their authorization to use the label? Must it be retested annually? How should the IoT registry reflect that an authorization to use the label is out of date?

49. We also seek comment on the interplay between the proposed IoT cybersecurity labeling program and our current equipment authorization rules. Given that the review process for the proposed program will likely not be administered in the same manner, and by the same entities, as are involved in our equipment authorization program, we propose that they generally operate in a distinct manner. However, given that equipment subject to the requirements of our equipment authorization rules must satisfy those rules before they can be manufactured and sold in the United States, we propose that approval be granted under the cybersecurity labeling program only after any applicable requirements of the equipment authorization rules have been satisfied for the relevant device or product. We seek comment on these proposals and on any other ways in which we should address the potential interplay between the proposed IoT cybersecurity labeling program and our current equipment authorization rules.

50. *Costs.* The Commission permits TCBs to establish and assess fees for processing equipment authorization applications and conducting other Commission-required tasks.⁸⁰ We anticipate that similarly situated third parties in this program may wish to charge for their services and seek comment on whether there is any oversight the Commission needs to exercise over such charges. Further, we propose, that when a proposed grant of labeling authority is submitted to the FCC for action it should be accompanied by an application fee pursuant to our authority under section 8 of the Communications Act.⁸¹ We propose to follow the fee calculation methodology adopted by the Commission in the *2020 Application Fee Report and Order*.⁸² We seek comment on this proposal and any changes or modifications we should consider here.

51. *Investigation, Disqualification, and Enforcement.* Ensuring that the label remains a trusted and valuable resource to purchasers requires that the integrity of the devices and products bearing the label is maintained. As such, we seek comment on how to enforce the labeling program requirements. To the extent that non-Commission entities are better situated to perform, and receive approval to perform, certain functions, should they also be required to conduct a certain number of random audits of the certified IoT devices and products to confirm that they are in compliance? Are there types of market

⁸⁰ 47 CFR § 2.962(f)(3).

⁸¹ 47 U.S.C. § 158. Section 8(c) of the Act requires the Commission to, by rule, amend the application fee schedule if the Commission determines that the schedule requires amendment so that: (1) such fees reflect increases or decreases in the costs of processing applications at the Commission or (2) such schedule reflects the consolidation or addition of new categories of applications. 47 U.S.C. § 158(c). Section 8(c) of the Act does not mandate a timeframe for making any such amendments under section 8(c). If the Commission determines that the application fee schedule may require an amendment pursuant to section 8(c), the Commission will initiate a rulemaking to seek comment on any proposed amendment(s) to the application fee schedule. We do so here.

⁸² *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089, 15127, para. 115-117 (2020). Application fees are adjusted every two years to reflect changes in the Consumer Price Index. See, e.g., *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Order, FCC 22-94 (2023).

surveillance that should be conducted, and by whom? Should we allow consumer or third-party complaints? Should the Commission or other entities accept and process such complaints? What should the Commission's role be in audit and oversight? For any non-compliance, we could rely on a combination of enforcement procedures such as administrative remedies under the Communications Act (e.g., show cause orders, revocation proceedings, forfeitures, consent decrees, cease and desist orders,⁸³ and penalties⁸⁴) or civil litigation for breach of contract or trademark infringement, in which the Department of Justice (DOJ) would participate.⁸⁵ As noted above, we also seek comment on what, if any, additional measures are necessary to ensure that the Commission is effectively controlling use of the certification mark for purposes of trademark law. What enforcement measures would be appropriate for firms that falsely put the IoT certification mark or label on their products? How would it be enforced if firms are outside of the United States? In the more contractual context of the ENERGY STAR program, EPA has set out certain Disqualification Procedures that it would apply if a product fails third-party verification testing, or if it fails subsequent Department of Energy (DOE) appliance testing or in the event of product nonconformity.⁸⁶ In particular, this process gives the ENERGY STAR Partner notice and an opportunity to dispute the assessment with EPA before a formal disqualification decision is made.⁸⁷ The Disqualification Procedures specify certain steps that ENERGY STAR Partners must take in the event of a disqualification (e.g., removing references to ENERGY STAR in the product labeling, marketing, etc.).⁸⁸ Should we adopt a similar disqualification procedure under our rules? What enforcement measures would be appropriate in addition to revoking authorization to use the IoT label? What procedures or consequences should apply where a device or product was certified under one set of standards but is not capable of meeting a new or updated standard adopted later? How should the participants address the products that have the IoT security labels affixed to their products when their products become non-compliant? If an applicant is denied authority to use the Commission's IoT label, should they be able to appeal that decision? We also seek comment on any recordkeeping and audit requirements for compliance review purposes.⁸⁹

52. Conversely, where a program participant has received authorization to utilize the Commission's IoT Label and has appropriately maintained the device's security measures, does this represent an indicium of reasonableness that might serve as a defense or safe harbor against liability for damages resulting from a cyber incident, e.g., data breach, denial of service, malware? While we clarify that we do not intend at this time for the labeling program in and of itself to preempt otherwise existing law, are there other affirmative measures that the Commission should consider adopting that should be afforded to devices that have achieved and maintained a Commission IoT security label?

53. *Consumer Education.* We expect that the success of this program will rely upon a robust education campaign with shared responsibilities among the scheme owner, manufacturers, retailers, industry, and non-profit security groups to promote label recognition, brand trust, and transparency of what the Commission's IoT cybersecurity label means. We seek comment on whether the education

⁸³ 47 U.S.C. § 312(b).

⁸⁴ 47 U.S.C. § 503(b)(1).

⁸⁵ 28 U.S.C. §§ 516, 519.

⁸⁶ See Disqualification Procedures ENERGY STAR® Products, (Last updated: Feb. 28, 2018) https://www.energystar.gov/sites/default/files/asset/document/Disqualification_Procedures_0.pdf.

⁸⁷ *Id.* at 1.

⁸⁸ *Id.* at 2.

⁸⁹ See, e.g., 47 CFR § 2.2.938 (imposing record retention requirements for certain categories of documents related to equipment authorizations); 47 CFR § 2.962(g) (requiring TCBs to engage in post-market surveillance).

campaign used should be comprised of the consumer education materials recommended by NIST,⁹⁰ which include providing consumers online access to information addressing:

- Intent and Scope: What the label does and does not mean, including addressing potential misinterpretations (e.g., stating that meeting the label security criteria reduces risk but does not eliminate it entirely, and that labeled products are not necessarily more secure than unlabeled products); and a statement that the label does not imply product endorsement by the Commission;
- Product Criteria: The cybersecurity properties that must be met for a device to have the Commission label and how and why these properties were selected; including information on how the criteria address security risks both to the consumer and to others for common intended uses of the products;
- A glossary of applicable technical terms written in plain English;
- General information about conformity assessment and how cybersecurity properties are evaluated;
- Declaration of Conformity: The device's specific declaration of conformity to the IoT security standards, including the date the label was last awarded;
- Scope: The kinds of devices eligible for the label and an easy way for consumers to identify labeled devices;
- Changing applicability: The current state of device labeling as new cybersecurity threats and vulnerabilities emerge;
- Security considerations for end-of-life IoT devices and implications for functionality if the device is no longer connected;
- Expectations for consumers: The responsibility consumers share in securing the device software and how their actions (or inactions) can impact the device's software cybersecurity; and
- Contact information for the labeling program and information on how consumers can lodge a complaint regarding a product label.

54. The Commission seeks comment on anticipated costs of such a consumer education campaign particularly with regard to upfront costs that will be incurred to start the program. We also seek comment on mechanisms for conducting the outreach consistent with the constraints on federal outreach⁹¹ and the possibility of public or private partnerships that may facilitate a consumer education campaign.

55. *Integrity of the National Government-based IoT Cybersecurity Label.* We seek comment on ways to avoid consumer confusion between the government-based IoT cybersecurity label and existing and future IoT cybersecurity labeling schemes such as UL and IoT Security Trust Mark.⁹² What features and assurances can the Commission's label provide to improve customer awareness of the security of a given IoT device? Alternatively, should the FCC label act as an aggregator for other labeling programs ensuring that these programs meet the IoT security standards in addition to any wider or sector specific

⁹⁰ NIST, *Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products* at 19-20 (Feb. 4, 2022), <https://doi.org/10.6028/NIST.CSWP.02042022-2>.

⁹¹ A number of appropriations riders apply to agency outreach and publicity efforts. *See, e.g.*, Division E - Financial Services and General Government Appropriations Act, 2023, Title V—Independent Agencies, Federal Communications Commission, Salaries and Expenses of the Consolidated Appropriations Act, 2023 –Pub. L. No. 117-328 (12/29/22) (sections 630, 631, 715 and 718 contain limitations on publicity).

⁹² *See* UL Solutions IoT device security rating program at <https://www.ul.com/services/ul-verified-iot-device-security-rating> and IoT Security Trust Mark certification program at <https://iotsecuritytrustmark.org/>.

security needs the scheme owners feel necessary. What about other labeling programs in other countries? How should the Commission coordinate and engage with other international bodies maintaining labeling programs to develop recognition of the Commission's IoT Label, and where appropriate, mutual recognition of those international labels? Our proposal seeks to implement this program for devices or products for sale in the United States. What steps, if any, should we take to ensure the FCC label is not mistaken for compliance with IoT security or RF-emission standards in other countries?

56. *Accessibility.* The Commission emphasizes its continued commitment to ensuring that the labeling program is accessible and usable by individuals with disabilities. With respect to the Commission's Broadband Consumer Label, in 2022, the Commission noted that the Consumer Advisory Committee (CAC) determined that participating providers can best ensure accessibility to printed and online information by relying on well-established legal requirements included in the Americans with Disabilities Act and by following the guidance developed by the Web Accessibility Initiative.⁹³ We seek comment on whether relying on these guidelines provides the best likelihood of ensuring that consumers with disabilities will be able to access necessary information about their IoT devices or products. We seek comment on how best to ensure that any adopted IoT cybersecurity label is accessible to persons with disabilities.

F. Legal Authority

57. We tentatively conclude that the Commission has authority to adopt the proposed IoT labeling program. In particular, section 302(a) of the Communications Act authorizes the FCC "consistent with the public interest, convenience, and necessity, [to] make reasonable regulations (1) governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications; . . ."⁹⁴ While this program would be voluntary, entities that elect to participate would need to do so in accordance with the regulations the Commission adopts in this proceeding, including but not limited to the IoT security standards, compliance requirements, and the labeling program's operating framework. We tentatively conclude that the standards the Commission proposes to apply when administering the proposed labeling program fall within the scope of "reasonable regulations . . . governing the interference potential of devices . . ."⁹⁵ We seek comment on this reasoning.

58. The Commission has exercised authority in other contexts to secure both software and firmware to prevent unauthorized modification that would compromise a device or the data it transmits. For example, in adopting technical rules for the Citizens Broadband Radio Service (CBRS), the Commission required end user devices to "contain security features sufficient to protect against modification of software and firmware by any unauthorized parties" and required that such devices "be able to protect the communication data that are exchanged between these elements."⁹⁶ The Commission adopted a further obligation for identified security vulnerabilities to be resolved on a going-forward basis, and encouraged industry to develop best practices for end-to-end security that can be validated through the certification process.⁹⁷ By way of further example, in the 5 GHz band, the Commission, noting the potential for reprogramming of unlicensed national information infrastructure (U-NII) devices to operate outside of authorized device parameters, similarly adopted security measures requiring manufacturers to

⁹³ FCC 22-7, para. 27.

⁹⁴ 47 U.S.C. § 302a(a).

⁹⁵ *Id.*

⁹⁶ *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550- 3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 4033-4034, para. 240 (2015).

⁹⁷ *Id.*

prevent software changes that would result in this outcome.⁹⁸ Declining to mandate specific software security measures, the Commission required manufacturers instead to document their methods.⁹⁹ In addition, the Commission's rules require security protocols and procedures to ensure the integrity of transmission related between and among white space devices and databases.¹⁰⁰

59. Our proposed labeling program rules are intended to ensure that IoT devices have implemented certain minimum cybersecurity protocols to prevent their being hacked by bad actors who could cause the devices to cause harmful interference to radio communications.¹⁰¹ As noted above, in the 5 GHz context, the Commission identified concerns about security vulnerabilities that could, if exploited, lead equipment to operate outside established parameters, with the associated risk that doing so could cause harmful interference. As also noted above, interference issues also could arise if security vulnerabilities were exploited to use a device as an interference generator, or to transmit at times and intervals selected by the attacker to interfere with other devices.¹⁰² We anticipate that this could be a more pervasive risk, and we seek comment on that predictive judgment. Furthermore, under the Act, the Commission's other obligations in this regard can encompass not only the prevention of interference to other devices, but the need to mitigate against the risk of interference to covered equipment.¹⁰³ In this regard, and in considering the potential need to encompass not only devices but, ultimately, products in order to adequately secure the IoT ecosystem and empower consumer choices, we believe such an approach is reasonable under sections 333 and 302(a) of the Act.

60. In particular, we also seek comment on the authorities that would support including additional IoT products and devices within the proposed IoT labeling Program. For example, section 302(a)(2) of the Act provides the Commission with the authority to adopt reasonable regulations “establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy.”¹⁰⁴ Does this authority support reasonable regulations that may include the regulations proposed herein? Section 333 states: “No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government.”¹⁰⁵ Does this authority, possibly coupled with other provisions, provide a basis for the Commission's proposed action? Is our proposal necessary or reasonably ancillary to the execution of our implementation of any or all of these statutory responsibilities?¹⁰⁶

⁹⁸ *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 13-49, First Report and Order, 29 FCC Rcd 4127, 4143, para. 54 (2014).

⁹⁹ *Id.* See also 47 CFR §§ 2.1033(b)(13) (requiring applications for certification of scanning receivers to describe the methods used to comply with requirements that they be incapable of being modified in a way that would allow them to receive cellular frequencies), 15.407(i) (requiring U-NII devices to contain security features to protect third parties from reprogramming a device to operate outside the parameters for which it was certified; providing a non-exclusive list of means for doing so).

¹⁰⁰ See 47 CFR § 15.713(1).

¹⁰¹ See also 47 U.S.C. § 333 (“No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government.”).

¹⁰² See *supra* para. 12.

¹⁰³ See *id.* See also *Principles for Promoting Efficient Use of Spectrum and Opportunities for New Services; Promoting Efficient Use of Spectrum through Improved Receiver Interference Immunity Performance*, ET Docket Nos. 23-122, 22-137, Policy Statement, FCC 23-27 (April 20, 2023).

¹⁰⁴ 47 U.S.C. § 302a(2).

¹⁰⁵ 47 U.S.C. § 333.

¹⁰⁶ See 47 U.S.C. § 154(i); *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

61. Is it reasonable for our labeling program to not only guard against the risk that covered devices and products cause harmful interference, but also to guard against other risks, including the risk of interference to those covered devices and products consistent with policy goals underlying sections 302(a)(2) and 333 of the Act? For example, we tentatively conclude that the Commission’s authority to adopt “reasonable regulations” to guard against harmful interference under section 302 of the Act authorizes a labeling program that applies a set of criteria or standards that address not only risks of harmful interference *from* the products or devices subject to labeling but also other harms, such as the risk of harmful interference *to* such products or devices—particularly where the relevant criteria or standards were designed or intended to be applied as a package or collectively.

62. We also tentatively conclude that our authority under section 302(a)(1) of the Act to adopt reasonable regulations consistent with the public interest to guard against interference provides us flexibility to tailor the proposed labeling program in other ways. For example, we believe that, in adopting reasonable regulations consistent with the public interest under section 302, we have authority to exclude equipment from the Covered List from participating in the voluntary labeling program, consistent with the objectives of sections 2(a) and (d) of the Secure and Trusted Communications Networks Act of 2019.¹⁰⁷ We further tentatively conclude that our section 302 authority likewise enables us to rely on third parties in carrying out the implementation details of the proposed labeling program. In particular, section 302(e) of the Act authorizes the Commission to delegate equipment testing and certification to private laboratories, and we note in that regard that the Commission already has relied in part on third parties in carrying out its equipment authorization rules. We also seek comment on whether our authority to adopt reasonable regulations in the public interest to carry out the objectives of section 302 authorizes us to rely on a third party IoT registry administrator as well as rely on third parties to perform some of the functions described above.

63. We also seek comment on whether section 301 of the Act also provides the Commission with authority to include in its labeling program IoT products and devices that might receive harmful interference from an unauthorized cyber event. We also recognize, for example, that cyberattacks utilizing IoT vulnerabilities may not only give rise to harmful interference concerns, but can also effectuate physical threats to the world around us – degrading wireless networks, for example, changing service settings on our smart appliances, or – more catastrophically – shutting down an industrial control system. Are there additional authorities that support the inclusion of additional IoT products and devices that do not emit RF externally for purposes of communications, such as unintentional or incidental radiators, or wired-only IoT?

64. We seek comment broadly our legal authority under the Communications Act, or any other source, to implement the proposed voluntary IoT labeling program, including its authority pursuant to Titles II and III as well as its authority under section 4(i) of the Communications Act, as amended, to “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”¹⁰⁸ which includes “the purpose of promoting safety of life and property.”¹⁰⁹

65. We further seek comment on how the Commission may utilize enforcement authorities under the Act, including the potential imposition of penalties under section 503 and cease and desist orders under section 312 for those entities that voluntarily participate in the labeling program, but fail to continue to comply with the Commission’s regulations. Would participants in the labeling program already be holders of authorizations within the meaning of section 503(b)(5) of the Act, or are there steps the Commission should take to structure the labeling program so that participation would itself satisfy that provision? Are there any additional avenues for enforcement or oversight of the program’s participants or

¹⁰⁷ 47 U.S.C. § 1601(a), (d).

¹⁰⁸ 47 U.S.C. § 154(i).

¹⁰⁹ 47 U.S.C. § 151.

of a third-party security certifying body? What trademark remedies are available to the Commission? Are there other agencies that might contribute to program enforcement?

G. Promoting Digital Equity

66. The Commission, as part of its continuing effort to advance digital equity for all,⁸⁴ 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 considerations⁸⁵ 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 as the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

67. *Paperwork Reduction Act.* This document 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 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.

68. *Ex Parte Rules - Permit-But-Disclose.* This proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹¹⁰ 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.

69. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹¹¹ 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."¹¹² Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B.

¹¹⁰ 47 CFR §§ 1.1200 *et seq.*

¹¹¹ *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

¹¹² *Id.*

Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

70. *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: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹¹³
- 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.

71. *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).

72. *Additional Information.* For further information regarding the Notice, please contact Erika Olsen, Acting Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-2868, or by email to erika.olsen@fcc.gov; or James Zigouris, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-0697, or by email to james.zigouris@fcc.gov.

V. ORDERING CLAUSES

73. Accordingly, IT IS ORDERED that pursuant to Sections 1, 2, 4(i), 4(n), 301, 302, 303(b), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(n), 301, 302a, 303(b), 312, 333, 503; the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. § 278g-3a to § 278g-3e; that this *Notice of Proposed Rulemaking* IS hereby ADOPTED.

74. IT IS FURTHER ORDERED that the 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.

¹¹³ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Within the scope of a consumer IoT product, the following baseline product criteria are recommended by NIST to define the cybersecurity outcomes expected of IoT products and IoT product developers as part of a consumer IoT product labeling program. Most criteria concern the IoT product directly and are expected to be satisfied by software and/or hardware means implemented in the IoT product. Some criteria apply to the IoT product developer rather than to the IoT product directly. These criteria are expected to be satisfied through actions and supported by assertions and evidence from the developer rather than from the IoT product itself.

Product criteria are recommended to apply to the IoT product overall, as well as to each individual IoT product component (e.g., IoT device, backend, companion app), as appropriate.¹¹⁴ A scheme owner has the flexibility to adapt the product criteria and determine appropriate supporting evidence. Though NIST recommends that all criteria apply to every IoT product, some components may not be able or need to support all criteria. That might be the case due to product risk considerations, product development (e.g., cybersecurity tasks delegated via contracts and supply chain), nature of the components to form the product (e.g., backends may be highly distributed), or limitations of IoT components (e.g., devices may be constrained, companion software apps may have limited access and functionality).

1. **Asset Identification:** The IoT product is uniquely identifiable and inventories all of the IoT product's components.
 - The IoT product can be uniquely identified by the customer and other authorized entities (e.g., the IoT product developer).
 - The IoT product uniquely identifies each IoT product component and maintains an up-to-date inventory of connected product components.

Cybersecurity utility: The ability to identify IoT products and their components is necessary to support asset management for updates, data protection, and digital forensics capabilities for incident response.

2. **Product Configuration:** The configuration of the IoT product is changeable, there is the ability to restore a secure default setting, and any and all changes can only be performed by authorized individuals, services, and other IoT product components.
 - The customer can change the configuration settings of the IoT product via one or more IoT product components.
 - The IoT product applies configuration settings to applicable IoT components.

Cybersecurity utility: The ability to change aspects of how the IoT product functions can help customers tailor the IoT product's functionality to their needs and goals. Customers can configure their IoT products to avoid specific threats and risk they know about based on their risk appetite.

3. **Data Protection:** The IoT product and its components protect data stored (across all IoT product components) and transmitted (both between IoT product components and outside the IoT product) from unauthorized access, disclosure, and modification.

¹¹⁴ Given the nature of consumer IoT product, it is expected that all IoT products should satisfy all technical product criteria since they will, in most cases, be finished products intended for direct plug-and-play use. Individual IoT product components, though, may be more likely to not require certain criteria (e.g., based on lack of applicability).

- Each IoT product component protects data it stores via secure means, including the ability to delete or render inaccessible data stored that is either collected from or about the customer, home, family, etc.
- When data is sent between IoT product components or outside the product, protections are used for the data transmission.

Cybersecurity utility: Maintaining confidentiality, integrity, and availability of data is foundational to cybersecurity for IoT products. Customers will expect that data is protected and that protection of data helps to ensure safe and intended functionality of the IoT product.

4. **Interface Access Control:** The IoT product and its components restrict logical access to local and network interfaces – and to protocols and services used by those interfaces – to only authorized individuals, services, and IoT product components.
- Each IoT product component controls access (to and from) all interfaces (e.g., local interfaces, network interfaces, protocols, and services) in order to limit access to only authorized entities. At a minimum, the IoT product and its components shall:
 - a. Use and have access only to interfaces necessary for the IoT product’s operation. All other channels and access to channels are removed or secured.
 - b. For all interfaces necessary for the IoT product’s use, access control measures are in place (e.g., unique password-based multifactor authentication).
 - c. For all interfaces, access and modification privileges are limited.
 - The IoT product executes means via some, but not necessarily all, components to protect and maintain interface access control. **At a minimum, the IoT product shall:**
 - a. Validate that data sent to other product components matches specified definitions of format and content.
 - b. Prevent unauthorized transmissions or access to other product components.
 - c. Maintain appropriate access control during initial connection (i.e., on-boarding) and when reestablishing connectivity after disconnection or outage.

Cybersecurity utility: Inventorying and controlling access to all internal and external interfaces to the IoT product will help preserve the confidentiality, integrity, and availability of the IoT product, its components, and data by helping prevent unauthorized access and modification.

5. **Software Update:** The software of all IoT product components can be updated by authorized individuals, services, and other IoT product components only by using a secure and configurable mechanism, as appropriate for each IoT product component.
- Each IoT product component can receive, verify, and apply verified software updates.
 - The IoT product implements measures to keep software on IoT product components up to date (i.e., automatic application of updates or consistent customer notification of available updates via the IoT product).

Cybersecurity utility: Software may have vulnerabilities discovered after the IoT product has been deployed; software update capabilities can ensure secure delivery of security patches.

6. **Cybersecurity State Awareness:** The IoT product supports detection of cybersecurity incidents affecting or affected by IoT product components and the data they store and transmit.

- The IoT product captures and records information about the state of IoT components that can be used to detect cybersecurity incidents affecting or affected by IoT product components and the data they store and transmit.

Cybersecurity utility: Protection of data and ensuring proper functionality can be supported by the ability to alert the customer when the device starts operating in unexpected ways, which could mean that unauthorized access is being attempted, malware has been loaded, botnets have been created, device software errors have happened, or other types of actions have occurred that was not initiated by the IoT product user or intended by the developer.

7. **Documentation:** The IoT product developer creates, gathers, and stores information relevant to cybersecurity of the IoT product and its product components prior to customer purchase, and throughout the development of a product and its subsequent lifecycle.
- Throughout the development lifecycle, the IoT product developer creates or gathers and stores information relevant to the cybersecurity of the IoT product and its product components, **including:**
 - a. Assumptions made during the development process and other expectations related to the IoT product, **including:**
 - i. Expected customers and use cases.
 - ii. Physical use, including security of the location of the IoT product and its product components (e.g., a camera for use inside the home that has an off switch on the device vs. a security camera for use outside the home that does not have an off switch on the device), and characteristics.
 - iii. Network access and requirements (e.g., bandwidth requirements).
 - iv. Data created and handled by the IoT product.
 - v. Any expected data inputs and outputs (including error codes, frequency, type/form, range of acceptable values, etc.).
 - vi. The IoT product developer's assumed cybersecurity requirements for the IoT product.
 - vii. Any laws and regulations with which the IoT product and related support activities comply.
 - viii. Expected lifespan and anticipated cybersecurity costs related to the IoT product (e.g., price of maintenance), and length and terms of support.
 - b. All IoT components, including but not limited to the IoT device, that are part of the IoT product.
 - c. How the baseline product criteria are met by the IoT product across its product components, including which baseline product criteria are not met by IoT product components and why (e.g., the capability is not needed based on risk assessment).
 - d. Product design and support considerations related to the IoT product, *for example:*
 - i. All hardware and software components, from all sources (e.g., open source, propriety third-party, internally developed) used to create the IoT product (i.e., used to create each product component).
 - ii. IoT platform used in the development and operation of the IoT product, its product components, including related documentation.
 - iii. Protection of software and hardware elements implemented to create the IoT product and its product components (e.g., secure boot, hardware root of trust, and secure enclave).
 - iv. Consideration of the known risks related to the IoT product and known potential misuses.

- v. Secure software development and supply chain practices used.
- vi. Accreditation, certification, and/or evaluation results for cybersecurity- related practices.
- vii. The ease of installation and maintenance of the IoT product by a customer (i.e., the usability of the product).
- e. Maintenance requirements for the IoT product, *for example*:
 - i. Cybersecurity maintenance expectations and associated instructions or procedures (e.g., vulnerability/patch management plan).
 - ii. How the IoT product developer identifies authorized supporting parties who can perform maintenance activities (e.g., authorized repair centers).
 - iii. Cybersecurity considerations of the maintenance process (e.g., how customer data unrelated to the maintenance process remains confidential even from maintainers).
- f. The secure system lifecycle policies and processes associated with the IoT product, **including**:
 - i. Steps taken during development to ensure the IoT product and its product components are free of any known, exploitable vulnerabilities.
 - ii. The process of working with component suppliers and third-party vendors to ensure the security of the IoT product and its product components is maintained for the duration of its supported lifecycle.
 - iii. Any post end-of-support considerations, such as the discovery of a vulnerability which would significantly impact the security, privacy, or safety of customers who continue to use the IoT product and its product components.
- g. The vulnerability management policies and processes associated with the IoT product, **including**:
 - i. Methods of receiving reports of vulnerabilities (see Information and Query Reception below).
 - ii. Processes for recording reported vulnerabilities.
 - iii. Policy for responding to reported vulnerabilities, including the process of coordinating vulnerability response activities among component suppliers and third-party vendors.
 - iv. Policy for disclosing reported vulnerabilities.
 - v. Processes for receiving notification from component suppliers and third- party vendors about any change in the status of their supplied components, such as end of production, end of support, deprecated status (e.g., the product is no longer recommended for use), or known insecurities.

Cybersecurity utility: Generating, capturing, and storing important information about the IoT product and its development (e.g., assessment of the IoT product and development practices used to create and maintain it) can help inform the IoT product developer regarding the product's actual cybersecurity posture.

8. **Information and Query Reception**: The ability of the IoT product developer to receive information relevant to cybersecurity and respond to queries from the customer and others about information relevant to cybersecurity.
 - The IoT product developer can receive information related to the cybersecurity of the IoT product and its product components and can respond to queries related to cybersecurity of the IoT product and its product components from customers and others, **including**:
 - a. The ability of the IoT product developer to identify a point of contact to receive maintenance and vulnerability information (e.g., bug reporting capabilities and bug bounty

programs) from customers and others in the IoT product ecosystem (e.g., repair technician acting on behalf of the customer).

- b. The ability of the IoT product developer to receive queries from and respond to customers and others in the IoT product ecosystem about the cybersecurity of the IoT product and its components.

Cybersecurity utility: As IoT products are used by customers, those customers may have questions or reports of issues that can help improve the cybersecurity of the IoT product over time.

9. **Information Dissemination:** The IoT product developer broadcasts (e.g., to the public) and distributes (e.g., to the customer or others in the IoT product ecosystem) information relevant to cybersecurity.
 - The IoT product developer can broadcast to many/all entities via a channel (e.g., a post on a public channel) to alert the public and customers of the IoT product about cybersecurity relevant information and events throughout the support lifecycle. **At a minimum, this information shall include:**
 - a. Updated terms of support (e.g., frequency of updates and mechanism(s) of application) and notice of availability and/or application of software updates.
 - b. End of term of support or functionality for the IoT product.
 - c. Needed maintenance operations.
 - d. New IoT device vulnerabilities, associated details, and mitigation actions needed from the customer.
 - e. Breach discovery related to an IoT product and its product components used by the customers, associated details, and mitigation actions needed from the customer (if any).
 - The IoT product developer can distribute information relevant to cybersecurity of the IoT product and its product components to alert appropriate ecosystem entities (e.g., common vulnerability tracking authorities, accreditors and certifiers, third-party support and maintenance organizations) about cybersecurity relevant information, *for example:*
 - a. Applicable documentation captured during the design and development of the IoT product and its product components.
 - b. Cybersecurity and vulnerability alerts and information about resolution of any vulnerability.
 - c. An overview of the information security practices and safeguards used by the IoT product developer.
 - d. Accreditation, certification, and/or evaluation results for the IoT product developer's cybersecurity-related practices.
 - e. A risk assessment report or summary for the IoT product developer's business environment risk posture.

Cybersecurity utility: As the IoT product, its components, threats, and mitigations change, customers will need to be informed about how to securely use the IoT product.

10. **Product Education and Awareness:** The IoT product developer creates awareness of and educates customers and others in the IoT product ecosystem about cybersecurity-related information (e.g., considerations, features) related to the IoT product and its product components.

- The IoT product developer creates awareness and provides education targeted at customers about information relevant to cybersecurity of the IoT product and its product components, **including**:
 - a. The presence and use of IoT product cybersecurity capabilities, including at a minimum:
 - i. How to change configuration settings and the cybersecurity implications of changing settings, if any.
 - ii. How to configure and use access control functionality (e.g., set and change passwords).
 - iii. How software updates are applied and any instructions necessary for the customer on how to use software update functionality.
 - iv. How to manage device data including creation, update, and deletion of data on the IoT product.
 - b. How to maintain the IoT product and its product components during its lifetime, including after the period of security support (e.g., delivery of software updates and patches) from the IoT product developer.
 - c. How an IoT product and its product components can be securely re-provisioned or disposed of.
 - d. Vulnerability management options (e.g., configuration and patch management and anti-malware) available for the IoT product or its product components that could be used by customers.
 - e. Additional information customers can use to make informed purchasing decisions about the security of the IoT product (e.g., the duration and scope of product support via software upgrades and patches).

Cybersecurity utility: Customers will need to be informed about how to securely use the device to lead to the best cybersecurity outcomes for the customers and the consumer IoT product marketplace.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, we propose a voluntary cybersecurity labeling program for the Internet of Things (IoT) to improve consumer confidence and understanding of security for IoT devices and/or products. Such IoT devices and products are susceptible to a wide range of security vulnerabilities, which can be exploited by attackers to gain unauthorized access to an IoT device or IoT product and its data. Accordingly, providing consumers with a label certifying that an IoT device and/or product satisfies certain baseline cybersecurity standards and has specific cybersecurity capabilities allows a consumer to understand the relative security risk that an IoT device and/or product may pose when making a purchase. We seek comments on the scope of the proposed cybersecurity labeling program, including comments on proposed definitions of an IoT device and an IoT product. We also seek comments on specific technical criteria for the cybersecurity labeling program, including whether other criteria in addition to the IoT Criteria developed by the National Institute of Standards and Technology (NIST),⁴ should be considered, and whether and how to develop administrable standards. Finally, we invite comments on how to administer the cybersecurity labeling program, the appropriate means to fund the costs of running the program, and what program auditing, enforcement, disqualification and certification revocation processes and procedures should be put in place to ensure that the labeling program is a trusted and valuable resource that consumers can rely upon to assess the security of the IoT devices and/or products that exhibit the label.

B. Legal Basis

3. The proposed action is taken under authority found in sections 1, 2, 4(i), 4(n), 301, 302, 303(b), 312, 333, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(n), 301, 302a, 303(b), 312, 333, 503; and the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. § 278g-3a to 278g-3e.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,”

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603(a).

³ *Id.*

⁴ NIST, Recommended Criteria for Cybersecurity Labeling for Consumer IoT Products (2022), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf>; see also NIST, *IoT Product Criteria* (May 24, 2022), <https://www.nist.gov/itl/executive-order-14028-improving-nations-cybersecurity/iot-product-criteria>.

⁵ 5 U.S.C. § 603(b)(3).

“small organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

5. *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 here, 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 30.7 million businesses.¹¹

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹² The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹³ Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁴

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

⁹ See 5 U.S.C. § 601(3)-(6).

¹⁰ See SBA, Office of Advocacy, *What’s New With Small Business?* (Mar 14, 2023), <https://advocacy.sba.gov/2023/03/14/whats-new-with-small-business/>.

¹¹ *Id.*

¹² 5 U.S.C. § 601(4).

¹³ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number 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.

districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2017 Census of Governments¹⁶ indicate that 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 (county¹⁸, municipal and town or township¹⁹) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²⁰ with enrollment populations of less than 50,000.²¹ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²²

8. *Radio Frequency Equipment Manufacturers (RF Manufacturers).* There are several analogous industries with an SBA small business size standard that are applicable to RF Manufacturers. These industries are Fixed Microwave Services, Other Communications Equipment Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these industries and the SBA small business size standards are detailed below.

9. *Fixed Microwave Services.* Fixed microwave services include common carrier,²³ private-operational fixed,²⁴ and broadcast auxiliary radio services.²⁵ They also include the Upper Microwave

¹⁵ 5 U.S.C. § 601(5).

¹⁶ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7.” See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁷ See U.S. Census Bureau, 2017 Census of Governments – Organization Tbl. 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Tbl. 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁸ See *id.* at Tbl. 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁹ See *id.* at Tbl. 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁰ See *id.* at Tbl. 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Tbl. 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²¹ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²² This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tbls. 5, 6, and 10.

²³ See 47 CFR Part 101, Subparts C and I.

²⁴ See *id.* Subparts C and H.

²⁵ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission’s Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between
(continued....)

Flexible Use Service (UMFUS),²⁶ Millimeter Wave Service (70/80/90 GHz),²⁷ Local Multipoint Distribution Service (LMDS),²⁸ the Digital Electronic Message Service (DEMS),²⁹ 24 GHz Service,³⁰ Multiple Address Systems (MAS),³¹ and Multichannel Video Distribution and Data Service (MVDDS),³² where in some bands licensees can choose between common carrier and non-common carrier status.³³ Wireless Telecommunications Carriers (*except* Satellite)³⁴ is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁵ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.³⁶ Of this number, 2,837 firms employed fewer than 250 employees.³⁷ Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

10. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.³⁸

11. 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

two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

²⁶ See 47 CFR Part 30.

²⁷ See 47 CFR Part 101, Subpart Q.

²⁸ See *id.* Subpart L.

²⁹ See *id.* Subpart G.

³⁰ See *id.*

³¹ See *id.* Subpart O.

³² See *id.* Subpart P.

³³ See 47 CFR §§ 101.533, 101.1017.

³⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

³⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³⁶ 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>.

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 See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

12. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).³⁹ Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.⁴⁰ The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small.⁴¹ For this industry, U.S. Census Bureau data for 2017 shows that 321 firms operated for the entire year.⁴² Of that number, 310 firms operated with fewer than 250 employees.⁴³ Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

13. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.⁴⁴ 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.⁴⁵ This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).⁴⁶ Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.⁴⁷ The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small.⁴⁸ For this industry, U.S. Census Bureau data for 2017 shows that 321 firms operated for the entire year.⁴⁹ Of that number, 310 firms operated with fewer than 250

³⁹ See U.S. Census Bureau, *2017 NAICS Definitions*, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

⁴⁰ *Id.*

⁴¹ See 13 CFR § 121.201, NAICS Code 334290.

⁴² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&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 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> (last visited July 17, 2023).

⁴⁵ *Id.*

⁴⁶ See U.S. Census Bureau, *2017 NAICS Definitions*, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

⁴⁷ *Id.*

⁴⁸ See 13 CFR § 121.201, NAICS Code 334290.

⁴⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

employees.⁵⁰ Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

14. The voluntary cybersecurity labeling program for IoT devices and/or products to provide consumers with accessible information on the relative security of these IoT devices and/or products that we propose in the *Notice* may impose new reporting, recordkeeping, notice or other compliance requirements on small entities that choose to participate in the program. The requirements may include application or other conformance reporting, licensing, certification and/or other reporting obligations.

15. The proposals in the *Notice* build upon other actions the Commission has taken to protect and secure public safety. Accordingly, the proposals being made in this *Notice* may require additional analysis and mitigation activities by small and other IoT manufacturers in order to satisfy certain technical criteria or standards for the ability to display an IoT cybersecurity label. At this time, the Commission is not in a position to determine whether the requirements that may be adopted for participants in the proposed cybersecurity labeling program will require small entities to hire professionals in order to comply and cannot quantify the cost of compliance with the potential requirements and obligations that may result in this proceeding. Among other things considered, we inquire about the options for the Commission to address the costs of running and administering the labeling program including whether there may be application fees charged by third-parties administering the program and whether there is oversight the Commission should exercise over such charges. We seek comment on these issues and anticipate that the information we receive in comments will address these matters and any broader cost issues for small entities that may choose to participate in the proposed labeling program.

16. In light of the importance of mark integrity and the need to build consumer confidence and trust in the security of IoT devices and products that will display the Commission's IoT label, regardless of the size of the entity seeking to participate in the proposed cybersecurity labeling program, adherence by all participants to the same Commission rules is necessary. However, we expect that the comments we receive will help the Commission identify and evaluate relevant matters for small entities before adopting final rules for the labeling program, including any compliance costs and burdens that may result from the proposals and other matters discussed in the *Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”⁵¹

18. The Commission's development of a voluntarily cybersecurity labeling program for the IoT products and devices builds on the work of the National Institute of Standards and Technology

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 5 U.S.C. § 603(c).

(NIST) which produced labeling criteria for cybersecurity capabilities of IoT consumer devices.⁵² Using the work of NIST as a foundation has the potential to minimize the economic impact on small entities for several reasons. First, NIST took into account existing consumer product labeling programs and information provided by diverse stakeholders.⁵³ Next, two of the key elements NIST identified for labeling were encouraging innovation, and being practical and not burdensome.⁵⁴ Further, we believe building on the approach NIST developed for IoT cybersecurity labeling will provide a level of consistency with the requirements we establish for the entities subject to Commission regulation that choose to participate in the Commission's cybersecurity IoT labeling program.

19. In the *Notice*, we consider and seek comment on various compliance requirements that the Commission could consider in advancing a voluntary cybersecurity labeling program. More specifically, we considered the NIST definition for IoT devices which defines IoT devices as devices that have at least one transducer (sensor or actuator) for interacting directly with the physical world and at least one network interface (e.g., Ethernet, Wi-Fi, Bluetooth) for interfacing with the digital world,⁵⁵ and determined that we should propose an alternative definition. Our proposed definition modifies the NIST definition to add "Internet-connected" because a key element of the IoT is the usage of standard Internet protocols for functionality, which exposes IoT devices to the security threats and challenges related to being connected to the Internet.⁵⁶ Our proposed definition also includes the requirement that devices must be capable of intentionally emitting radio frequency energy because the relevant scope of Commission's statutory authorities focus on devices that intentionally emit radio frequency energy.⁵⁷

20. Although we include in our definition devices that intentionally emit radio frequency energy, we considered whether there are unintentional radiators or incidental radiators that should be included in the program, and if so whether we should revise the definition to omit the word "intentional." Alternatively, we inquire if we should consider adding unintentional or incidental radiating devices to the program at a later date. In addition, while we refer to devices and products in the *Notice*, we inquire whether we should expand the proposed scope of our cybersecurity labeling program and definition of devices beyond IoT devices to apply to IoT products. Under this expanded alternative we could define an IoT product as an IoT device and any additional product components (e.g., backend, gateway, mobile App) that are necessary to use the IoT device. A further alternative we considered, is whether to limit our IoT labeling program to consumer IoT devices or products intended for personal use, or to include "enterprise" devices or products intended for industrial or business uses and any additional considerations that would need to be accounted for with such devices or products. We seek comment on these inquiries and alternatives in the *Notice*, in addition to comments on our proposed definition.

21. Regarding the content and updating of the IoT label on the physical device, product, or packaging, we believe the simple approach we proposed in the *Notice* will result in cost savings which could minimize the impact of these requirements for small entities. Our proposal is to have the physical device, product, or packaging simply indicate that the manufacturer participates in the FCC's labeling program by having the FCC mark along with the related QR Code and/or the URL to the IoT registry. The detailed information on the IoT device or product will be made available on the device or product's webpage within the IoT registry using a QR Code and/or a URL. When the device or product's

⁵² NIST, *Cybersecurity Labeling for Consumers: Internet of Things (IoT) Devices and Software* (May 24, 2022), <https://www.nist.gov/itl/executive-order-14028-improving-nations-cybersecurity/cybersecurity-labeling-consumers-0>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ National Institute of Standards and Technology Internal Report 8425, *Profile of the IoT Core Baseline for Consumer Products* (Sept. 2020) at 23.

⁵⁶ *Id.* at 1.

⁵⁷ 47 U.S.C. § 302(a)(1).

webpage within the IoT registry is updated to indicate for example, that the device or product's authorization is outdated, and/or the device or product is no longer maintained or updated, using the QR Code and/or the URL provided next to the FCC mark the information can be accessed on the device or product's webpage within the IoT registry. Updating requirements for the device or product's webpage within the IoT registry could alleviate the need for the Commission to adopt additional notification requirements which would increase costs for small entities.

22. We also considered and seek comment on alternatives on how to address the end-of-life issues for devices previously receiving authorization under the program. For example, we considered whether the label should include the specific date, or the year the authorization was awarded, or an expiration date. Further, we considered whether it would be sufficient to provide consumers with additional information via the QR Code regarding the current security status of a device, and whether the QR Code-linked website should indicate when the label was issued by the Commission, and when the information on the webpage last updated.

23. In the area of accessibility, to ensure that any IoT cybersecurity label information the Commission adopts is accessible to persons with disabilities, we considered an alternative that would alleviate the need for the Commission to establish and impose new accessibility requirements on small entities and other participants in the labeling program. Consistent with our approach with broadband consumer labels in 2022, in the *Notice* we considered and seek comment on relying on the existing legal requirements in the Americans with Disabilities Act (ADA) and following the guidance developed by the Web Accessibility Initiative, which the Consumer Advisory Committee (CAC) determined is the best method to ensure accessibility to printed and online information is made available by providers.⁵⁸

24. Further, rather than proposing rules at this juncture, in the *Notice* we seek comment on costs associated with the proposed cybersecurity IoT labeling program, and on investigation, disqualification and enforcement processes to maintain the integrity of the devices or products that will be labeled under the program. Our actions on all of these matters have the potential to minimize the impact of the cybersecurity IoT labeling program we adopt on small entities.

25. Regarding investigation, disqualification and enforcement, as discussed in the *Notice*, we considered and seek comment on whether to have random audits of IoT devices or products to confirm continued compliance; whether we should adopt disqualifications procedures similar to those adopted for the ENERGY STAR program by the Environmental Protection Agency (EPA); what additional non-compliance or disqualification measures would be appropriate in addition to authorization revocation, and whether there should be an appeal process available to applicants that are denied authority to use the IoT label. Additionally, we seek comment on what recordkeeping and audit requirements could be adopted for purposes of compliance review.

26. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *Notice*. Having input from interested parties will allow the Commission to better evaluate options and alternatives to minimize any significant economic impact on small entities that may result from the proposed cybersecurity IoT labeling program and the inquiries and alternatives discussed in the *Notice*. The Commission's evaluation of this information will shape the final alternatives it considers to minimize any significant economic impact that may occur on small entities, the final conclusions it reaches and any final rules it promulgates in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

27. None.

⁵⁸ *Empowering Broadband Consumers Through Transparency*, Notice of Proposed Rulemaking, FCC 22-7, 2022 WL 273068, *7, para. 27 (Jan. 27, 2022).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Notice of Proposed Rulemaking (August 8, 2023)

There are so many new devices—from smart televisions and thermostats to home security cameras, baby monitors, and fitness trackers—that are connected to the internet. In fact, right now there are estimates that there are 17 billion smart devices in the world, and that number is expected to increase to 25 billion by the end of the decade. These technologies provide all kinds of benefits because they can make our lives easier and more efficient. They allow us to do things like check who is at the front door when we are away, keep tabs on our health, and automatically adjust the thermostat, so we save on our energy bills.

However, this increased interconnection brings more than just convenience. It brings increased security risk. After all, every device connected to the internet is a point of entry for the kind of cyberattacks that can take our personal data and compromise our safety. That is true for the biggest connections to the largest businesses and the smallest connections to the devices in our homes.

I believe it doesn't have to be this way. That's because we can do more to make internet of things devices secure and help consumers make good choices about what they bring into their homes and businesses.

This is exactly what we propose to do so with this rulemaking. We propose to put in place the first-ever voluntary cybersecurity labeling program for connected smart devices. We are calling it the U.S. Cyber Trust Mark. And just like the "Energy Star" logo helps consumers know what devices are energy efficient, the Cyber Trust Mark will help consumers make more informed purchasing decisions about device privacy and security. So when you need a baby monitor or new home appliance, you will be able to look for the Cyber Trust Mark and shop with greater confidence. What's more, because we know devices and services are not static, we are proposing that along with the mark we will have a QR code that provides up-to-date information on that device.

This proposal builds on good work already done by government and industry because we will rely on the NIST-recommended criteria for cybersecurity to set the Cyber Trust Mark program up. That means we will use criteria device manufacturers already know, and, when they choose to meet these standards, they will be able to showcase privacy and security in the marketplace by displaying this mark. Over time, we hope more companies will use it—and more consumers will demand it.

With this notice we seek input on how best to establish this voluntary labeling program, the scope of eligible devices, the mechanics of managing this program, how to further develop standards that could apply to different kinds of devices, how to demonstrate compliance with those standards, and how best to educate consumers.

That is not a small task. But it's worth it. Because the future of smart devices is big and the opportunity for the United States to lead the world with a global signal of trust is even greater. I appreciate the interest my colleagues have expressed in this effort, look forward to the record that follows, and in the future seeing the Cyber Trust Mark in the marketplace.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Cybersecurity Labeling for Internet of Things*, Notice of Proposed Rulemaking, PS Docket No 23-239.

Nearly 40 years ago David Nicols had a problem. As a graduate student enrolled in Carnegie Mellon University's computer science department he needed a caffeine hit, but it was a hike to reach the soda machine in his building, and it frequently ran out. He wanted a tool to stop the trend of returning from his long walks empty-handed. So, he did what any enterprising computer scientist would do—he solved the problem using technology. He and some friends created an application that monitored the soda machine's reserves and connected it to ARPANET, the Internet's forerunner, so they could remotely view the soda availability and temperature. In doing so, we now know, they actually created the very first Internet of Things (IoT) device.¹ It was a success, to say the least! Another student followed suit, focusing on the nearby M&M machine, and it was off to the races.²

From those humble beginnings, it's now hard to imagine an electronic device that isn't connected. One manufacturer estimates that there are more than 20 billion IoT devices in active use around the world,³ and it is estimated that spending on IoT surpassed \$1 trillion dollars in 2022, and will be even higher this year.⁴ On this front, I saw continued momentum firsthand when I visited this year's Consumer Electronics Show earlier this year.

The proliferation of IoT devices has, of course, led to many benefits in society. At the same time, their use has elevated the United States' risk profile due to their prevalence in our networks and physical world. Without the right level of security, they constitute an attack plane that can introduce vulnerabilities, both individually or as part of a network of IoT devices working together, sometimes referred to as botnets. This threat occurs due to the fact that historically, many IoT devices were created and deployed without necessary baseline cybersecurity protections, which bad actors can exploit.⁵ Unprotected IoT devices and devices with simple or no security such as easily guessable default passwords are susceptible to malware⁶ and hacking, and can be used to create botnets that can wreak havoc on our networks. These unsecure IoT devices when used maliciously can block access to the Internet and websites, waste network resources, and cause harm to people, businesses, and government alike.

¹ The Carnegie Melon University Computer Science Coke Machine, *The 'Only' Coke Machine on the Internet*, Carnegie Melon, available at https://www.cs.cmu.edu/~coke/history_long.txt.

² Jordan Teicher, *The Little Known Story of the First IoT Device*, IBM.com, Feb. 7, 2018, available at <https://www.ibm.com/blog/little-known-story-first-iot-device/> (The Little Known Story of the First IoT Device).

³ Nokia Threat Intelligence Report Finds Malicious IoT Botnet Activity Has Sharply Increased, Press Release, Nokia.com, June 7, 2023, available at <https://www.nokia.com/about-us/news/releases/2023/06/07/nokia-threat-intelligence-report-finds-malicious-iot-botnet-activity-has-sharply-increased/>.

⁴ IDC Report: IoT Spending to Reach More than \$1 Trillion by 2022, Finley Research (Last visited Aug. 8, 2023), available at <https://finleyusa.com/idc-report-iot-spending-to-reach-more-than-1-trillion-by-2022/#:~:text=Telecom%2C%20Broadband-.IDC%20Report%3A%20IoT%20Spending%20to%20Reach%20More%20than%20%241%20Trillion,%24646%20billion%20spent%20last%20year.>

⁵ Alert, Secure New Internet-Connected Devices, Cybersecurity and Infrastructure Security Agency, Dec. 31, 2019, available at <https://www.cisa.gov/news-events/alerts/2019/12/31/secure-new-internet-connected-devices>.

⁶ 2022 Sonicwall Cyber Threat Report, Mid-Year Update, Sonicwall (Last visited Aug. 8, 2023), available at <https://www.sonicwall.com/medialibrary/en/white-paper/mid-year-2022-cyber-threat-report.pdf> (finding a 77% increase in malware attacks for IoT/Connected Devices in the first half of 2022).

Recognizing the problem, the United States government has taken steps to mitigate the risks and improve security. Beginning in 2018, the Department of Commerce's *Botnet Report* identified actions to protect devices and networks including the idea of a labeling program.⁷ President Biden drew on that approach when releasing his *Executive Order on Improving the Nation's Cybersecurity*, EO 14028, requiring an IoT labeling pilot.⁸ President Biden's *National Cybersecurity Strategy* went further and included driving the development of secure IoT devices as a strategic objective.⁹

That leads us to this proposal, which is the cumulation of a significant amount of work between our federal government partners, especially the National Institute of Standards and Technology (NIST), and private stakeholders. I strongly support moving on the IoT cybersecurity label, and believe that it will ultimately help consumers identify how secure a device may be, and support safe networks. As we develop the proposal, however, I look forward to closely reviewing the record to make sure we get it right. I want to highlight two particular issues that are especially important.

First, it is vital that the cybersecurity label program is as pro-consumer as possible. We must ensure that our actions make it easier for consumers to quickly understand the information on the label and then make informed purchasing decisions. Along those lines, we properly ask critical questions to ensure that the cybersecurity labeling program matches consumer expectations. One important question is how the IoT cybersecurity labeling program should be scoped. Specifically, should it be focused on products as a whole, or on subcomponent devices. As we develop the record for guidance, it may also be useful for us to consider other successful government consumer education labeling programs, such as the Department of Energy's ENERGY STAR program. The item seeks comment on both approaches, and I will be closely reviewing the record to make sure we get this right. I thank the Chairwoman and my fellow Commissioners for agreeing to my edits to ensure that the IoT cybersecurity label has the proper scope.

Second, we must ensure that the IoT cybersecurity label protects Americans. If insecure equipment becomes included in the IoT cybersecurity label, it will undermine network security and the public's trust in the IoT cybersecurity labeling program. Thus, it is vital that we do not place our stamp of approval on devices from producers that the United States government and its agencies have already identified publicly as part of a national security review. I'm glad that the Chairwoman and my colleagues agreed to include a proposal to expand the list of products that will be excluded from access to the IoT cybersecurity label beyond the Commission's List of Covered Communications Equipment and Services to also include companies named on the Department of Commerce's Designated Entity List, the Department of Defense's List of Chinese Military Companies, and similar lists. I look forward to reviewing the record to further ensure that adversarial countries do not try to take advantage of the labeling program to harm our networks.

The Commission has recently taken strong steps to protect the security of our networks, and now, with the IoT cybersecurity label, connected products and devices. Last month, at my urging, the Commission for the first time explicitly required providers that deploy broadband networks receiving federal Universal Service funds to implement operational cybersecurity and supply chain risk management plans that reflect the latest NIST and government guidance. This ensured that networks built with Universal Service Fund support are just as secure as those built with other support programs from

⁷ A Report to the President on Enhancing the Resilience of the Internet and Communications Ecosystem Against Botnets and Other Automated, Distributed Threats, Action 5.2, Department of Commerce and Department of Homeland Security, May 22, 2018, available at https://www.commerce.gov/sites/default/files/2020-07/eo_13800_botnet_report_-_finalv2.pdf.

⁸ Executive Order on Improving the Nation's Cybersecurity, Sec. 4, Enhancing Software Supply Chain Security, The White House, Executive Order 14028, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/>.

⁹ National Cybersecurity Strategy, Strategic Objective 3.2, The White House, Mar. 1, 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf>.

other federal agencies. It is also an important precedent that will signal to other providers that they should do the same, if they haven't already done so. Combined with our efforts to protect connecting products and devices, we can be confident that we are taking important and necessary steps to secure our networks. But, there is more to do and I am committed to continuing to work with all stakeholders on any additional steps that we can take to protect our communications networks.

Those Carnegie Mellon students didn't know how their idea would flourish in the world when they just wanted a cold soda. Indeed, as they were creating the first IoT device, they joked around about how your toaster was one day going to be on the Internet.¹⁰ Thanks to this proposal, we are one step closer to helping consumers understand exactly what cybersecurity protections their connected toaster, and many other IoT devices, have enabled. I thank the FCC staff that worked on this item for their hard work.

¹⁰ *The Little Known Story of the First IoT Device.*

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Notice of Proposed Rulemaking

Cybersecurity vulnerabilities are inevitable. Even the best engineers, supported by sophisticated organizations and applying the best software development methodologies, cannot hope to eradicate every security flaw lurking in a modern software-powered device. A single one of these vulnerabilities can be enough to render access controls and other security mechanisms useless, allowing even amateur attackers to bypass them and gain illicit access to sensitive information and controls. Because any device is liable to be rendered insecure at any time by a newly discovered flaw, a responsible manufacturer should undertake to search for and patch vulnerabilities as quickly as possible. Otherwise, it might as well be putting ticking time-bombs into the homes and businesses of every one of its customers across the country.

Unfortunately, many device companies have fallen short. It often takes months for a fix to a serious vulnerability to make its way to end user devices, if the manufacturer bothers to release an update at all, and if the device was designed to be updateable in the first place. Manufacturers frequently pull the plug on support for a device well before consumers have stopped using it. The length of security support periods—the time period during which users can count on receiving timely security updates—is usually not communicated at the time of sale, and sometimes the end of support is not even announced, leaving even the most informed users unsure whether their devices are still safe to use. And many devices require manual installation of security updates, something very few consumers will ever do.

This is no mere academic concern. Attacks on unpatched devices are becoming more frequent and more dangerous. A recent FBI advisory warned of increasing cyberattacks against unpatched medical devices.¹ Unpatched industrial control systems threaten the availability of critical infrastructure.² The Mirai botnet, which at its peak consisted of over 600,000 compromised devices performing large-scale cyberattacks in unison, grew by scanning the internet for devices with unpatched vulnerabilities like IP cameras and routers and taking control of them.³ And we have not yet seen the worst. An attacker could use unpatched vulnerabilities to take control of large numbers of mobile phones, turn their radios into signal jammers, and take down mobile networks.⁴ Botnets of commandeered high wattage devices like air conditioners, water heaters, and ovens could be used to disrupt the power grid and even cause large-scale blackouts.⁵ And attacks on cyberphysical systems like automated cars, or on medical devices, can directly cause widespread property destruction, human injury, and death.

The early days of the connected device industry are behind us, and the laissez-faire attitude that came with rapid innovation now threatens to thwart the industry's progress into more serious domains where the stakes are higher. As we entrust technology with greater responsibility for our money, privacy, personal safety, and public order, we need to have greater confidence in its security. Otherwise,

¹ <https://www.ic3.gov/Media/News/2022/220912.pdf>

² <https://www.darkreading.com/vulnerabilities-threats/cisa-warns-unpatched-vulnerabilities-ics-critical-infrastructure>; <https://www.cisa.gov/news-events/alerts/2023/03/21/cisa-releases-seven-industrial-control-systems-advisories>; <https://www.darkreading.com/ics-ot/unpatched-iot-ot-devices-pile-up-ics-cyberattacks>

³ <https://blog.cloudflare.com/inside-mirai-the-infamous-iot-botnet-a-retrospective-analysis/>; <https://www.scmagazine.com/news/unpatched-apache-tomcat-servers-spread-mirai-botnet-malware>; https://www.theregister.com/2023/05/02/cisa_exploited_flaws_oracle_apache/

⁴ <https://www.cise.ufl.edu/~traynor/papers/ccs09a.pdf>

⁵ <https://www.usenix.org/system/files/conference/usenixsecurity18/sec18-soltan.pdf>

increasingly damaging cyberattacks will undermine faith in automated systems and prevent us from realizing the full gains in productivity and quality of life that the technological revolution promises.

I am only able to support this initiative because it includes my proposal that the cybersecurity labels disclose the time period during which a device's manufacturer commits to diligently issue security updates. A stamp of approval from the United States government for the security of your device should reflect the genuine confidence of the American people. You cannot possibly qualify for such an endorsement if you refuse to provide even this bare minimum of transparency. If you want this label on your product, you must earn it by taking responsibility for the security of your product, not just while you initially develop it, but for its entire lifespan. Requiring any less would make the United States government complicit in reckless conduct that endangers the safety and security of every American. I want to thank the Chairwoman and the other Commissioners for supporting my request that we include this provision.

I suspect that some manufacturers will choose to not pursue a label rather than commit themselves to doing the right thing. The United States government should be proud to deny such companies a label. Let the absence of a label serve as a warning: this device is not safe.

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

In the Matter of)	
)	
Assessment and Collection of Regulatory Fees for	)	MD Docket No. 23-159
Fiscal Year 2023)	
)	
Review of the Commission's Assessment and	)	MD Docket No. 22-301
Collection of Regulatory Fees)	

REPORT AND ORDER

Adopted: August 10, 2023

Released: August 10, 2023

By the Commission

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I. INTRODUCTION

1. Today we take action to address longstanding concerns to better ensure that our assessment and collection of our annual regulatory fees is more closely aligned with the burden of the work being performed by Commission employees for each regulatory fee category. Specifically, we adopt the proposals in our Fiscal Year (FY) 2023 Regulatory Fee Notice of Proposed Rulemaking¹ and reallocate almost nineteen percent of our indirect full time equivalents (FTEs)² as direct to one of the Commission's four core licensing bureaus,³ following a high-level, comprehensive staff analysis of the time utilized in the oversight and regulation of certain segments of the telecommunications industry. Our decisions in this Report and Order reflect our conclusion that we can determine, with reasonable accuracy

¹ *Review of the Commission's Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Report and Order and Notice of Proposed Rulemaking, FCC 23-34 (rel. May 15, 2023) (*FY 2023 NPRM*).

² One FTE, a "Full Time Equivalent" or "Full Time Employee," is a unit of measure equal to the work performed annually by a full-time person (working a 40-hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget. See generally Executive Office of the President, Office of Management and Budget, Circular No. A-11, Preparation, Submission, and Execution of the Budget (August 2022), <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>. See section 85.5(c) for a detailed explanation of how FTEs are calculated. In this proceeding when we state that 1.5 FTEs work on a particular subject matter, that might mean three individuals spend 50% of their time on that area. Moreover, any change in FTE allocation described here is solely for regulatory fee purposes and does not reflect any change of personnel in the various organizational work units.

³ The phrase "core bureaus" was first adopted in the *FY 2012 Regulatory Fee Reform NPRM* where the Commission explained that, under (prior) section 9(b)(1)(A) of the Communications Act, the Commission was instructed to calculate the regulatory fees by determining the FTEs performing the activities enumerated in section 9(a)(1) of the Communications Act within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission; those bureaus subsequently were renamed the Wireless Telecommunications Bureau, Media Bureau, Wireline Competition Bureau, and a new International Bureau. See *Procedures for Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, MD Docket No. 12-20, Notice of Proposed Rulemaking, 27 FCC Rcd 8460, para. 5 & n.5 (2012) (*FY 2012 Regulatory Fee Reform NPRM*). The Commission explained that "[f]or simplicity and ease of reference, in this Notice we will refer to these four bureaus as the 'core' bureaus or the 'core licensing' bureaus." *Id.* See also *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8193-94, paras. 9-10 (2019) (*FY 2019 Report and Order*). Effective April 10, 2023, we have a new Space Bureau and an Office of International Affairs replacing the International Bureau. See *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1 (rel. Jan. 9, 2023) (*Space Bureau Order*). Because the International Bureau existed for most of FY 2023, we are using that term in this proceeding, instead of Space Bureau and/or Office of International Affairs.

for this fiscal year, that certain FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau that were previously considered to be indirect are devoted to work that is sufficiently linked to the oversight and regulation of regulatory fee payors in a core bureau such that the FTE burden of that work should be allocated as direct to that bureau for regulatory fee purposes. Consistent with our long-standing regulatory fee methodology, we implement these reallocations and we adopt a schedule of regulatory fees, as set forth in Appendices B and C, in order to collect \$390,192,000 in congressionally required regulatory fees for FY 2023 by the end of September.⁴

2. Additionally, in this Report and Order, we (i) adopt our proposal regarding the calculation of television and radio broadcaster regulatory fees, including the modification of the existing grid by adding a new tier for AM and FM radio stations; (ii) continue to consider operations for on-orbit servicing (OOS) and rendezvous and proximity operations (RPO) on a mission-by-mission basis for regulatory fee purposes, and apply the regulatory fee for “Space Stations (Geostationary Orbit)” to OOS and RPO spacecraft operating near the GSO arc, unless it is determined that the OOS or RPO spacecraft is operating as part of an existing GSO system and therefore should not be assessed a separate regulatory fee; (iii) confirm that orbital transfer vehicles (OTVs) are responsible for regulatory fees under the current regulatory fee scheme; (iv) continue two of the temporary measures that were implemented in FYs 2020 through 2022 to assist regulatory fee payors that were experiencing financial hardship related to the COVID-19 pandemic to request waiver, reduction, deferral and/or installment payment of regulatory fees, and continue a third such measure in modified form;⁵ and (v) decline to permit regulatory fee payors to prepay their regulatory fees in installments before the annual regulatory fee payment deadline.

II. BACKGROUND

3. Congress requires the Commission to assess regulatory fees each year in an amount that can reasonably be expected to equal the amount of our annual S&E appropriation.⁶ Pursuant to sections 9 and 9A of the Communications Act of 1934, as amended (Act or Communications Act),⁷ and the Commission’s FY 2023 Appropriations Act, we are required to collect \$390,192,000 in regulatory fees.⁸ Regulatory fees recover all of the Commission’s non-auctions costs, including direct costs, such as salaries and expenses; indirect costs, such as overhead functions; statutorily required tasks that do not directly equate with oversight and regulation of a particular regulatory fee payor but instead benefit the Commission and the industry as a whole; and support costs, such as rent, utilities, and equipment.⁹ Regulatory fees must recover the total amount of the annual appropriation; therefore, they also cover the Commission’s costs incurred in oversight and regulation of entities that do not pay regulatory fees, such as those that are statutorily exempt from paying regulatory fees (i.e., governmental and nonprofit entities,

⁴ 47 U.S.C. §§ 156, 159. The regulatory fee collection is guided by both the statutory authority in sections 6 and 9 of the Communications Act of 1934, as amended (Act or Communications Act) and the explicit language of each fiscal year’s salaries and expenses (S&E) appropriation directing the amount to be collected as an offsetting collection.

⁵ A resolution terminating the National Emergency concerning COVID-19 based on the powers granted in the National Emergencies Act was signed by President Biden on April 10, 2023. H.J. Res. 7, 118th Congress (2023-2024) [Public Law No: 118-3](https://www.congress.gov/bills/118/congress/house-joint-resolution/7), (Apr. 10, 2023), available at [https://www.congress.gov/bills/118-congress/house-joint-resolution/7](https://www.congress.gov/bills/118/congress/house-joint-resolution/7).

⁶ 47 U.S.C. § 159(a), (b).

⁷ 47 U.S.C. § 159 (requiring the Commission to assess and collect regulatory fees to recover the costs of carrying out its activities in the total amounts provided for in Appropriations Acts); 47 U.S.C. § 159A (various provisions applicable to application and regulatory fees, e.g., notice to Congress and waiver provisions).

⁸ Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Division E—Financial Services and General Government Appropriations Act, 2023 (FY 2023 Consolidated Appropriations Act). The total offsetting collection for FY 2023 has increased by \$8,242,000, or 2.16%, from the FY 2022 appropriated level.

⁹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket No. 04-73, Report and Order, 19 FCC Rcd 11662, 11666, para. 11 (2004) (*FY 2004 Report and Order*).

amateur radio operators, and noncommercial radio and television stations),¹⁰ entities that are exempt from payment of FY 2023 regulatory fees because their total assessed annual regulatory fees fall below the annual de minimis threshold,¹¹ and entities whose regulatory fees are waived.¹²

4. Pursuant to section 9(d) of the Communications Act, the Commission's methodology for assessing regulatory fees must "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."¹³ In section 9 of the Communications Act, Congress prescribed a method of collecting an amount equal to the full S&E appropriation by keying the regulatory fee assessment to our FTE burden.¹⁴ As a result, the fee assigned to each regulatory fee category relates to the FTE burden associated with oversight and regulation of a particular set of fee payors by the relevant core bureaus.¹⁵ Because the total amount we must collect in an offsetting collection generally changes each fiscal year, annual regulatory fees also typically change each fiscal year as a mathematical consequence of the changes in the total amount to be collected, the number of Commission FTEs, and the projected unit estimates for each regulatory fee category.¹⁶ Beyond those potential changes in collection requirements, in considering other additions or deletions to the regulatory fee schedule, the Commission focuses on direct FTE cost burden related to the regulatory fee category at issue within each core bureau.¹⁷ Given the Act's explicit language that fees must reflect FTEs, we have long concluded that these FTE counts are by far the most administrable starting point for regulatory fee allocations.¹⁸

¹⁰ 47 U.S.C. § 159(e)(1).

¹¹ 47 U.S.C. § 159(e)(2). Section 9(e)(2) of the Act permits the Commission to exempt a party from paying regulatory fees if "in the judgment of the Commission, the cost of collecting a regulatory fee established under this section from a party would exceed the amount collected from such party."

¹² 47 U.S.C. § 159A(d); 47 CFR § 1.1166.

¹³ 47 U.S.C. § 159(d).

¹⁴ See 47 U.S.C. § 159(d). In 2018, as part of the RAY BAUM'S Act Congress revised section 9 of the Act and added new section 9A. See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 1084, Division P – RAY BAUM'S Act of 2018, Title I, § 103 (2018) (RAY BAUM'S Act). Although the Commission adopted several rule amendments to reflect those changes, it concluded that the methodology for implementing regulatory fee authority essentially remained unchanged by the RAY BAUM'S Act. In the *FY 2019 Report and Order*, the Commission analyzed the changes to the statutory regulatory fee authority and determined that "...because the new section 9 of the Act closely aligns to how the Commission assessed and collected fees under the prior section 9 of the Act, we will hew closely to our prior methodology in assessing FY 2019 regulatory fees." *FY 2019 Report and Order*, 34 FCC Rcd at 8192-93, paras. 7-8.

¹⁵ *FY 2019 Report and Order*, 34 FCC Rcd at 8192-93, paras. 7-8; *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket No. 19-105, Notice of Proposed Rulemaking, 34 FCC Rcd 3272, 3275-77, paras. 6-10 (2019) (*FY 2019 NPRM*).

¹⁶ Section 9(c)(1)(B) of the Communications Act contemplates such changes to the fee schedule necessary to result in the collection of the amount required by subsection 159(b). 47 U.S.C. § 159(c)(1)(B). For example, if the number of units in a regulatory fee category increases, the amount due per unit may decrease, depending on other factors. Such changes under section 9(c) of the Communications Act fall under the section 9A(b)(1) Congressional notification requirements. 47 U.S.C. §§ 159A(b)(1), 159(c).

¹⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2021*, Report and Order and Notice of Proposed Rulemaking, 36 FCC Rcd 12990, 12999, para. 17 (2021) (*FY 2021 Report and Order*). Changes under section 9(d) of the Communications Act fall under the section 9A(b)(2) 90-day notification to Congress. 47 U.S.C. §§ 159A(b)(2), 159(d).

¹⁸ *FY 2019 Report and Order*, 34 FCC Rcd at 8193, para. 8. In addition to this issue of administrability, adopting a fee category where there are no FTE time accorded most years or where any fees set would be well below the annual de minimis threshold is not practicable.

5. We do not assign direct FTEs to specific fee categories by rote or at random.¹⁹ Instead, as the Commission has previously explained, we assign direct FTEs within a core bureau to a specific fee category in a manner that reflects the time spent by FTEs on oversight and regulation of a particular set of fee payors which is the “benefit” to such payors in each fee category.²⁰ Thus, we apportion regulatory fees across fee categories based on the number of non-auctions direct FTEs in each core bureau and take into account factors that are reasonably related to the payor’s benefits.²¹

6. As part of our annual regulatory assessment obligations, we issue an annual Notice of Proposed Rulemaking seeking comment on the methodology for assessing regulatory fees and the proposed regulatory fees for the fiscal year.²² In implementing our section 9 authority, we consider the adoption of a new regulatory fee category or a change in an existing regulatory fee category only when we develop a sufficient basis for making the change, and we work to ensure that all changes serve the goal of ensuring that our assessment of regulatory fees is fair, administrable, and sustainable.²³

7. We typically assess the allocation of FTEs by first determining the number of direct FTEs, (that is, those non-auctions²⁴ FTEs whose work is focused on the industry segment in each core

¹⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2021, Assessment and Collection of Regulatory Fees for Fiscal Year 2022*, Report and Order and Notice of Proposed Rulemaking, FCC 22-39, para. 3 (*FY 2022 NPRM*).

²⁰ The Commission has stated that “Section 9 is clear . . . that regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.” *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712, 15719, para. 19 (2007).

²¹ See *FY 2019 Report and Order*, 34 FCC Rcd at 8193, para. 9.

²² The annual Notice of Proposed Rulemaking, *FY 2023 NPRM*, was released on May 15, 2023. *Review of the Commission’s Assessment and Collection of Regulatory Fees, Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, MD Dockets 22-301, 23-159, Report and Order and Notice of Proposed Rulemaking, FCC 23-34 (rel. May 15, 2023) (*FY 2023 NPRM*).

²³ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, MD Docket Nos. 12-201, 13-58, 08-65, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd 7790, 7798-7807, paras. 17-40 (2013); *FY 2012 Regulatory Fee Reform NPRM*, 27 FCC Rcd at 8464-65, paras. 14-16. The concept of administrability includes the difficulty in collecting regulatory fees under a system that could have unpredictable dramatic shifts in assessed fees in certain categories from year to year. In adopting our fee schedule, we are also mindful of other general limits of fee authority. See *National Cable Television Ass’n v. United States*, 415 U.S. 336, 340-41 (1974) (construing Independent Offices Appropriations Act) (IOAA)); see also *National Cable Television Ass’n v. FCC*, 554 F.2d 1094, 1106 & n.42 (D.C. Cir. 1976). While IOAA no longer applies to the Commission, we remain cognizant of broader legal issues raised by user fee and/or regulatory fee precedent. See House of Representatives Report No. 99-453 (1985) at page 433 (noting the significance of *National Cable* and explaining that IOAA no longer applies to the Commission with the passage of other specific fee authority, application fees, in COBRA-85).

²⁴ Auctions expenses are separately funded and not part of the Commission’s S&E appropriation. The Commission recovers the costs of developing and implementing its section 309(j) spectrum auctions program as an offsetting collection against auction proceeds and subject to an annual cap. 47 U.S.C. § 309(j)(8)(B) (providing that “the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection.”). For this reason, auctions FTEs are not included in the calculation of regulatory fees and the Commission’s methodology excludes all auction-related FTEs and overhead from the regulatory fee calculations. To the extent that FTEs within core bureaus spend a portion of their time on auctions issues and a portion of their time on non-auctions issues, their time is split and only the non-auctions portion of their time is reflected in the relevant core bureau’s FTE count. *FY 2021 Report and Order*, 36 FCC Rcd at 12999-13000, para. 20. We recognize that section 309(j)(11) (“Termination”) of the Communications Act provides an expiration date for the “authority of the Commission to grant a license or permit under this subsection” and includes a list of exceptions to the expiration date. 47 U.S.C. § 309(j)(11). Congress issued a series of extensions to the expiration date, the last of which expired on March 9, 2023. Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, (continued....)

bureau) and then attribute all other non-auction FTEs as indirect.²⁵ The Commission generally categorizes the FTEs in the Enforcement Bureau, Consumer and Governmental Affairs Bureau, Public Safety and Homeland Security Bureau, Chairwoman's and Commissioners' Offices, Office of the Managing Director, Office of General Counsel, Office of Inspector General, Office of Communications Business Opportunities, Office of Engineering and Technology, Office of Legislative Affairs, Office of Workplace Diversity, Office of Media Relations, Office of Economics and Analytics, and Office of Administrative Law Judges, along with some FTEs in the Wireline Competition Bureau and the International Bureau, as indirect for regulatory fee purposes.²⁶ Unlike the work of direct FTEs, the work of indirect FTEs in these non-core bureaus and offices does not focus on the oversight and regulation of a specific category of regulatory fee payors, but instead benefits the Commission, the telecommunications industry, and the public as a whole.²⁷ Our high percentage of indirect FTEs demonstrates that many of our activities and costs are not limited to a particular fee category.²⁸

8. In the *FY 2023 NPRM*, based on the record received in response to the Notice of Inquiry (*NOI*) in MD Docket No. 22-301²⁹ that was released last fall, and after a thorough staff level review of the work being conducted by FTEs in the Commission's bureaus and offices, we sought comment on reallocating certain FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau to a core bureau as direct FTEs, solely for the

Pub. L. No. 117-180, 136 Stat. 2114 (September 30, 2022) (extending spectrum auction authority through December 16, 2022); Further Continuing Appropriations and Extensions Act, 2023, Pub. L. No. 117-229, 136 Stat. 2308 (December 16, 2022) (further extending spectrum auction authority through December 23, 2022); Further Additional Continuing Appropriations and Extensions Act, 2023, Pub. L. No. 117-264, 136 Stat. 4167 (December 23, 2022) (further extending spectrum auction authority through December 30, 2022); and Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459 (December 29, 2022) (further extending spectrum auction authority through March 9, 2023). Due to the lapse of the Commission's general auction authority, the Commission has ceased certain work. We have evaluated the impact of this on the FCC's FTEs and do not believe that it materially impacts our direct or indirect FTE allocations for FY 2023. To the extent the issue is relevant for FY 2024, we will address it in our FY 2024 NPRM.

²⁵ *FY 2012 Regulatory Fee Reform NPRM*, 27 FCC Rcd at 8460, para. 5 & n.5; *Procedures for Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, MD Docket No. 12-116, Report and Order, 27 FCC Rcd 8390, 8392 paras. 3-5 (2012) (*FY 2012 Report and Order*).

²⁶ The Commission has previously reallocated FTEs in the International Bureau and the Wireline Competition Bureau from direct to indirect for regulatory fee purposes, due to the nature of their work assignments. For example, in 2013, the Commission allocated as indirect all but 28 International Bureau FTEs. *Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Report and Order, 28 FCC Rcd 12351, 12355-356, para. 14 (2013) (*FY 2013 Report and Order*). Subsequently, in the *FY 2015 Report and Order*, the Commission reallocated, for regulatory fee purposes, four International Bureau FTEs working on market access requests for non-U.S. licensed space stations as indirect. *Assessment and Collection of Regulatory Fees for Fiscal Year 2015*, Report and Order and Further Notice of Proposed Rulemaking, 30 FCC Rcd 10268, 10278, para. 24 (2015) (*FY 2015 Report and Order*). Four indirect FTEs have since been reallocated as direct. *Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, Report and Order and Notice of Proposed Rulemaking, 35 FCC Rcd 4976, 4991, para. 33 (2020) (*FY 2020 NPRM*), *affirmed*, *Telesat Canada, et al. v. FCC*, 999 F.3d 707 (D.C. Cir. 2021) (*Telesat*). In 2017, the Commission reallocated as indirect, for regulatory fee purposes, 38 FTEs in the Wireline Competition Bureau who work on non-high cost programs of the Universal Service Fund. *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7057, 7061-64, paras. 10-15 (2017) (*FY 2017 Report and Order*). The FTE burden associated with the work of the non-high cost programs of the Universal Service Fund are evaluated annually and adjusted accordingly.

²⁷ See *FY 2021 Report and Order*, 36 FCC Rcd at 30001, para. 22.

²⁸ *Id.* at 12991-92, para. 8; *FY 2013 Report and Order*, 28 FCC Rcd at 12357, para. 17.

²⁹ The Commission's *NOI* was attached to the *FY 2022 Report and Order*. *Assessment and Collection of Regulatory Fees for FY 2022*, MD Docket Nos. 22-223, 22-301, Report and Order and Notice of Inquiry, FCC 22-68, 2022 WL 4079045 (2022) (*FY 2022 Report and Order*). Three parties filed comments and six parties filed replies. The list of commenters to the *NOI* was attached in Appendix A to the *FY 2023 NPRM*.

purpose of calculating regulatory fees. As we explained in the *FY 2023 NPRM*, where we are able to determine that FTE time is being spent on work directly related to the oversight and regulation of regulatory fee payors in a core bureau and that such a determination is reasonably accurate for the fiscal year, we proposed to reallocate the FTE burden of such work as direct to the relevant core bureau(s), which would increase the number of direct FTEs in each of the core bureaus.³⁰

9. We also sought comment on several additional regulatory fee issues, including: (i) the calculation of television and radio broadcaster regulatory fees, including the modification of the existing grid by adding a new tier for AM and FM radio stations; (ii) defining the category of operations for on-orbit servicing and rendezvous and proximity operations for regulatory fee purposes, including whether a separate regulatory fee category is necessary, and how to apply regulatory fees to OOS and RPO spacecraft specifically operating near the geostationary satellite orbit arc, including the two licensed OOS and RPO spacecraft that were operational in FY 2023; (iii) evaluating how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; (iv) considering whether to continue in FY 2023 several of the temporary measures we implemented in FYs 2020 through 2022; and (v) whether to permit regulatory fee payors to prepay their regulatory fees in installments.

10. We received 10 comments and 12 reply comments. Appendix A contains the list of commenters.

III. DISCUSSION

11. Pursuant to section 9 of the Act, in this Report and Order, we adopt the regulatory fee schedule, as set forth in Appendices B and C, as modified herein, for FY 2023, to collect \$390,192,000 in regulatory fees as required by Congress.³¹

A. Methodology for Assessing Regulatory Fees and FTE Allocation

12. Consistent with our statutory mandate and our regulatory fee methodology, we start our regulatory fee assessment with the FTE counts and then adjust fees to reflect other factors related to the benefits provided to the payor of the fee by the Commission's activities.³² In section 9 of the Act Congress prescribes that regulatory fee payors bear the FTE burden associated with their oversight and regulation by the relevant core bureau(s).³³ Insofar as the non-auctions FTE time in the four core bureaus continues to focus on the oversight and regulation of fee payors in the industry segment regulated by each of those bureaus, we will continue to apportion regulatory fees across fee categories based on the number of non-auction direct FTEs in each core bureau and take into account factors that are "reasonably related to the benefits provided to the payor of the fee by the Commission's activities."³⁴ After we determine the number of direct FTEs for each core bureau, we use these numbers to start our calculations of the percentage of the total amount of regulatory fees to be collected for a given fiscal year from each fee category.

13. We then allocate appropriated amounts to be recovered proportionally based on the number of direct FTEs within each core bureau. Those proportions are then subdivided within each core bureau into fee categories among the regulatory fee payors served by the core bureau. Finally, within each regulatory fee category, we divide the amount to be collected by a unit that allocates the regulatee's proportionate share based on an objective measure. As a general matter, there is no additional calculation to attribute indirect costs. Instead, the proportional allocation of the whole S&E appropriation based on

³⁰ *FY 2023 NPRM* at paras. 22-54.

³¹ FY 2023 regulatory fees are listed in Appendices B and C.

³² *FY 2019 Report and Order*, 34 FCC Rcd at 8195, para. 16.

³³ *FY 2019 NPRM*, 34 FCC Rcd at 3275-77, paras. 6-10.

³⁴ *FY 2012 Regulatory Fee Reform NPRM*, 27 FCC Rcd at 8461, para. 8 ("The Commission allocates FTEs according to the nature of the employees' work. If the work performed by an employee can be assigned to a regulatory fee category in one of the four core licensing bureaus—Wireless Telecommunications, Media, Wireline Competition, and International—that employee's time is counted as a direct FTE.").

the number of direct FTEs effectively attributes all indirect costs among the core bureaus so that the Commission can recover its entire appropriation each year.

14. As the Commission has explained, “[g]iven the Act’s requirement that fees must ‘reflect’ FTEs before adjusting fees to take into account other factors, we find FTE counts by far the most administrable starting point for regulatory fee allocations.”³⁵ Regulatory fees must cover the entire S&E appropriation, even those portions of the appropriation that supports work on issues for which we do not have regulatory fee categories. Therefore, we continue to find that, consistent with section 9 of the Act, regulatory fees are not based on a precise allocation of specific employees with certain work assignments each year and instead are based on a higher-level approach.³⁶ While some commenters continue to take issue with some of the Commission’s determinations of whether certain FTEs should be considered to be indirect or direct³⁷ and also advocate that the Commission should adopt new fee categories,³⁸ no commenter has offered an alternative methodology for the Commission to recover our annual appropriation.³⁹ Instead, we agree with commenters that argue that the record supports the adoption of regulatory fees consistent with the Commission’s long standing regulatory fee framework.⁴⁰ CTIA agrees that our core principles—basing regulatory fees on FTEs; fairness, administrability, and sustainability; and making changes to classifications only after performing considerable analysis and concluding there is a clear case for reassignment—have resulted in a reasoned but rigorous methodology that ensures all regulatory fee payors pay their fair share of regulatory fees.⁴¹ Accordingly, we find no basis to adjust our general methodology for assessing regulatory fees. We find that the Commission’s general methodology for establishing regulatory fees has been, and continues to be, appropriate and consistent with section 9 of the Act. Thus, for FY 2023, our fee methodology will attribute the direct FTEs within each core bureau to payor categories based on the nature of the FTE work. We also will consider the ministerial adjustments necessitated by the more discernable changes from the prior year regulatory fee proceeding, e.g., changes in the: (i) FY appropriation, (ii) FTE levels, and (iii) relevant unit measures for each regulatory fee category.⁴² Once the percentages of total direct FTEs in the core bureaus are determined, the Commission calculates fee rates among the specific fee categories within each core bureau based upon the fee categories’ proportional fee amounts to be collected. These proportional calculations allocate all Commission non-auction related costs across all fee categories that total the target goal amount.

15. For FY 2023, our Human Resources Management office has provided the Commission data identifying 339.25 non-auctions, direct FTEs distributed among the core bureaus. In consultation with the bureaus and offices, we have validated this data. In the *FY 2023 NPRM*, following a high level, yet comprehensive, staff analysis of indirect FTE time in non-core bureaus and offices, we proposed to reallocate 63 indirect FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau where we were able to determine with reasonable accuracy for the fiscal year that the FTE burden of such work is directly related to the oversight and regulation of regulatory fee payors in a core bureau such that it should be considered as direct to that

³⁵ *FY 2019 Report and Order*, 34 FCC Rcd at 8193, para. 8.

³⁶ *FY 2022 Report and Order* at para. 15.

³⁷ See, e.g., State Broadcasters Associations Reply at 6-10; NAB Comments at 10-16 & Reply at 3.

³⁸ See, e.g., Intelsat Comments at 5-6; Satellite Operators Reply at 3-9; NAB Reply at 4-5.

³⁹ Apart from certain commenters’ raising specific issues with indirect FTEs in the Wireline Competition Bureau and contending that we should seek comment again on adopting new fee categories, commenters generally agree with the NPRM proposals. See, e.g., CTIA Reply at 7-11; SIA Reply at 1-3.

⁴⁰ CTIA Reply at 2.

⁴¹ *Id.* at 3-7.

⁴² While such changes are usually non-controversial and based on objective changes, they can nevertheless result in significant changes in fee rates.

bureau for the purposes of calculating regulatory fees.⁴³ As explained fully below, with the overwhelming support of commenters,⁴⁴ we adopt our proposal for these reallocations. In addition, in order to apply consistent principles to our determinations, and in response to the record gathered in this proceeding,⁴⁵ we also reallocate two direct FTEs from the Media Bureau to be considered as indirect FTEs because the nature of their work is sufficiently linked to work that is similar to that of work performed in the Enforcement Bureau, which is categorized as indirect.⁴⁶ Our adoption of these reallocations results in a revised total of 400.25 non-auctions, direct FTEs for FY 2023. Our calculations of direct FTEs associated with each core bureau are now as follows: International Bureau (31), Wireless Telecommunications Bureau (98), Wireline Competition Bureau (143.25), and Media Bureau (128).⁴⁷

16. Based on these reallocations and after we make adjustments to these direct FTE counts to implement Commission precedent regarding FTEs working on non-high cost Universal Service Fund matters,⁴⁸ we will collect approximately \$30.32 million (7.77%) in fees from the International Bureau regulatory fee payors; \$95.83 million (24.56%) in fees from the Wireless Telecommunications Bureau regulatory fee payors; \$140.12 million (35.91%) in fees from Wireline Competition Bureau regulatory fee payors; and \$123.92 million (31.76%) in fees from Media Bureau regulatory fee payors.

17. The record supports our proposal to reallocate certain indirect FTEs from the Office of General Counsel, the Office of Economics and Analytics, and the Public Safety and Homeland Security Bureau as direct to a core bureau because we can determine with reasonable accuracy for the fiscal year that these FTEs are devoted to work that is sufficiently linked to the oversight and regulation of regulatory fee payors in a core bureau such that the burden of that work should be allocated as direct for regulatory fee purposes. Commenters addressing this issue agree that by taking a more granular approach, the Commission's fee structure more closely aligns the recovery of costs with those who benefit from Commission regulatory activities.⁴⁹ Commenters support our proposal to reallocate a total of 63 indirect FTEs as direct for regulatory fee purposes.⁵⁰ They contend that doing so will advance the Communications Act objective for the Commission to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.⁵¹

18. CTIA agrees that we should adopt the tentative conclusion to continue to treat FTEs in other non-core bureaus and offices, including OET, EB, and CGB, as indirect and that our comprehensive analysis reaffirmed the longstanding conclusion that the work in these non-core bureaus and offices covers a variety of issues that are not directly allocable or associated with a regulatory fee payor and they are properly considered indirect.⁵² Several commenters propose that in future years we should identify

⁴³ *FY 2023 NPRM* at paras. 22-54.

⁴⁴ *See, e.g.,* Satellite Operators Comments at 3-4 & Reply at 2; SIA Reply at 1-3; State Broadcasters Association Reply at 8-9; NAB Comments at 6-10 & Reply at 2-4; Satellite *ex parte* at 3. CTIA agrees that our approach appears to be generally consistent with our longstanding methodology of basing fees on FTE work and changing FTE classifications only after considerable analysis and finding the clearest case for reassignment. CTIA Reply at 7-8.

⁴⁵ NAB Comments at 9-10.

⁴⁶ *See* discussion below in section III.C.3.

⁴⁷ As we discuss below in section III.C.3, we are reallocating two Media Bureau FTEs from direct to indirect, for regulatory fee purposes.

⁴⁸ *See FY 2022 Report and Order* at paras. 66-71. *See also* discussion below in section III.B.

⁴⁹ Intelsat Comments at 2-3; Satellite Operators Comments at 3-4 & Reply at 2; NAB Reply at 3.

⁵⁰ Intelsat Comments at 2-3; NAB Comments at 6-8 & Reply at 2-3; Satellite Operators Reply at 2; CTIA Reply at 2; State Broadcasters Associations Reply at 3; SIA Reply at 1-2.

⁵¹ Satellite Operators Comments at 3-4; NAB Reply at 3.

⁵² CTIA Reply at 8-9.

additional indirect FTEs that can be considered direct for regulatory fee purposes.⁵³ Intelsat recommends that the Commission conduct the evaluation of the work of indirect FTEs in future regulatory fee rulemakings, if not annually, then at least biannually.⁵⁴ In addition to making this allocation review a priority annually or biannually, Intelsat argues, the Commission should also consider what other indirect FTEs may be appropriate to reallocate as direct, and whether adding new fee payors would more fully comply with the Commission's statutory mandate regarding regulatory fees.⁵⁵ Commenters argue that future reviews of the Commission's FTEs should include an annual analysis of whether there are indirect FTEs in non-core bureaus and offices that should be reallocated as direct to a core bureau based upon the burden of time being devoted to particular regulatory fee payors.⁵⁶ CTIA argues that we should reject these arguments and that we need not undertake a comprehensive analysis of all indirect FTEs annually.⁵⁷ CTIA maintains that "the mere specter of wide-ranging annual FTE reclassifications" will interject uncertainty into the regulatory fee process.⁵⁸

19. We conclude that, as part of our annual FTE analysis, we will continue to evaluate whether any FTEs should be reallocated for regulatory fee purposes as we do each year when reviewing and validating the FTE data. And, where our evaluation merits inclusion of proposed reallocations, we will seek comment on any such potential reallocation of FTEs in an annual proceeding. We note, however, that we will exercise our discretion regarding where to focus our analytical efforts each year to best respond to changes in the FCC's substantive work, changes in the FCC's organization, and changes in the telecommunications industry itself. We further conclude that such agency discretion is particularly important because we agree with CTIA that we do not wish to inadvertently expand our indirect FTE levels by engaging in an endless review of all FTE allocations. As such, we will exercise our discretion to ensure that we conduct our annual review in a manner that is fair, manageable, and sustainable.⁵⁹

20. We emphasize that our decision to adopt our proposal today is in accord with past Commission precedent. For example, in 2013, the Commission allocated as indirect all but 28 International Bureau FTEs.⁶⁰ Likewise in 2015, the Commission reassigned four International Bureau FTEs working on market access requests for non-U.S. licensed space stations as indirect.⁶¹ Five years later, the Commission reclassified four International Bureau indirect FTEs as direct FTEs.⁶² Thus, it is also not uncommon for the Commission to reassign direct FTEs as indirect or from one core bureau to another for regulatory fee purposes to reflect, among other things, changes in the FCC's substantive work, changes in the FCC's organization, and changes in the telecommunications industry.⁶³

21. As we described in the *FY 2023 NPRM*, we limit our reallocation of indirect FTEs as direct FTEs to a core bureau for regulatory fee purposes to those instances where we can determine with reasonable accuracy for the entire fiscal year that such FTE work furthers the oversight and regulation of

⁵³ Satellite Operators Comments at 4; NAB Comments at 8 & Reply at 2; Intelsat Comments at 3; SIA Reply at 3.

⁵⁴ Intelsat Comments at 3.

⁵⁵ *Id.* at 4.

⁵⁶ NAB Comments at 8; SIA Reply at 3.

⁵⁷ CTIA Reply at 9.

⁵⁸ *Id.*

⁵⁹ *Id.* at 5-9.

⁶⁰ *FY 2013 Report and Order*, 28 FCC Rcd at 12355-56, para. 14.

⁶¹ *FY 2015 Report and Order*, 30 FCC Rcd at 10278, para. 24.

⁶² *FY 2020 NPRM*, 35 FCC Rcd at 4991, para. 33.

⁶³ See, e.g., *FY 2017 Report and Order*, 32 FCC Rcd at 7064-65, paras. 16-17 (reallocating, for regulatory fee purposes, four direct FTEs from the Wireline Competition Bureau to the Wireless Telecommunications Bureau because approximately half of the benefit of the work of these FTEs accrue to Wireless Telecommunications Bureau regulatees).

regulatory fee payors. We recognize that this reclassification represents a change from some recent reviews of the same offices.⁶⁴ Nevertheless, at this time our evaluation of FTE time in the non-core bureaus and offices supports our conclusion that, for certain FTEs in the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau, it is appropriate to consider the FTE burden of their work as directly devoted to the oversight and regulation of regulatory fee payors. For that reason, we are adopting our proposal that such FTE time should be considered direct for those relevant core bureau(s).

22. For the purposes of this determination, we have evaluated whether measurable FTE time for FY 2023 is primarily being spent on the regulation and oversight of regulatory fee payors. Commission staff excluded any FTE time from this analysis if it was not equivalent to the time of at least one FTE, concluding that less than a full-time FTE demonstrates that the work being done is appropriately considered to be indirect and should not be reassigned. The table below summarizes all of the reallocations we are adopting today.

CORE BUREAU FTE PERCENTAGES WITH AND WITHOUT FTE REALLOCATIONS

Core Bureau	2023 FTE % Without FTE Reallocations	2023 Amount Without FTE Reallocations (Millions)	2023 FTE % With FTE Reallocations	2023 Amount With FTE Reallocations (Millions)
		FY 2023 Appropriation is \$390.192		FY 2023 Appropriation is \$390.192
Wireline Competition Bureau	35.57%	\$138.79	35.91%	\$140.12
Media Bureau	33.96%	\$132.52	31.76%	\$123.9
Media Bureau subcategory Broadcasters	15.28%	\$59.65	14.12%	\$55.10
Media Bureau subcategory Cable	18.68%	\$72.87	17.64%	\$68.83
Wireless Telecommunications Bureau	22.19%	\$86.56	24.56%	\$95.83
International Bureau	8.28%	\$32.32	7.77%	\$30.32

23. We conclude that 63 FTEs from the Office of Economics and Analytics, the Office of General Counsel, and the Public Safety and Homeland Security Bureau devote their time to the oversight and regulation of regulatory fee payors, where we can determine with reasonable accuracy for the entire fiscal year, as we discuss below. For that reason, we reallocate the FTE time as direct to the relevant core bureau(s) for calculating regulatory fees. Likewise, to apply consistent principles across our determinations, we reallocate two direct FTEs from the Media Bureau as indirect FTEs because the nature of their work is sufficiently linked to work that is similar to that performed in the Enforcement Bureau, which has been categorized as indirect. Below, we discuss our analysis.

24. *Office of Economics and Analytics (OEA)*. We adopt our proposal to reallocate 30 indirect FTEs from OEA as direct to a core bureau for regulatory fee purposes as follows: two to the International Bureau, eight to the Wireless Telecommunications Bureau, 13 to the Wireline Competition Bureau, and seven to the Media Bureau. We reach this conclusion after evaluating the burden of FTE time in OEA.

⁶⁴ See, e.g., our discussion below of our initial classification of FTEs in OEA with our decision here today.

25. Following its inception in 2018,⁶⁵ the Commission concluded that it was appropriate for the non-auctions FTEs in OEA to be considered indirect FTEs because their work benefits the entire Commission as well as the telecommunications industry and does not specifically focus on regulatory fee payors.⁶⁶ As a general matter, this remains true today. Of relevance to the regulatory fee proceeding, OEA's non-auction funded work provides economic analysis, including cost-benefit analysis, for rulemakings, transactions, adjudications, and other Commission actions; develops policies and strategies to help manage Commission data resources and establish best practices for data use throughout the Commission in coordination with other bureaus and offices; and conducts long-term research on ways to improve the Commission's policies and processes in each of these areas.⁶⁷ Notably, OEA collaborates with and advises other bureaus and offices in the areas of economic and data analysis and with respect to the analysis of benefits, costs, and regulatory impacts of Commission policies, rules, and proposals. As part of this collaboration, OEA reviews all rulemakings prepared by those bureaus and offices, all other Commission-level items that contain economic or data analysis, and similar items that the bureaus or offices release on delegated authority.⁶⁸

26. In evaluating the burden of the work currently being performed by OEA's FTEs, staff recognized that certain bureaus tend to generate more economic and data issues for OEA to analyze as well as more documents that require OEA review. For FY 2023, we find that there is measurable work done by OEA FTEs that is being done directly in furtherance of the oversight and regulation of regulatory fee payors in certain industry segments. In fact, staff analysis reveals that the work and expertise of certain FTEs from OEA remain devoted to the oversight and regulation of regulatory fee payors in a manner that is consistent with the FTE burden of work performed within a core bureau prior to the OEA's implementation. This determination supports our decision to reallocate the burden of the work of certain of OEA's FTEs as direct for regulatory fee purposes. We recognize that this is a partial change from our determination in the 2019 regulatory fee proceeding with respect to OEA FTEs.⁶⁹ We have explained however, that our determinations are based on an analysis of the actual work of the OEA.

27. We conclude that 13 indirect FTEs from OEA should be reallocated as direct FTEs to the Wireline Competition Bureau because the burden of their work is devoted to universal service fund issues in high-cost areas; competition and interconnection; setting rates for calls from incarcerated persons; the establishment of a national suicide hotline, and efforts to evaluate the costs, benefits, and public interest factors associated with protecting privacy matters such as the Wireline Competition Bureau's work on customer proprietary network information (CPNI) rules addressing access, use, and disclosure of

⁶⁵ The Commission reassigned staff to the OEA, effective December 11, 2018, resulting in the reassignment of 95 FTEs (of which 64 were not auctions-funded) as indirect FTEs. *See Establishment of the Office of Economics and Analytics*, Order, 33 FCC Rcd 1539 (2018); FCC Opens Office of Economics And Analytics, Federal Communications Commission News Release, Dec. 11, 2018, <https://www.fcc.gov/document/fcc-opens-office-economics-and-analytics>. At the time of the implementation of the OEA, of the non-auctions FTEs, 8.5 were from the Wireless Telecommunications Bureau, 22.2 from the Wireline Competition Bureau, and 8.9 from the Media Bureau. *FY 2019 Report and Order*, 34 FCC Rcd at 8194, para. 11. That same year, the Commission reassigned Equal Employment Opportunity enforcement staff from the Media Bureau to the Enforcement Bureau, effective March 15, 2019, resulting in a reduction of seven direct FTEs in the Media Bureau. *See Transfer of EEO Audit and Enforcement Responsibilities to Enforcement Bureau*, Public Notice, 34 FCC Rcd 1370 (EB 2019).

⁶⁶ *FY 2019 Report and Order*, 34 FCC Rcd at 8194, para. 11 & n.41.

⁶⁷ We do not include auctions funded OEA FTEs for regulatory fee purposes.

⁶⁸ *See* 47 CFR § 0.271.

⁶⁹ *FY 2019 Report and Order*, 34 FCC Rcd at 8194, para. 11 & n.41 (the Commission reassigned staff to the Office of Economics and Analytics, effective December 11, 2018, resulting in the reassignment of 95 FTEs (of which 64 were not auctions-funded) as indirect FTEs.); *Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, Report and Order, 36 FCC Rcd 1731, 1734, para. 8 (2020) (*FY 2020 Report and Order*) (listing indirect bureaus and offices, including OEA with 53 indirect FTEs); *FY 2021 Report and Order*, 36 FCC Rcd at 12994, para. 8 (listing indirect bureaus and offices, including OEA); *FY 2022 Report and Order* at para. 6 (listing indirect bureaus and offices, including OEA with 78 indirect FTEs).

information related to the use of a telecommunications service subscribed to by a customer of a telecommunications carrier. This FTE work is being done directly in furtherance of the oversight and regulation of Wireline Competition Bureau regulatory fee payors, therefore, we find that it appropriate to reallocate it as direct to the Wireline Competition Bureau for purposes of our regulatory fee calculation.

28. Similarly, staff analysis shows that the work of eight OEA FTEs address various wireless and spectrum issues, such as mergers, transactions, and acquisitions, mobile spectrum holdings policies, and deployment in rural areas and on tribal lands. Insofar as the burden of this work is being done directly in furtherance of the oversight and regulation of Wireless Telecommunications Bureau regulatory fee payors, we adopt our proposal to reallocate these eight indirect FTEs as direct FTEs to the Wireless Telecommunications Bureau, for purposes of our regulatory fee calculation.

29. Further, we find that because the burden of the work of seven FTEs from OEA relates to broadcast and cable issues, including ownership regulation, next generation (or NextGen TV) standards,⁷⁰ content source disclosures, program carriage and retransmission, and rates and billing practices, and is being done directly in furtherance of the oversight and regulation of Media Bureau regulatory fee payors, it is appropriate to reallocate these FTEs as direct to the Media Bureau, proportionally among the Media Bureau regulatory fee categories, for purposes of our regulatory fee calculation.

30. Lastly, because the burden of the work of two FTEs from OEA addressing undersea cables, international bearer circuits, and satellite services related issues is done directly in furtherance of the oversight and regulation of International Bureau regulatory fee payors, we conclude that it is appropriate to reallocate these two indirect FTEs as direct to the International Bureau, proportionally among the International Bureau regulatory fee categories.

31. *Office of General Counsel (OGC).* Our evaluation of the burden of the FTE time in OGC supports the Commission's repeated conclusion that the majority of the work this office performs is most appropriately categorized as indirect, for regulatory fee purposes.⁷¹ On review, however, for FY 2023 we conclude that certain aspects of OGC's work are sufficiently linked to the oversight and regulation of individual regulatory fee categories such that five FTEs from OGC should be reallocated as direct FTEs to a relevant core bureau for regulatory purposes.

32. OGC serves as the chief legal advisor to the Commission and its various bureaus and offices. In that capacity OGC's responsibilities are generally described as interpreting new and existing statutes and executive orders as they pertain to the Commission's exercise of its Communications Act authority and other authorities, as well as performing such functions involving implementation of such statutes and executive orders as may be assigned to it by the Commission. OGC advises the Commission in the preparation and revision of our rules, recommends decisions in adjudicatory matters before the Commission, assists the Commission in its decision-making capacity and performs a variety of legal functions regarding internal and other administrative matters. OGC also advises and represents the Commission in matters of litigation. These roles are divided between the Administrative Law Division and the Litigation Division and are overseen by the General Counsel (GC) and the GC's Front Office.

33. The Litigation Division represents the Commission in a wide variety of court cases⁷²

⁷⁰ NextGen TV, also known as ATSC 3.0, is based on Internet Protocol (IP), such as online video or streaming services, and uses web languages for interactivity. See NAB, Unleashing the Next Generation of Broadcast Innovation, *What is Next Generation TV?*, <https://www.nab.org/innovation/nextGenTV.asp> (last visited June 22, 2023); FCC News Release, *FCC Chairwoman Announces Launch of 'Future of TV' Public-Private Initiative Focused on Transition to NextGen TV*, Apr. 17, 2023, <https://www.fcc.gov/document/chairwoman-announces-future-tv-public-private-initiative>.

⁷¹ *FY 2022 Report and Order*, paras. 6, 20 (noting the FTE allocation of OGC).

⁷² OGC represents the Commission in Federal courts of appeals when parties challenge Commission actions, and, in conjunction with the United States Department of Justice and United States Attorney's offices, represents the Commission in litigation in Federal district courts. In addition, Litigation Division attorneys work with the Office of (continued....)

covering actions that most federal agencies are subject to (e.g., personnel, Federal Tort Claims Act, Freedom of Information Act, False Claims Act, and contract actions and disputes) in addition to challenges regarding the Commission's exercise of our Communications Act authority. After careful consideration of the burden of FTE work in this division, we do not make any FTE reallocations for the Litigation Division. The level of effort to support litigation that is unrelated to our Communications Act authority is generally not tied to oversight and regulation of any regulatory fee category. Thus, the FTE burden of this work remains appropriately considered as indirect. The FTE burden associated with litigation that directly touches on our Communications Act authority should also remain as indirect. We make this determination for a variety of reasons. Primarily, it is not possible to determine with any level of consistency year to year whether the FTE work in support of litigation matters benefits a particular regulatory fee category.⁷³ This is particularly true because the essential issue in dispute when a matter moves to litigation may touch on issues of broader concern than any one regulatory fee group, or conversely be so procedural as to be effectively generic to all federal agency action.⁷⁴ Moreover, at its core, the FTE work defending the Commission's expert authority in implementing the Communications Act is the epitome of work that benefits the agency as a whole and we do not believe it would be fair for any one regulatory fee group to shoulder the FTE burden of such work.

34. The Administrative Law Division provides legal advice to the Commission concerning a wide array of substantive areas of the law necessary to the functioning of any federal agency.⁷⁵ In large part, such work benefits the work of the Commission as a whole and is not specific to any particular regulatory fee category. Thus, the FTE burden associated with such work properly remains almost entirely allocated as indirect. In contrast to the Litigation Division, however, it is possible to determine that some of the burden of the work performed by FTEs from the Administrative Law Division, particularly in reviewing Commission rules, proposed rules, and adjudicatory orders, as well as providing extensive advice on the Commission's authority under the Communications Act, including the exercise of delegated authority by the bureaus and offices, is done in furtherance of the oversight and regulation of regulatory fee payors in the core bureaus. Accordingly, where we have determined that this work is directly related to our oversight and regulation of specific regulatory fee payor categories, we adopt our determination to reallocate the FTE burden of such work as direct to the relevant core bureau(s). Specifically, for FY 2023 we reallocate one OGC FTE as direct to the Wireline Competition Bureau; two OGC FTEs as direct to the Wireless Telecommunications Bureau; one OGC FTE as direct to the Media Bureau, proportionally among the Media Bureau fee categories; and one OGC FTE as direct to the International Bureau, proportionally among the International Bureau fee categories.

35. *Public Safety and Homeland Security Bureau (PSHSB)*. We also adopt our proposal to reallocate, for regulatory fee purposes, a total of 28 indirect FTEs from PSHSB as direct FTEs to core bureaus as follows: 13 to the Wireless Telecommunications Bureau, nine to the Wireline Competition Bureau, and six to the Media Bureau.

36. PSHSB advises and coordinates within the Commission on all matters pertaining to public safety, homeland security, national security, cybersecurity, emergency management and preparedness, disaster management, and related matters.⁷⁶ Insofar as the bureau leads initiatives that

the Solicitor General of the United States in representing the Commission in actions in the United States Supreme Court.

⁷³ Because most litigation is defensive it is inherently more difficult to predict the level of effort and fee categories that might be implicated each year. This would make predictive analysis more time consuming and subjective and also make such direct FTE allocations potentially less administrable.

⁷⁴ For example, litigation can frequently turn on procedural issues such as the timeliness of when an argument was raised, or an exception to the Administrative Procedure Act.

⁷⁵ Such areas of the law include the Freedom of Information Act, the Privacy Act, the Regulatory Flexibility Act, the Paperwork Reduction Act of 1995, the Government in the Sunshine Act, the Congressional Review Act of 1996, and the statutes and rules governing ethics, personnel, procurement, and fiscal law.

⁷⁶ 47 CFR §§ 0.191 (PSHSB functions); 0.392 (PSHSB delegation).

strengthen public safety and emergency response capabilities enabling the Commission to assist the public, first responders, law enforcement, hospitals, the communications industry and all levels of government in times of emergency, we continue to conclude that the majority of its work is best categorized as indirect. PSHSB is organized into three divisions: the Policy and Licensing Division, the Operations and Emergency Management Division, and the Cybersecurity and Communications Reliability Division. On review for FY 2023, we conclude that certain aspects of the burden of some of the FTE work within these divisions is sufficiently linked to the oversight and regulation of individual regulatory fee categories such that certain FTEs, as described below, should be reallocated as direct FTEs to a relevant core bureau for regulatory purposes.

37. The Policy and Licensing Division develops and administers rules, regulations, and policies to support public safety entities, including law enforcement, fire and emergency medical first responders, Public Safety Answering Points, and emergency operations organizations. The division handles licensing of public safety frequencies, including modifications, renewals and adjudications, in frequencies below 470 MHz, and in 470-512 MHz, 700 MHz, 800 MHz, 4.9 GHz and 5.9 GHz under part 90 of the Commission's rules, and the microwave bands under part 101; 911/Enhanced 911/Next Generation 911; Communications Assistance for Law Enforcement Act; the Emergency Alert System (EAS); operability and interoperability for public safety communications and the First Responder Network Authority; and intra- and interagency coordination on spectrum management.

38. After analyzing the FTE work in the Policy and Licensing Division, we conclude that the burden of the work of 14 FTEs in this division is directly in furtherance of the oversight and regulation of regulatory fee payors of a core bureau such that it is appropriate to adopt our proposal to reallocate these FTEs as direct, for regulatory fee purposes. Of the 14 FTEs we have identified, we reallocate two FTEs as direct to the Wireline Competition Bureau, eight FTEs as direct to the Wireless Telecommunications Bureau, and four FTEs as direct to the Media Bureau. Specifically, we adopt these reallocations for regulatory fee purposes because the burden of the work performed on 911 policy, covering issues such as 911 location accuracy, and the transition to Next Generation 911,⁷⁷ as well as clarifying provider obligations and acting on waiver and other provider-specific requests, directly furthers the oversight and regulation of regulatory fee payors of the Wireline Competition Bureau and the Wireless Telecommunications Bureau. Similarly, with regard to the four FTEs we proposed to consider as direct to the Media Bureau, we adopt these reallocations for regulatory fee purposes, proportionally among the fee categories in the Media Bureau, because the FTE burden of the work on the EAS, developing and maintaining the operational rules that apply to EAS participants (i.e., broadcasters), facilitating interactions between EAS participants and alert originators, reviewing State EAS Plans, and acting on waiver and similar requests from broadcasters directly furthers the oversight and regulation of the regulatory payors of the Media Bureau.

39. The Operations and Emergency Management Division (OEMD) ensures the readiness of the Federal Communications Commission to respond to threats and emergencies; conducts and coordinates risk and incident management activities; and supports public safety and events of national security significance. Division staff recommend, develop, and implement emergency plans, policies, and preparedness programs covering the reporting and situational awareness of communications status during times of emergency and Commission functions during emergency conditions. OEMD also manages the provision of service by communications service providers during emergency conditions.

40. The division staff provide legal guidance and perform technical operations in support of interagency Federal, State, Local, Tribal, and Territorial (SLTT) government national security and public safety risk and incident management efforts. In addition, the division provides situational awareness to FCC and federal government leadership regarding national security risks and makes recommendations to

⁷⁷ Next Generation 911 enhances emergency number services and allows digital information (e.g., voice, photos, videos, text messages) to flow from the public, through the 911 network, and to first responders. It will also enable 911 call centers to transfer 911 calls to other call centers. See U.S. Department of Commerce, National Telecommunications and Information Administration, *Next Generation 911*, <https://ntia.gov/category/next-generation-911> (last visited June 22, 2023).

help manage those risks; manages the FCC Continuity Programs to ensure the Commission's ability to perform the functions vital to an enduring government and the availability of nationwide and international communications under all conditions; and assesses and evaluates the status of communications services and infrastructure through Over-The-Air observations and analysis by its Spectrum Monitoring and Analysis Response Team. The division also coordinates with the U.S. Department of Homeland Security on critical national security and emergency preparedness priority communications programs, such as Telecommunication Service Priority Program, Government Emergency Telecommunications Service, and Wireless Priority Service. After analyzing the FTE work in OEMD, we conclude that the burden of the work of five FTEs in this division is directly in furtherance of the oversight and regulation of regulatory fee payors of a core bureau such that it should be reallocated for regulatory purposes. Specifically, of the five FTEs we have identified from this division there are two FTEs that should be reallocated as direct FTEs to the Wireline Competition Bureau, two FTEs that should be reallocated as direct FTEs to the Wireless Telecommunications Bureau, and one FTE that should be reallocated as a direct FTE to the Media Bureau, proportionally among the fee categories in the Media Bureau. OEMD's deployment of personnel to disaster areas primarily supports the oversight and regulation of the regulatory fee payors of all three of these core bureaus by, among other things, receiving and facilitating federal partner responses to requests from providers in disaster areas with issues such as obtaining access to facility sites and procurement of fuel for generators.

41. Moreover, with regard to the two FTEs we reallocate as direct to the Wireline Competition Bureau and the two FTEs we reallocate as direct to the Wireless Telecommunications Bureau, we adopt these changes for regulatory fee purposes because the burden of the work performed by these FTEs is directly related to the oversight and regulation of wireline and wireless regulatory fee payors. In particular, the FTE burden from this division relates to working with federal partners on risk assessment and surveying the status of providers' service and infrastructure following major disasters, emergencies, matters of law enforcement or events of a national security as well as facilitating providers' restoration by coordinating requests and responses with other federal and SLTT entities and private sector companies. In addition, the FTE burden of this work in this division involves administering legal oversight and review of the Commission's Local Number Portability Act (LNPA) activities.

42. In addition, the work done by one FTE in OEMD directly supports the oversight and regulation of regulatory fee payors of the Media Bureau by conducting site surveys of media broadcast transmitters to determine potential issues of radio frequency interference, and by deploying personnel to disaster areas to perform spectrum scans before and after disasters to ascertain the operational status of broadcast stations and assist those that are not operational. Based on this analysis, we adopt our proposal to reallocate, for regulatory fee purposes, one FTE from OEMD as a direct to Media Bureau, proportionally among the fee categories in that bureau.

43. The Communications and Crisis Management Center (FCC Operations Center), which is part of OEMD, maintains a 24/7 staff at FCC Headquarters. Its responsibilities include: monitoring the status of communications and engaging in real-time with emergency operations centers and PSAPs in the event of outages or disasters; resolving consumer complaints; supporting the Commission's enforcement activities; granting special temporary authority to Commission licensees after hours; and maintaining the Commission's primary classified environment and the required support systems.

44. The Operations Center is available 24/7 to field requests from all regulatees for assistance and to grant special temporary authority outside of normal business hours. Operations Center staff routinely field calls regarding consumer complaints of communications outages and interference or requests for information on the provision of wireless and wireline communications services in specific regions of the Nation. In response to these communications, Operations Center staff will coordinate solutions across Commission Bureaus and Offices, SLTT stakeholder entities, and private sector companies. After staff analysis of data regarding the FTE work performed in the Operations Center, we find that the burden of the work of three FTEs from the Operations Center is performed directly in furtherance of the oversight and regulation of regulatory fee payors such that it should be reallocated as direct to a core bureau, for regulatory fee purposes. Specifically, we reallocate one FTE as a direct to the Wireline Competition Bureau, one FTE as direct FTE to Wireless Telecommunications Bureau, and one

FTE as direct to the Media Bureau, proportionally among the fee categories in that bureau.

45. The Cybersecurity and Communications Reliability Division helps ensure that the nation's communications networks are reliable and secure so that the public can communicate, especially during emergencies. This division identifies and promotes network improvements through analysis and investigation of significant communications outages, providing situational awareness of the status of communications infrastructure during times of emergency and administers the Commission's primary advisory committee on communications security and reliability, and rulemakings. Focus areas include emergency communications, such as 911 and wireless emergency alerting, network performance during disasters, and major network outages and threats. This division monitors and analyzes communications network outages to identify trends, assess actions the FCC can take to help prevent and mitigate outages, and where necessary, assist response and recovery activities. Finally, the division supports the security of services provided across platforms, in the Commission's Alerting Security docket, and Federal Advisory Committee work on 911 standards and alerting standards, as well as network and supply chain security.

46. The Cybersecurity and Communications Reliability Division provides oversight and regulation of the regulatory payors by, among other things, providing situational awareness of the status of communications infrastructure and coordinating requests for assistance during times of emergency. After analyzing the burden of the work done in this division, we adopt our proposal to reallocate four FTEs from this division as direct to the Wireline Competition Bureau because the burden of the work being done on wireline network outage reporting, in routine and disaster environments, as well as outages and notifications impacting the 911 and 988 systems, is directly in furtherance of the oversight and regulation of wireline regulatory fee payors. We also adopt our proposal to reallocate two FTEs from this division as direct to the Wireless Telecommunications Bureau because the FTE burden of this work is being done to administer the Mandatory Disaster Response Initiative to ensure providers of commercial mobile services can engage in mutual aid activities during times of emergency. The FTE burden in this division also includes working with the Federal Advisory Committee on standards and best practices related to 5G deployment as well as the work performed to develop and implement performance standards and accuracy for wireless emergency alerting, all of which is done directly in furtherance of the oversight and regulation of wireless regulatory fee payors.

47. *Conclusion Regarding Allocations.* Below is a table summarizing the FTE reallocations adopted here.

Core Bureau	# of Direct 2023 FTEs <u>Without</u> FTE Reallocations	% Before Reallocations	Direct FTEs After Reallocations	# of Direct 2023 FTEs <u>With</u> FTE Reallocations	% After Reallocations
International Bureau	28	8.28%	+2 from OEA + 1 from OGC Total additional FTEs +3	31	7.77%
Wireless Telecommunications Bureau	75	22.19%	+8 from OEA +2 from OGC +13 from PSHSB Total additional FTEs +23	98	24.56%
Wireline Competition Bureau	120.25	35.57%	+13 from OEA +1 from OGC +9 from PSHSB Total additional FTEs +23	143.25	35.91%
Media Bureau	116	33.96%	+7 from OEA +1 from OGC +6 from PSHSB -2 from MB Reallocated as Indirect Total additional FTEs +12	128	31.76%
Total	339.25	100%		400.25	100%

48. We disagree with the suggestion raised by the Satellite Operators that instead of assessing regulatory fees on an annual basis, based on our annual S&E appropriation, we should instead determine the allocation of regulatory fee costs associated with each “non-application proceeding” and identify its allocation in the document that initiates the proceeding.⁷⁸ This approach, according to the Satellite Operators, would break many of the Commission’s fee allocations into smaller assessments that should

⁷⁸ Satellite Operators Comments at 10-11 & Reply at 8-9. They identify such proceedings to include “Notice of Proposed Rulemaking proceedings, petition for rulemaking proceedings, Notice of Inquiry proceedings, and proceedings addressing non-application petitions for reconsideration.” Satellite Operators Comments at n. 28.

streamline and improve decision making.⁷⁹ The Satellite Operators further explain that such assessments may suggest appropriate new fee categories, and offer the example of the Commission's current proceeding updating its rules for video conferencing.⁸⁰ CTIA states in its reply comments that this proposal is "unworkable" and we agree.⁸¹

49. It appears that the Satellite Operators' proposal would base regulatory fees on the FTE time spent on various rulemaking proceedings, but they do not clearly explain how such an approach would facilitate recovery on an annual basis of the Commission's entire FY S&E appropriation. This proposal does not appear administrable because it would inject a potentially contentious issue – who bears the FTE burden of the proceeding – into each rulemaking and thereby only increase the possible points of disagreement in each respective rulemaking. Moreover, given the external factors regarding who might file comments and/or challenge any given rulemaking, we believe it highly likely that initial allocations regarding the fee payors that might bear the FTE burden of a particular rulemaking would require frequent reassessment. As CTIA notes, "an a priori approach" to assessing regulatory fees "would not be realistic."⁸² Additionally, basing our collection of regulatory fees solely on proceedings would fail to capture the FTE burden of work on issues that involve the day to day oversight of policies and rules that impact all categories of regulatory fee payors, issues that may be unrelated to any particular proceeding that is active during the fiscal year. Thus, we find the proposal impractical and thereby unlikely to facilitate the statutorily required recovery, on an annual basis, of the Commission's entire FY S&E appropriation. Specifically, we find that this proposal is inconsistent with the explicit requirement in sections 6 and 9 of the Communications Act and the explicit language of each fiscal year's S&E appropriation directing the amount to be collected as an offsetting collection.

B. Non-High Cost Universal Service Fund FTEs

50. In the *FY 2017 Report and Order*, the Commission reallocated 38 direct FTEs from the Wireline Competition Bureau working on the non-high-cost programs of the Universal Service Fund as indirect for regulatory fee purposes.⁸³ The Commission found that this reallocation was supported by the fact that contributions to the Universal Service Fund are required from service providers using any technology that has end-user interstate telecommunications and because of changes in the universal service fund regulatory landscape.⁸⁴ The Commission observed that although initially universal service programs were focused on wireline services, wireless carriers, and broadband providers⁸⁵ had since become involved in the E-Rate, Lifeline, and Rural Healthcare programs.⁸⁶ The Commission also noted that the E-Rate, Lifeline, and Rural Healthcare programs tie funding eligibility to the beneficiary, i.e., a school, a library, a low-income individual or family, or a rural healthcare provider, and not to

⁷⁹ Satellite Operators Comments at 10-11.

⁸⁰ Satellite Operators Reply at 8-9.

⁸¹ CTIA Reply at 11-12. In addition, it is unclear how this process would provide the required notice to Congress of any changes under section 9(d) of the Act. Section 9(c)(1)(B) of the Act contemplates changes to the fee schedule necessary to result in the collection of the amount required by subsection 159(b). 47 U.S.C. § 159(c)(1)(B). Such changes under section 9(c) of the Act fall under the section 9A(b)(1) Congressional notification requirements. 47 U.S.C. §§ 159A(b)(1), 159(c). Changes under section 9(d) of the Act fall under the section 9A(b)(2) 90-day notification to Congress. 47 U.S.C. §§ 159A(b)(2), 159(d).

⁸² CTIA Reply at 11-12.

⁸³ *FY 2017 Report and Order*, 32 FCC Rcd at 7061-64, paras. 10-15.

⁸⁴ *Id.* at 7062, para. 10.

⁸⁵ We note that broadcasters benefit from increased broadband service because many radio and television broadcasters offer their services over the internet for people all over the country to listen or watch. Further, NextGen TV is based on IP and provides a combination of online and broadcast television. NAB, *Unleashing the Next Generation of Broadcast Innovation, What is Next Generation TV?*, <https://www.nab.org/innovation/nextgentv.asp> (last visited June 22, 2023).

⁸⁶ *FY 2017 Report and Order*, 32 FCC Rcd at 7062, para. 10.

Commission regulatory fee payors.⁸⁷ Given these considerations, the Commission concluded that the burden of FTE time dedicated to non-high cost Universal Service Fund programs should be considered indirect because the nature of the work being conducted is not focused specifically on the oversight and regulation of fee payors of any core bureau.⁸⁸ The Universal Service Fund programs are administered by the Universal Service Administrative Company (USAC),⁸⁹ with oversight from the Commission.⁹⁰ Specifically, the Commission reasoned that the FTE time devoted to the non-high cost Universal Service Fund issues is not oversight and regulation of a category of regulatory fee payors, but instead is the oversight of several Universal Service Fund programs (administered by USAC) with a wide array of beneficiaries and participants.⁹¹ With such a diversity of participants, beneficiaries, and contributors, and a wide variety of issues addressed by Commission staff (including matters pertaining to entities that are not Commission regulatory fee payors), the Commission concluded that Interstate Telecommunications Service Providers (ITSPs) were no longer the sole contributors or beneficiaries of these programs.⁹² The Commission further found that it could not determine the benefits flowing from Commission oversight of the programs to any one fee category, let alone a particular cross-section of fee categories or even an entire industry. The Commission explained that as they are not traditional telecommunication industry members, attributing the benefits of FTE non-high cost work to any one fee category would be problematic at best.⁹³ For all of these reasons, the Commission concluded that FTE time spent on non-high cost Universal Service Fund issues should be reassigned as indirect.

51. In the *FY 2017 Report and Order*, the Commission also observed that the concern that the reallocation would impose a burden on broadcasters, which do not participate in the universal service program was misplaced “as there is no completely pure way to precisely allocate every Commission FTE.”⁹⁴ In support of this decision the Commission explained that the Commission’s methodology need not reach scientific precision and instead must simply be reasonable.⁹⁵ Subsequently, the Commission addressed NAB’s continued objection to assessing broadcasters for the costs of these indirect FTEs in the *FY 2022 Report and Order* by explaining that the reallocation was appropriate and that indirect FTEs in the Commission devote their time to a large variety of issues, some of which may not directly affect every Commission regulatee, including broadcasters.⁹⁶ The Commission nonetheless took a closer look at the FTE burden associated with these non-high cost Universal Service Fund issues, and determined that

⁸⁷ *Id.*

⁸⁸ *FY 2022 Report and Order* at paras. 66-71; *FY 2017 Report and Order*, 32 FCC Rcd at 7061-64, paras. 10-15.

⁸⁹ Universal Service Administrative Co., About USAC, available at <https://www.usac.org/about/> (last visited July 3, 2023).

⁹⁰ See 47 CFR §§ 54.701, 54.702.

⁹¹ *FY 2022 Report and Order* at para. 69. Moreover, many of the entities that benefit from or participate in such programs would be considered exempt if the Commission were to create a fee category for such entities (e.g., they are governmental entities or non-profit schools, libraries, and health care entities).

⁹² *FY 2017 Report and Order*, 32 FCC Rcd at 7062-63, paras. 10-11.

⁹³ *Assessment and Collection of Regulatory Fees for Fiscal Year 2017*, MD Docket No. 17-34, Notice of Proposed Rulemaking, 32 FCC Rcd 4526, 4531, para. 14 (2017) (*FY 2017 NPRM*).

⁹⁴ *FY 2017 Report and Order*, 32 FCC Rcd at 7063, para. 11. Broadcasters generally do benefit from the expansion of new communications networks into new areas from the Universal Service Fund programs, because such expansion provides opportunities for broadcasters on video services, websites, and streaming services.

⁹⁵ The agency is not required to calculate its costs with “scientific precision.” *Central & Southern Motor Freight Tariff Ass’n v. United States*, 777 F.2d 722, 736 (D.C. Cir. 1985). Reasonable approximations will suffice. *Id.*; *Mississippi Power & Light*, 601 F.2d at 232; *National Cable Television Ass’n v. FCC*, 554 F.2d 1094, 1105 (D.C. Cir. 1976); 36 Comp. Gen. 75 (1956).

⁹⁶ *FY 2022 Report and Order* at para. 69.

broadcasters should be excluded from the burden associated with these indirect FTEs.⁹⁷ Based on this determination, the burden associated with these indirect FTEs in FY 2022 was apportioned among all other regulatory fee payors.

52. For FY 2023, we tentatively concluded that the Commission's FY 2022 reasoning remained sound and the indirect FTE burden associated with these non-high cost Universal Service Fund programs should not be apportioned to broadcasters.⁹⁸ We sought comment on this tentative conclusion and asked any commenters asserting that these indirect FTEs should be reassigned as direct FTEs to a core bureau to provide an explanation of how these FTEs provide a direct benefit to other fee payors.

53. NAB continues to assert that we should reallocate the burden of FTE time dedicated to these matters as direct to a core bureau or bureaus because providers receive funding and program beneficiaries receive subsidies.⁹⁹ Specifically, NAB argues that the Commission could base this reallocation upon the information the Commission has about the fee payors that receive a particular percentage of the Commission's non-high cost USF program funds. Likewise, the State Broadcasters Association contends that because these programs provide certain service providers with significant funding, it should not be difficult to determine the direct impact of the FTE burden that benefits specific regulatees.¹⁰⁰ We disagree. As CTIA correctly points out, our regulatory fees must be based on the work conducted by Commission staff, i.e., the Commission's FTE burden, and the amount of USF program funds that a regulatory fee payor receives, is not a relevant factor in allocating regulatory fees among the core bureaus.¹⁰¹

54. In particular, we agree with CTIA that NAB's argument to reallocate FTEs based upon the financial benefit received by any particular service provider does not properly demonstrate that the FTE burden of this work is devoted to the oversight and regulation of any regulatory fee category such that it should be considered to be direct.¹⁰² WISPA also supports the Commission's decision to treat the FTE burden of this work as indirect, and remarks that attributing FTEs as direct on the basis of such work could unfairly impact smaller providers, like WISPA's members, and cause an exodus from non-high cost USF programs, which would be contrary to the public interest.¹⁰³ Moreover, the FTE work on these non-high cost Universal Service Fund programs covers issues regarding all program participants as well as benefits that are derived by the general public. We continue to agree with prior Commission determinations that FTE time spent on non-high cost Universal Service Fund issues is indirect because we cannot reasonably determine the FTE burden of oversight of the programs to any one fee payor category, let alone a particular cross-section of fee payors or even an entire industry.¹⁰⁴

55. As we have stated previously, indirect FTE time is devoted to issues that may include more than one regulated service or matters that are not related to services regulated by the Commission.¹⁰⁵ Commenters' argument is based on their assertion that they do not obtain benefit from the universal

⁹⁷ Specifically, in the *FY 2022 Report and Order* we excluded "Media Services" licensees from recovery of the funds associated with the 38 indirect FTEs who work on non-high cost Universal Service Fund issues. *FY 2022 Report and Order* at para. 71.

⁹⁸ *FY 2023 NPRM* at para. 57.

⁹⁹ NAB Comments at 10-16 & Reply at 6 ("in the absence of a broadband service provider fee category," the Commission should reclassify the non-high cost USF FTEs as direct).

¹⁰⁰ State Broadcasters Associations Reply at 11-12.

¹⁰¹ CTIA Reply at 11.

¹⁰² *Id.*

¹⁰³ WISPA Reply at 1-2.

¹⁰⁴ *FY 2017 Report and Order*, 32 FCC Rcd at 7064, para. 14.

¹⁰⁵ *FY 2022 Report and Order* at para. 69.

service programs,¹⁰⁶ but that is not a factor in determining whether the FTEs should be allocated as direct to other fee payors. Accordingly, we conclude that NAB's suggestion to reallocate the burden of the 23.75 FTEs working on non-high cost Universal Service Fund matters as direct to a core bureau based upon the percentage of subsidies received by any particular category of fee payor category conflates the nature of the work of the Commission's FTEs with the identity of the entities that ultimately receive support from any particular program. Commenters have thus failed to show that these indirect FTEs should be reassigned as direct. We therefore affirm prior Commission determinations that the burden of FTE time devoted to non-high cost Universal Service Fund programs is properly categorized as indirect, and that such a conclusion is consistent with how FTEs working for programs that benefit consumers and the American public are treated elsewhere in the Commission.¹⁰⁷

56. Additionally, as explained in the *FY 2023 NPRM*, staff analysis of the FTE burden associated with these non-high cost Universal Service Fund programs reveals that we need to adjust the number of indirect FTEs working on the non-high cost Universal Service Fund programs from 38 FTEs in FY 2022 downward to 23.75 indirect FTEs for FY 2023, a decrease of 14.25 indirect FTEs.¹⁰⁸

C. Other FTE Allocations

57. As a result of staff's comprehensive review of the Commission's indirect bureaus and offices, we conclude that the FTE time within the Office of Engineering and Technology, the Enforcement Bureau, and the Consumer and Governmental Affairs Bureau, continues to be appropriately designated as indirect.

1. Office of Engineering and Technology

58. The Office of Engineering and Technology (OET) provides engineering and technical expertise to the agency and supports each of the agency's four core bureaus. Part of that office's role is to participate in matters "not within the jurisdiction of any single Bureau" or "affecting more than one Bureau."¹⁰⁹ More specifically, OET manages the spectrum and maintains the U.S. Table of Frequency Allocations, manages the experimental licensing and equipment authorization programs, regulates the operation of devices on an unlicensed basis, and conducts engineering and technical studies. Each of these functions is broadly applicable and benefits multiple industry sectors, including the broadcasting industry. For example, work in overseeing the equipment authorization program benefits multiple industry sectors partly because many devices that require authorization, including some broadcast receiving equipment (e.g., smart TVs), operate under rules for both licensed services and unlicensed operations.

59. In the *FY 2021 Report and Order*, the Commission rejected commenters' proposals that would effectively treat the OET as a core bureau making FTEs who work in that office direct FTEs.¹¹⁰ At that time, the Commission found that OET provides engineering and technical expertise to the agency as a

¹⁰⁶ We also observe that broadcasters obtain benefit from increased broadband services due to the Universal Service Fund programs, e.g., NextGen TV (based on IP, provides a combination of online and broadcast television) and streaming services for television and radio broadcasters.

¹⁰⁷ *FY 2017 NPRM*, 32 FCC Rcd at 4530, para. 10.

¹⁰⁸ *FY 2023 NPRM* at para. 58.

¹⁰⁹ 47 CFR § 0.31(g). Section 0.31 of the Commission's rules provides the functions of the Office of Engineering and Technology and section 0.241 provides the delegated authority. 47 CFR §§ 0.31 and 241.

¹¹⁰ *FY 2021 Report and Order*, 36 FCC Rcd at 13000, para. 21. NAB contended that the Commission should require users of spectrum on an unlicensed basis and/or equipment manufacturers to pay regulatory fees to support the Office of Engineering and Technology's work on the management of spectrum for use on an unlicensed basis and authorization of equipment. *Id.* We disagreed and declined to adopt NAB's proposal to create one or more new regulatory fee payor categories consisting of users of spectrum on an unlicensed basis and/or equipment manufacturers, which under our current methodology would effectively transform the office into a "core bureau" and reassign the FTEs into direct FTEs. *Id.*

whole and supports each of the agency's four core bureaus and for that reason the FTEs were appropriately assigned as indirect.

60. Based on the staff's evaluation of the burden of FTE time in this office, we continue to conclude that the FTEs in OET are appropriately considered indirect.¹¹¹ Our analysis shows that a significant amount of FTE time is devoted to equipment authorization. FTE work in equipment authorization involves not only radio frequency (RF) testing of various equipment that operates on a licensed or unlicensed basis, or both¹¹² but also such functions as management of the equipment authorization system, coordination with Telecommunications Certification Bodies, and rulemaking activities such as updating testing and laboratory certification standards. As we discuss fully below, we are not persuaded that the burden of FTE time dedicated to equipment authorization should have its own fee category or be characterized as direct to any particular category of fee payor.¹¹³ FTE time to manage the U.S. Table of Frequency Allocations includes activities such as rulemaking and coordination with other federal and international entities, which impacts virtually all spectrum use, including licensed and experimental use. The work of OET FTEs therefore benefits the work of the Commission as a whole and is not specific to any particular regulatory fee category. As such, the FTE burden associated with such work properly remains allocated as indirect. Other FTE time in OET is spread out among multiple core bureaus within the Commission and its regulatees.¹¹⁴ For example, users of spectrum on an unlicensed basis includes virtually every American consumer and business, and management of the U.S. Table of Frequency Allocations has the potential to impact every spectrum user, either directly with regard to primary or secondary use, or indirectly such as with regard to emissions from adjacent spectrum bands. Accordingly, we will continue to consider the FTE burden of all of the work in OET as indirect and apportion the FTEs proportionately across the core bureaus.

2. Enforcement Bureau

61. We have closely analyzed the FTE time in the Enforcement Bureau (EB) and conclude that this bureau should continue to be treated as indirect because, as we discuss below, the EB FTEs enforce the Communications Act and the Commission's rules. The FTE oversight function is focused on the integrity of Commission's rules and ensuring the implementation of the Commission's Act. FTE time devoted to enforcement of the Commission's rules is the epitome of work that benefits the agency as a whole and the American public and we do not believe it would be fair for any one regulatory fee group of payors to shoulder the FTE burden of such work.

62. Intelsat contends that fraud investigations benefit the industries they relate to, including their example that FTEs devoting time exclusively to protecting consumers from robocalls benefit the wireline and wireless industries (as opposed to satellite or media) and their argument that we should consider apportioning one or more indirect FTEs in the EB's Fraud Division as direct to those core bureaus on that basis.¹¹⁵ NAB also maintains that to the extent a significant portion of FTE time in this division is centered on investigations or the development and enforcement of rules regarding voice service providers, that FTE time is directly tied to the oversight and regulation of a particular regulatory fee category and should be considered as such.¹¹⁶ CTIA, however, argues, that we should reject NAB's and Intelsat's attempts to shift the costs of FTEs in EB's Fraud Division because, while some of the work in non-core bureaus and offices may be generally focused on a single category of fee payors, such work is often interspersed with work that staff does on behalf of the many entities that do not pay regulatory

¹¹¹ See section III.D. below for a more in depth discussion of this issue.

¹¹² Some devices that use spectrum on a licensed basis, such as cell phones, also include functions that operate on an unlicensed basis.

¹¹³ See section III.D.3.

¹¹⁴ *FY 2022 Report and Order* at para. 80.

¹¹⁵ Intelsat Comments at 5.

¹¹⁶ NAB Comments at 8-9.

fees.¹¹⁷ As CTIA observes, all regulatory fee payors “have a shared burden to support indirect FTEs, which is appropriately reflected in the Commission’s regulatory fee framework. Excluding certain regulatees from covering their share of the regulatory fee burden associated with indirect FTEs would unfairly shift their fees to other regulatees.”¹¹⁸ CTIA contends that we should reject these arguments because parsing the work of EB FTES and those FTEs assigned to the Fraud Division would not be administrable.¹¹⁹

63. We agree with CTIA. The Fraud Division has primary responsibility for investigating and enforcing the violations of the Communications Act and the Commission’s rules and investigates alleged fraudulent receipt of federal funds from the Commission’s federal financial aid programs. The division also coordinates with other offices and bureaus within the Commission and with the Office of Inspector General, and other federal and state agencies to maximize enforcement efforts.¹²⁰ These issues handled by the Fraud Division are not tied to the oversight and regulation of particular regulatory fee categories. Investigations of fraud may involve voice service providers, but may also focus on entities that are not regulatory fee payors. As CTIA correctly states, “NAB and Intelsat ignore the fact that regulatees of both the Media Bureau and the International Bureau” are subject to the work of the Fraud Division.¹²¹ We find that the fraud investigations handled by this division benefit consumers in general and the Commission as a whole in enforcing our rules. Moreover, we note that many investigations are primarily with respect to federally funded programs, and not specifically to benefit regulatory fee payors for any particular industry. Accordingly, we decline to reallocate any FTEs from this division as direct to a core bureau.

64. Likewise, the burden of FTE time in the Telecommunications Consumers Division that is devoted to protecting consumers from robocalls is not solely focused on Commission regulatory fee payors, but includes the entities initiating the robocalls and coordination with other agencies. The wireline and wireless voice service providers (regulatory fee payors) are generally not the bad actors targeted in these investigations.¹²² This division conducts investigations of a variety of entities including regulatory fee payors and non-payors. Further, this division investigates manufacturers of equipment as well as telemarketers for practices that harm consumers. Thus, FTE time in this division is not only focused on regulatory fee payors of the core bureaus but includes non-payors.

65. Staff has also closely analyzed the remaining Enforcement Bureau divisions and finds that the FTEs from those divisions are properly categorized as indirect. The Market Disputes Resolution Division handles all formal complaints against common carriers and pole attachment complaints, which notably includes entities that use poles that are not regulatory fee payors, such as utilities. The Market Disputes Resolution Division provides an avenue for such parties, not limited to regulatory fee payors, to resolve complaints and their work regarding these matters is not limited to the oversight and regulation of any particular regulatory fee category.

¹¹⁷ CTIA Reply at 9-10.

¹¹⁸ *Id.* at 10.

¹¹⁹ *Id.*

¹²⁰ See FCC, Enforcement, *Enforcement Overview*, April 2020, https://www.fcc.gov/sites/default/files/public_enforcement_overview.pdf.

¹²¹ CTIA Reply at 10.

¹²² Although we have adopted rules regarding voice service providers that carry illegal robocall traffic. See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, WC Docket No. 17-97, Seventh Report and Order in CG Docket No. 17-59 and WC Docket No. 17-97, Eighth Further Notice of Proposed Rulemaking in CG Docket No. 17-59, Third Notice of Inquiry in CG Docket No. 17-59, FCC 23-37 (rel. May 19, 2023); *Advanced Methods to Target and Eliminate Illegal Robocalls*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 19-59, Fifth Report and Order in WC Docket No. 17-97, Order, Seventh Further Notice of Proposed Rulemaking in CG Docket No. 17-59 & Fifth Further Notice of Proposed Rulemaking in WC Docket No. 17-97, FCC 22-37 (rel. May 20, 2022).

66. The Spectrum Enforcement Division conducts investigations and takes enforcement actions primarily involving wireless equipment matters, such as electronic devices that are advertised, imported, sold, or operated without proper authorization or in violation of statutory or FCC regulations related to radio frequency to prevent interference to licensed services, protect national security, and protect consumers from harm, e.g., unauthorized drone accessories that could interfere with aviation frequencies. Other investigations involve entities that operate unauthorized use of spectrum, such as unauthorized satellite transmissions or unlicensed wireless data networks, which could jeopardize government operations and authorized commercial wireless operations. This division also focuses on public safety and technical issues such as jamming devices that threaten cellular networks and GPS, 911 system failures, and other equipment requirements, including labeling requirements and user manual disclosures for radiofrequency devices. The Spectrum Enforcement Division also investigates licensees that fail to comply with the terms of their licenses and widespread interference matters. The division also investigates and takes action against violations of the National Environmental Policy Act and the associated Commission regulations with regard to tower construction. In addition, this division provides engineering and technical support to the Enforcement Bureau. FTE time in this division is not solely focused on regulatory fee payors of the core bureaus. For all of these reasons, we find that these FTEs should remain indirect.

67. Similarly, we conclude that the Investigations and Hearings Division FTEs should remain indirect. This division conducts investigations and takes appropriate enforcement action against Commission auction participants, broadcast licensees, cable operators, direct broadcast satellite (DBS) service operators, wireless licensees, telecommunications carriers, and other entities for violations of the Communications Act and Commission rules; oversees the Equal Employment Opportunity compliance of television and radio broadcast licensees, as well as multichannel video programming distributors (MVPDs), such as cable and DBS operators, and satellite radio; investigates and takes appropriate enforcement action for violations of various Commission transparency rules concerning broadband services, cable television, and other communications offerings. This FTE time is spread among the regulatory fee payors of all core bureaus as well as entities that are not Commission regulatory fee payors, and FTE time cannot be allocated to any particular core bureau with reasonable accuracy in given fiscal year as the types of investigations are subject to significant variation. For this reason, we find that the FTEs in this division should remain indirect.

68. FTE time in the EB Field Offices is devoted to investigating unauthorized radio stations, among other things.¹²³ Parties found operating radio stations without FCC authorization will be subject to a variety of enforcement actions including seizure of equipment, imposition of monetary forfeitures, ineligibility to hold any FCC license, and criminal penalties.¹²⁴ Such unauthorized radio stations interfere with licensed radio stations and prevent the American public from enjoying the radio station that is unable to broadcast due to such interference. Field offices have other functions, such as on-scene investigations, inspections, and audits; responding to safety-of-life matters; investigating and resolving individual interference complaints; investigating violations in all licensees and/or operator services; coordinating with local and state public safety entities; and carrying out special priorities of the Commission. Further, we find that the burden of FTE time in the Field Offices cannot be allocated to any particular core bureau with reasonable accuracy in given fiscal year as it is subject to significant variation.

69. We conclude that none of the FTEs in EB should be considered for reallocation. As a general matter, investigations are undertaken by EB staff in the Field Offices, and the Fraud, Telecommunications Consumers, Investigations and Hearings, and Spectrum Enforcement Divisions based on complaints and the Commission's decisions on how to allocate investigation resources among

¹²³ Unauthorized or "pirate" radio stations generally involve an individual operating an over-the-air radio station in the AM or FM frequency band without an FCC license that exceeds the unlicensed radiated emission limits found in part 15 of the Commission's rules. See FCC, Enforcement Bureau, General Enforcement Areas, *Pirate Radio*, <https://www.fcc.gov/enforcement/areas/pirate-radio> (last visited June 22, 2023).

¹²⁴ See FCC, Enforcement Bureau, Unauthorized Broadcast Stations—ULBC Content, <https://www.fcc.gov/tags/unauthorized-broadcast-stations-ulbc> (last visited June 22, 2023).

various disputes, including those concerning bad actors. Attempting to discern whether the FTE work conducted in general dispute resolution benefits a particular regulatory fee payor would be difficult, time consuming, and impractical to administer. Moreover, where the work of EB concerns bad actors, it would be particularly unfair to consider the work of resolving such matters as direct to a category of regulatory fee payors. The direct FTE time on which we calculate regulatory fees should not be based on these types of considerations. For example, a decision by the Commission to have the Field Offices investigate complaints about unauthorized radio operators should not result in an increase in the AM and FM broadcasters' regulatory fees based on the FTE time in such investigations. An investigation of a fraudulent robocaller by the Telecommunications Consumers Division should not result in an increase in the wireline or wireless carriers' regulatory fees, due to the fact that the robocalls were made to consumers' phones. This bureau addresses all violations of Commission rules; some of those could be considered fraud or bad actors and others are rule violations or disagreements between parties. As a policy matter, our regulatory fees should not be based on our investigations of generalized disputes or the actions of parties that have violated the Commission's rules. Our regulatory fee calculations are based on the FTEs devoted to oversight and regulation of the regulatory fee payors, and should not be inflated or skewed due to the Commission's focus on investigations and its enforcement of our rules that are related to the telecommunications industry generally, or to bad actors. We therefore conclude that all of the Enforcement Bureau FTEs should remain as indirect FTEs.

3. Media Bureau Enforcement

70. NAB contends that for regulatory fee purposes, the burden of certain FTE time in the Media Bureau should be considered as indirect because it is devoted to enforcement responsibilities of the Commission's political programming rules, the cable and broadcast must carry rules, and the rules related to broadcast retransmission consent, among others.¹²⁵ We agree. After careful analysis, we have determined that certain FTEs in the Policy Division of the Media Bureau devote time to enforcement related matters, rather than oversight and regulation, including investigations of political programming and retransmission consent rule compliance such that, in order to be consistent with the manner that we treat other enforcement efforts in the Commission, the burden of this FTE time should be reallocated as indirect for regulatory fee purposes.¹²⁶ Upon an analysis of this work we conclude that approximately two FTEs from the Media Bureau devote time to work on such on enforcement issues.

4. Consumer and Governmental Affairs Bureau

71. Similarly, we continue to consider the FTEs in Consumer and Governmental Affairs Bureau (CGB) as indirect because the burden of the work of the FTEs in this bureau is primarily devoted to outreach and consumer matters and enforcing the Act and the Commission's rules. FTE time devoted to regulatory fee payors is often either spent on complaints or petitions for declaratory rulings or on oversight more generally of the industry, e.g., establishing and oversight of the Reassigned Numbers Database. As we explained with respect to EB FTEs, our regulatory fees should not be based on the volume of complaints or petitions for declaratory rulemakings and the Commission's discretion in allocating resources to handling such matters. Thus, we conclude that none of the FTEs in CGB should be considered for reallocation as direct FTEs.

5. International Bureau Direct and Indirect FTEs

72. We conclude that the FTE time within the International Bureau,¹²⁷ with the exception of

¹²⁵ NAB Comments at 9.

¹²⁶ Generally, enforcement actions taken by the Media Bureau result from the review of an application associated with the Bureau's administration of the licensing programs for television and radio, rather than an enforcement investigation. Nevertheless, we find that it would be consistent with our approach to the Enforcement Bureau to reassign these two FTEs as indirect, for regulatory fee purposes.

¹²⁷ This discussion of International Bureau FTEs refers to FTEs located in the International Bureau and does not address the FTEs we are proposing to reallocate from OEA, OGC, and PSHSB. Because the International Bureau existed for most of FY 2023, we are using that term in this proceeding, instead of Space Bureau and/or Office of (continued....)

28 FTEs, is appropriately considered indirect.¹²⁸ Historically, the burden of FTE work of the International Bureau differs from that of other licensing bureaus because it predominantly benefits other bureaus' licensees rather than its own.¹²⁹ We note that this will be the last year where we consider FTE time within the International Bureau. For FY 2024, we anticipate that the recent reorganization of the International Bureau into the new Space Bureau and the Office of International Affairs may result in a change in the number of the Commission's direct FTEs, due to increased oversight on various relevant industries. In the FY 2024 regulatory proceeding, we will closely review the Space Bureau and Office of International Affairs FTEs to determine the appropriate number of direct FTEs and how they will be apportioned among the different services.

73. For the purposes of FY 2023, the International Bureau has 81 FTEs, and we adopt the same allocation of those 81 FTEs as 28 direct FTEs and 53 indirect FTEs for purposes of regulatory fees (prior to adding three FTEs that we are reallocating for regulatory fee purposes).¹³⁰ Specifically, in the Telecommunications and Analysis Division (TAD) and the Satellite Division there are 27 direct FTEs, and one FTE in the Office of the Bureau Chief that is allocated as a direct FTE, for a total of 28 direct FTEs. All FTEs in the Global Strategy and Negotiation Division (GSN) have been considered indirect FTEs.

74. As we discussed in the *FY 2023 NPRM*, staff has reviewed the indirect FTE time in the International Bureau, which is primarily in GSN.¹³¹ GSN staff represent the Commission in international conferences, meetings, and negotiations, and manage Commission participation in the fellowship telecommunication training program for foreign officials offered through the U.S. Telecommunications Training Institute (USTTI)¹³² as well as the Commission's International Visitors Program.¹³³ They also

International Affairs. The Telecommunications and Analysis Division, formerly in the International Bureau, is now in the Office of International Affairs. Intelsat observes that it would be immensely helpful for the Commission to provide as much information and guidance as possible regarding this reallocation. *See* Intelsat Comments at 10. For FY 2024, the Commission will determine how to assess the regulatory fees for international bearer circuits (IBCs), including submarine cable, based on the number of FTEs devoted to oversight and regulation of that industry. The Commission may consider these IBC direct FTEs in the new Office of International Affairs or consider them reallocated as direct FTEs to the Space Bureau, for regulatory fee purposes. Ultimately the regulatory fees of payors benefiting from the work of direct FTEs in the new Space Bureau and Office of International Affairs will be based on the number of direct FTEs as well as the Commission's 2024 appropriation, and the number of units in each fee category. Due to these variables, we cannot estimate at this time what the FY 2024 regulatory fees will be for any particular fee payor.

¹²⁸ *FY 2013 Report and Order*, 28 FCC Rcd at 12355-356, para. 14. In 2012, a report on the Commission's regulatory fee program issued by the Government Accountability Office provided support for a fundamental reevaluation of how to align regulatory fees more closely with regulatory costs. GAO, Federal Communications Commission, "Regulatory Fee Process Needs to be Updated," Aug. 2012, GAO-12-686, <https://www.gao.gov/products/gao-12-686>. Subsequently, the Commission allocated as indirect all but 28 International Bureau FTEs. In the *FY 2015 Report and Order*, the Commission reassigned, for regulatory fee purposes, four International Bureau direct FTEs working on market access requests for non-U.S. licensed space stations as indirect. *FY 2015 Report and Order*, 30 FCC Rcd at 10278, para. 24. Those four FTEs have since been reclassified as direct. *FY 2020 NPRM*, 35 FCC Rcd at 4991, para. 33.

¹²⁹ *FY 2013 NPRM*, 28 FCC Rcd at 7799-7803, paras. 19-28.

¹³⁰ *See FY 2022 Report and Order*, paras. 20-21 (IB allocated 28 direct FTEs and 52 indirect FTEs for FY 2022).

¹³¹ The Global Strategy and Negotiation Division (now, part of the Office of International Affairs) has three branches (1) Cross Border Negotiations & Treaty Compliance Branch; (2) International Radiocommunications Branch; and (3) Multilateral & Regional Affairs Branch.

¹³² *See* United States Telecommunications Training Institute, *Global Growth Through Communications Sharing*, available at <https://ustti.org/> (last visited June 22, 2023).

¹³³ The International Visitors Program enables foreign delegations to interact in informal discussions with FCC personnel who provide legal, technical, and economic perspectives on a wide range of communications issues.

(continued....)

participate in various international and regional organizations such as the International Telecommunication Union (ITU),¹³⁴ the International Maritime Organization, the International Civil Aeronautics Organization, the Organization for Economic Cooperation and Development, the Asia Pacific Economic Cooperation, and the Inter-American Telecommunication Commission.

75. GSN also coordinates cross-border issues with Mexico and Canada that involve a wide range of services, such as maritime, aeronautical, mobile and fixed satellite, broadcasting, mobile, and terrestrial wireless services. In addition, GSN's functions include international broadcasting station licensing and coordination of frequencies for International Broadcast licenses at the ITU.¹³⁵ GSN's multilateral and bilateral international work ultimately benefits all fee payors by maintaining and advancing the United States' global leadership and interests, which encompasses, among others, U.S. trade, foreign policy, and national security interests. Insofar as the work of GSN does not benefit a specific fee payor, but rather the government as whole, we continue to conclude the work of its FTEs is appropriately categorized as indirect.

76. In the International Bureau's Office of the Bureau Chief, and in TAD and GSN, FTE time supports the various bureau functions involving management and administrative support, such as IT issues, international travels, and other administrative activities, as well as coordinating with Executive Branch agencies on issues involving foreign ownership, national security, law enforcement, and cyber security. As most FTE time supports all regulatory fee payors and the Commission as a whole, we conclude that these FTEs should continue to be considered indirect. In addition, not all the work of the Satellite Division can be attributed directly to a particular category of regulatory fee payor. For example, a number of space-related activities indirectly benefit the existing fee categories, including space stations, commercial mobile services, and earth stations. The Satellite Division also coordinates with the National Aeronautics and Space Administration (NASA),¹³⁶ Federal Aviation Administration (FAA),¹³⁷ National

FCC, International, *International Visitors Program*, available at <https://www.fcc.gov/general/international-visitors-program> (last visited June 22, 2023).

¹³⁴ The ITU is an agency of the United Nations responsible for matters related to information and communication technologies. See International Telecommunication Union, About ITU, <https://www.itu.int/en/Pages/default.aspx> (last visited June 22, 2023). The ITU has three sectors, radiocommunications (ITU-R), telecommunications standardization (ITU-T), and telecommunications development (ITU-D). GSN staff cover all three sectors, with ITU-R work focused on spectrum allocations and related international regulations governing spectrum use, ITU-T work focused on international standards setting issues, numbering, and related policy issues, and ITU-D work focused on capacity building and digital inclusion.

¹³⁵ In FY 2009, the Commission eliminated two International Bureau fee categories; International Public Fixed Radio and International High Frequency (HF) Broadcast Stations. *Assessment and Collection of Regulatory Fees for Fiscal Year 2009, Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket Nos. 08-65, 09-65, Notice of Proposed Rulemaking and Order, 24 FCC 5966, 5967, paras. 2-4 (2009) (*FY 2009 NPRM*). The Commission observed that there was only one licensee in the International Public Fixed Radio category, it did not expect any additional licensees or applications, and eliminating the fee category would reduce the Commission's administrative burden. *FY 2009 NPRM*, 24 FCC Rcd at 5967, para. 3. In the International High Frequency Broadcast Stations category there were only 25 licensed stations of which most were tax-exempt, and only two entities made payments, totaling \$1,720. *FY 2009 NPRM*, 24 FCC Rcd at 5967, para. 4. The Commission eliminated this category from the schedule of regulatory fees in order to reduce the administrative burden on the Commission in assessing this fee category. *Id.*

¹³⁶ NASA is an independent agency of the U.S. federal government responsible for the civil space program, aeronautics research, and space research. See NASA, *About NASA*, <https://www.nasa.gov/about/index.html> (last visited June 22, 2023).

¹³⁷ The FAA, part of the U.S. Department of Transportation, regulates civil aviation. See United States Department of Transportation, Federal Aviation Administration, <https://www.faa.gov/> (last visited June 22, 2023).

Oceanic and Atmospheric Administration (NOAA),¹³⁸ and State Department¹³⁹ on space sustainability, planetary protections, and on leading space innovation. Lastly, the Satellite Division works closely with GSN staff, to help cover certain ITU World Radiocommunications Conference (WRC) agenda items.¹⁴⁰ Based on our review of the FTEs in the International Bureau, we find that the allocation of direct and indirect FTEs should remain the same for FY 2023, i.e., 28 direct and 53 indirect FTEs.

D. New Regulatory Fee Categories

77. In the *FY 2023 NPRM*, we sought comment on whether we should adopt new regulatory fee categories and on ways to improve our regulatory fee process regarding any and all categories of service.¹⁴¹ The Satellite Operators argue that the Commission has unquestionable jurisdiction to extend its regulatory fee categories to include service providers and manufacturers that benefit from the Commission's regulatory activities.¹⁴² The Satellite Operators suggest that we again seek comment on four new fee categories: (i) broadband Internet access providers, (ii) database administrators that enable unlicensed operations, (iii) equipment manufacturers, and (iv) experimental licenses.¹⁴³ TechFreedom, on the other hand, contends that the Commission lacks legal authority to require entities that it neither licenses nor regulates to pay regulatory fees.¹⁴⁴

78. We have previously sought comment on the fee categories proposed by the Satellite Operators and others,¹⁴⁵ and, as no new facts or analysis have been provided in the record to support such proposals, we are neither adopting such categories at this time nor seeking further comment on them. As discussed in detail below, commenters have provided no basis for us to change the Commission's prior determinations on this issue and we therefore affirm that such fees would be unworkable and logistically infeasible to collect at this time.

¹³⁸ NOAA, part of U.S. Department of Commerce, holds key leadership roles in shaping international ocean, fisheries, climate, space and weather policies. See United States Department of Commerce, National Oceanic and Atmospheric Administration, <https://www.noaa.gov/> (last visited June 22, 2023).

¹³⁹ United States Department of State, <https://www.state.gov/> (last visited June 22, 2023).

¹⁴⁰ See ITU, World Radiocommunication Conferences, <https://www.itu.int/en/ITU-R/Conferences/WRC/Pages/default.aspx> (last visited June 22, 2023). WRCs are held every three to four years. It is the job of WRC to review, and, if necessary, revise the Radio Regulations, the international treaty governing the use of the radio-frequency spectrum and satellite orbits. The Radio Regulations facilitate equitable access to and rational use of the natural resources of the radio-frequency spectrum and geostationary satellite orbits. They also ensure the availability of the frequencies provided for distress and safety purposes and assist in the prevention and resolution of cases of harmful interference between the radio services of different administrations. Further, the regulations facilitate the efficient and effective operation of all radiocommunication services and, where necessary, regulate new applications of radiocommunication technology. See ITU, Publications, *Radio Regulations 2020*, <https://www.itu.int/hub/publication/r-reg-rr-2020/> (last visited June 22, 2023).

¹⁴¹ *FY 2023 NPRM* at para 95, n.185 citing *FY 2022 NPRM* at para. 53; see also *FY 2021 Report and Order*, 36 FCC Rcd at 13026, para. 73 (“[S]hould the Commission assess regulatory fees on large technology companies based on a different basis, such as any advantages they receive because of the Commission’s universal service or other activities?”). In the *FY 2022 Report and Order*, we noted that “[t]he Commission previously sought comment on whether to assess regulatory fees on large technology companies on alternative grounds, ‘such as any advantages they receive because of the Commission’s universal service or other activities[.]’” *FY 2022 Report and Order* at para. 102, n.395. At the time, we declined to make any findings in this regard, and we similarly decline to do so in this item. *Id.*

¹⁴² Satellite Operators Comments at 5-9 & Reply at 3-4.

¹⁴³ Satellite Operators Comments at 9-10.

¹⁴⁴ Tech Freedom Comments at 1-10. NAB disagrees with Tech Freedom and contends that the Commission has authority to assess fees on Big Tech companies and other unlicensed spectrum users. NAB Reply at n.15. As discussed below, we decline to address Tech Freedom’s arguments regarding our legal authority. See n.147, *infra*.

¹⁴⁵ *FY 2022 Report and Order* at paras. 76-93.

1. Broadband Internet Access Providers

79. Satellite Operators advocate that we should seek additional comment on creating a new regulatory fee category for broadband Internet access service providers at this time.¹⁴⁶ TechFreedom argues that the Commission must limit the universe of who pays regulatory fees to those over whom it has regulatory authority.¹⁴⁷ We are not persuaded that we should seek further comment on creating a new fee category for broadband Internet access service providers. Rather, as the Commission has previously concluded, there is no specific bureau or office in the Commission with oversight of all broadband services, because these oversight activities are spread out among all core bureaus, and broadband issues are a part of a variety of Commission initiatives and proceedings.

80. In the *FY 2022 Report and Order*, the Commission was not convinced that a broadband Internet access service regulatory fee category was necessary or that such a category appropriately belongs in the Wireline Competition Bureau.¹⁴⁸ The Commission reasoned that broadband Internet access services are offered through various technical means and by widely differing entities and to distinct user groups, e.g., wireless service providers, wireline service providers (including VoIP), cable operators, and satellite operators, to consumers and businesses, on both a retail and a wholesale basis.¹⁴⁹ The Commission explained that this service is not only offered by different types of providers, it is also delivered to end users in different ways.¹⁵⁰

81. The Satellite Operators have offered no new reason to counter our prior decision that it would be administratively difficult to try to determine the FTEs throughout the Commission devoting time to various proceedings involving broadband Internet access service in order to create this proposed regulatory fee category. Broadband Internet access services are involved in many Commission initiatives and proceedings and such services are offered by service providers regulated by all the core bureaus and already responsible for regulatory fees.

2. Database Administrators that Enable Use of Spectrum on an Unlicensed Basis

82. Satellite Operators' also urge us to seek further comment on adopting a new regulatory fee category for database administrators that charge fees to enable use of certain frequency bands on an unlicensed basis.¹⁵¹ We decline to seek comment on adopting such a category. Pursuant to section 9 of the Act, regulatory fees are to be derived by determining "the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."¹⁵² Specifically, section 9 of the Act directs the Commission to consider "factors that are *reasonably related* to the benefits provided to the payor of the fee by the Commission's activities."¹⁵³ The Commission's

¹⁴⁶ Satellite Operators Comments at 9 & Reply at 6-7. The Commission previously addressed this proposal for a new fee category in the *FY 2022 Report and Order* at paras. 81-86.

¹⁴⁷ TechFreedom Comments at 10. We note that TechFreedom discusses at length why the Commission should not adopt any category of regulatory fees that applies to "edge providers" like itself. *See generally* TechFreedom Comments 3-8. Insofar as we decline to seek comment on creating a new fee category for broadband Internet access service providers generally, and because no commenter has specifically argued in favoring of imposing regulatory fees on any edge providers, we find it unnecessary to address this issue or TechFreedom's arguments on the scope of our legal authority to assess regulatory fees.

¹⁴⁸ *FY 2022 Report and Order* at paras. 81-86.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Satellite Operators Comments at 9 & Reply at 7-8. The Commission previously addressed this proposal for a new fee category in the *FY 2022 Report and Order* at paras. 90-93.

¹⁵² 47 U.S.C. § 159(d).

¹⁵³ *Id.* (emphasis added).

FTE activities for these database operators includes the establishment of database rules and ensuring that database administrators have the technical expertise to develop and operate the relevant databases. After a database is set up, Commission involvement with the operator is generally sporadic and would not result in measurable FTE time sufficient to justify adoption of a new fee category.¹⁵⁴

83. Moreover, the suggestion that we create a regulatory fee category for only these database administrators ignores the fact that, under the Commission's rules, there are a variety of database administrators and spectrum coordinators (e.g., television white space devices, 6 GHz devices, and fixed, personal/portable, and mobile devices). Thus, focusing solely on database administrators enabling the use of spectrum on an unlicensed basis, i.e., selecting one type of database administrator, due to the connection with users of spectrum on an unlicensed basis, appears to be a tactic to assess regulatory fees on certain users of spectrum on an unlicensed basis. As explained below, we also decline to create a regulatory fee category for users of spectrum on an unlicensed basis.

84. Further, the Commission's FTE activities related to operators of databases of spectrum for use on an unlicensed basis benefit a wide variety of industry segments, both licensed and unlicensed, and is consistent with the treatment of these FTEs, which work primarily in the Office of Engineering and Technology, as indirect. Thus, we do not find that there are sufficient benefits (i.e., FTE work in oversight or regulation) provided each fiscal year to these database operators by the Commission's activities that warrants seeking comment on or the creation of a regulatory fee category for database operators at this time. We acknowledge that in establishing the rules that allow for such database operators to support Commission licensees, FTE time is devoted to adopting regulations that allow for the database operators to perform such functions. This is, however, generally a one-time effort and to date has not resulted in the work of FTEs sufficient to subsequently assess fees year after year based on such a limited FTE burden years in the past. We therefore decline to seek further comment on adopting a new regulatory fee category for operators of these databases.

3. Equipment Authorization

85. Several commenters contend that a significant amount of FTE time in OET is devoted to equipment authorization such that the Commission should recoup those costs with a regulatory fee assessed on equipment manufacturers for such authorizations.¹⁵⁵ CTIA correctly observes, however, that we previously rejected proposals to create new fee categories for experimental licenses and equipment authorizations and neither Intelsat nor the Satellite Operators provide any new reason for the Commission to reverse course.¹⁵⁶

86. We decline to adopt the Satellite Operators' proposal that the Commission seek additional comment on this issue or on Intelsat's request that we reconsider our prior decision on adopting a new regulatory fee category for holders of equipment authorizations.¹⁵⁷ As WISPA recognizes, we

¹⁵⁴ The function of the databases is to prevent harmful interference from occurring to incumbent licensed operations by unlicensed use of certain frequency bands thereby enabling the more efficient use of radio spectrum. The services provided by operators of databases are essentially available to any user of the relevant frequency bands on an unlicensed basis. We note that users of those databases pay operators to access the databases and are required to use such databases to prevent harmful interference to other users. See 47 CFR §§ 15.711(a), (c)(2), (d)(2), (k)(5), 15.70(k)(1). The Commission often recognizes multiple database administrators.

¹⁵⁵ Intelsat Comments at 5; NAB Reply at 4-5; Satellite Operators Comments at 9-10 & Reply at 7. The State Broadcasters Association also contends that although we have acknowledged that a significant amount of FTE time is devoted to equipment authorization, when broadcasters have suggested that the Commission attempt to capture any of that FTE time from the users of the equipment authorization process, the Commission has rejected the suggestion. State Broadcasters Association Reply at 13. The Commission previously addressed and rejected this proposal for a new fee category in the *FY 2022 Report and Order* at paras. 87-89 and the *FY 2021 Report and Order*, 36 FCC Red at 13000-13002, paras. 21-24.

¹⁵⁶ CTIA Reply at 12.

¹⁵⁷ For a more in depth explanation of why the FTEs in the Office of Engineering and Technology are considered indirect FTEs, see *FY 2021 Report and Order*, 36 FCC Red at 13000-13003, paras. 21-25.

already undertook a comprehensive assessment of OET staff, and determined that FTEs in OET should continue to be considered indirect because such FTEs benefit the work of the Commission as a whole and is not specific to any particular regulatory fee category.¹⁵⁸ Further, as WISPA notes, we found that users of spectrum on an unlicensed basis includes virtually every American consumer and business, and management of the U.S. Table of Frequency Allocations has the potential to impact every spectrum user, either directly with regard to primary or secondary use, or indirectly such as with regard to emissions from adjacent spectrum bands.¹⁵⁹ Further, we agree with CTIA's assessment that OET FTEs that work on equipment authorizations are appropriately classified as indirect because their work affects multiple core bureaus and their regulatees, including satellite regulatees.¹⁶⁰ As we discuss above, OET provides engineering and technical expertise to the Commission as a whole and supports each of the four core bureaus. Notably, part of this office's role is to participate in matters "not within the jurisdiction of any single bureau" or "affecting more than one bureau."¹⁶¹ Some of the duties and responsibilities that affect multiple core bureaus and their regulatory fee payors include maintaining the U.S. Table of Frequency Allocations; managing the Experimental Licensing and Equipment Authorization programs; regulating the operation of devices; and conducting engineering and technical studies.¹⁶² The matters handled by the OET benefit the Commission's work as a whole as well as all service sectors to which the Commission's core bureaus devote FTE resources.¹⁶³

87. We further note that because there are multiple categories of equipment authorization procedures, including exemption and self-authorization, the implementation of regulatory fees assessed to holders of equipment authorizations presents challenges in determining a fair, administrable, and sustainable fee system. Additionally, equipment authorization generally applies to the functionality of a particular device, not the production of each unit (i.e., an entity needs to complete the equipment authorization process only once for a device regardless of how many units of such devices are produced). Thus, unlike licenses, equipment authorizations are obtained once and are not subject to validity for a defined time period.¹⁶⁴ No commenter has provided new analysis or a basis to change our determinations. For all of these reasons, we reject the proposal to adopt a new fee category for equipment authorizations.

4. Holders of Experimental Licenses

88. Intelsat and the Satellite Operators propose that the Commission adopt a regulatory fee category for holders of experimental licenses.¹⁶⁵ We have sought comment on this previously and concluded that an experimental license is not the same as other Commission licenses and that it should not be subject to a regulatory fee.¹⁶⁶ As we observed in the *FY 2022 Report and Order*, while

¹⁵⁸ WISPA Reply at 2.

¹⁵⁹ *Id.*

¹⁶⁰ CTIA Reply at 12.

¹⁶¹ See 47 CFR § 0.31(g). Section 0.31 of the Commission's rules provides the functions of OET and section 0.241 provides the delegated authority. 47 CFR §§ 0.31, 241.

¹⁶² FCC, Engineering & Technology, <https://www.fcc.gov/engineering-technology> (last visited June 16, 2023). See also 47 CFR §§ 0.31, 0.241.

¹⁶³ Much of OET's work in making spectrum available on an unlicensed basis and overseeing the equipment authorization program indirectly benefits multiple industry sectors. For example, there is no separate process for devices capable of operating wholly or partly under the Commission's device rule, as many devices, including some broadcast receiving equipment (e.g., smart TVs) operate on several spectrum bands under rules for both licensed services and operations on an unlicensed basis.

¹⁶⁴ We also find that adopting a fee category where there are no FTE time accorded most years or where any fees set would be well below the annual de minimis threshold is not practicable.

¹⁶⁵ Intelsat Comments at 5-6; Satellite Operators Comments at 10 & Reply at 5-6. The Commission previously addressed this proposal for a new fee category in the *FY 2022 Report and Order* at paras. 76-80.

¹⁶⁶ *FY 2022 Report and Order* at para. 76.

Commission resources are expended on processing experimental applications, these licenses are approved for a proposed experiment or range of experiments, and not for an actual operational service under established service rules providing some level of interference protection.¹⁶⁷ Intelsat and the Satellite Operators have not provided a basis to conclude that additional comment on this issue would demonstrate that the fundamental differences we described in the *FY 2022 Report and Order* are immaterial or that an experimental license is the same as other Commission licenses such that it should be subject to a regulatory fee.

89. The Office of Engineering and Technology typically grants over 2,000 experimental licenses each year, including grants of Special Temporary Authority (STA), to various entities, including broadcasters. Many commercial services and technologies deployed today were first tested under the experimental licensing program. Where such technologies result in new licensing frameworks or services, the resultant services usually are subject to regulatory fees.¹⁶⁸ The experimental radio service permits broad experimentation, including assessing equipment intended to operate in existing Commission services, proof of concept testing and evaluation of new radio technologies, equipment designs, radio wave propagation characteristics, and service concepts related to the use of the radio spectrum.¹⁶⁹ Thus, many experimental licenses are filed by universities, research and development companies, technology manufacturers, and medical institutions which often are non-profit entities.

90. The Commission issues a variety of experimental licenses that range in duration from a few days to six months for STAs, generally two years for conventional experimental licenses,¹⁷⁰ five years for experimental program licenses, and 10 years for experimental licenses in spectrum bands above 95 GHz.¹⁷¹ There is no renewal process for STAs. Further, applicants seeking extension of conventional experimental licenses must include sufficient justification for continued experimentation;¹⁷² otherwise, such applicants are referred to the appropriate service bureau to seek a service license. If service rules for the applicable spectrum are needed, applicants may petition the Commission for rulemaking to modify allocations or service rules in such a way as to permit the tested technology to obtain a license to operate. Experimental licenses (except for above 95 GHz licenses) are not permitted to be used to offer commercial service.¹⁷³ Further, experimental licenses are issued on a limited, non-harmful interference basis for operation within a band in which (typically) regulatory fee payors enjoy primary or secondary use. Additionally, experimental licenses do not provide the holder with any vested spectrum use rights and the Commission can require licensees to discontinue experimental operations at any time without undertaking any further administrative process, such as an adjudication.¹⁷⁴

¹⁶⁷ *Id.* at para. 79.

¹⁶⁸ For example, some small satellite operators initially sought to operate commercial systems under the experimental licensing program rather than seeking licensing under part 25 of the Commission's rules before the streamlined small satellite rules were adopted. When adopting the streamlined small satellite licensing rules, the Commission also adopted a separate regulatory fee category for small satellites. *See Streamlining Licensing Procedures for Small Satellites*, IB Docket No. 18-86, Report and Order, 34 FCC Rcd 13077, 13080-81, 13118-19, paras. 11-13, 105 (2019) (*Small Satellite Report and Order*).

¹⁶⁹ The experimental radio service rules prescribe flexible rules to encourage manufacturers, inventors, entrepreneurs, and students to experiment across a wide range of frequencies, power, emissions, and applications. (*See* 47 CFR part 5, *et seq.*).

¹⁷⁰ Up to five years is permitted by rule with sufficient justification. 47 CFR § 5.71.

¹⁷¹ In a typical year, the Commission generally issues only a few five-year licenses and no 10-year licenses.

¹⁷² 47 CFR § 5.71(a).

¹⁷³ However, market trials are permitted under certain circumstances to allow applicants to evaluate product performance and customer acceptability prior to the production stage. Under a market trial, the experimental licensee retains ownership of all equipment and must collect all such equipment at the end of the trial or render such equipment inoperable. 47 CFR § 5.602(e).

¹⁷⁴ 47 CFR § 5.83.

91. The experimental authorization processes fall under the functions of evaluating evolving technology for interference potential, facilitating the introduction of nascent technologies, and maintaining the U.S. Table of Frequency Allocations.¹⁷⁵ As such, in reviewing those applications, the Office of Engineering and Technology ensures that experimental uses will not interfere with the primary and secondary users in the relevant bands, who, unlike experimental license holders, do have spectrum rights associated with a license in an authorized service. Thus, while Commission resources are expended on processing experimental applications, these licenses are approved for a proposed experiment or range of experiments, and not for an actual operational service under established service rules providing some level of interference protection.

92. Given these facts, we do not currently have an appropriate framework for adopting a fee category for experimental authorizations that is fair, administrable, and sustainable. Many experimental license applicants are exempt from regulatory fees under the statute.¹⁷⁶ Additionally, given the transient nature of such authorizations, developing a fee allocation method would require significant analysis.¹⁷⁷ In addition to the exempt status of many applicants, it is likely we would find that many experimental authorizations, if subject to regulatory fees, do not result in any collection because the payor's total assessment falls under the de minimis threshold.¹⁷⁸ We therefore decline the Satellite Operators' suggestion to seek further comment on adopting to a new regulatory fee category for holders of experimental licenses.

E. Space Station and International Bearer Circuit Regulatory Fees

1. Space Station Regulatory Fees

a. NGSO/GSO 80/20 Allocation

93. For FY 2023, we adopt the regulatory fees for space and earth stations proposed in the *FY 2023 NPRM*, which were based on the allocation of International Bureau FTEs that regulated space and earth stations. The International Bureau existed for most of FY 2023, and therefore we conclude that it is appropriate to adopt regulatory fees for FY 2023 based on the work of International Bureau FTEs for this fiscal year. We find that the proposed categories and allocations continue to accurately reflect the allocation of International Bureau FTEs in FY 2023. For the reasons discussed below, we decline to change allocations or add categories or subcategories of space station regulatory fees at this time. FY 2024 will be the first full fiscal year that the Space Bureau will be in existence. We anticipate closely evaluating the work of staff during the first year to ensure the continued accuracy of our FTE allocations. Moreover, given the rapid pace of development change in this segment of the telecommunications industry, we also anticipate closely considering whether any space and earth station regulatory fee categories should be revised in the coming years.

94. The *FY 2023 NPRM* sought comment on proposed regulatory fees for space and earth stations.¹⁷⁹ For space stations, the proposed fees were calculated using the existing allocation of FTEs between GSO and NGSO space station categories, and among different categories of NGSO space station systems.¹⁸⁰ Under the existing methodology of calculating regulatory fees for space stations, 80% of space station regulatory fees are allocated to GSOs and 20% of the space station regulatory fees to

¹⁷⁵ 47 CFR § 0.31.

¹⁷⁶ 47 U.S.C. § 159(e)(1); 47 CFR § 1.1162.

¹⁷⁷ Experimental licenses can be discontinued at any time and are issued for varying time periods based on the unique needs of the applicant.

¹⁷⁸ The Commission increased the annual de minimis threshold to \$1,000 in 2017. *FY 2017 Report and Order*, 32 FCC Rcd at 7073, para. 40.

¹⁷⁹ *FY 2023 NPRM* at para. 78 and Appendix C: FY 2023 Schedule of Regulatory Fees.

¹⁸⁰ *FY 2023 NPRM* at paras. 79-80.

NGSOs.¹⁸¹ In addition, there are two subcategories for NGSO space stations regulatory fees: “less complex” NGSO systems and all other NGSO systems identified as “other” NGSO systems.¹⁸² “Less complex” NGSO systems are defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS).¹⁸³ “Less complex” NGSO fees and “other” NGSO fees were split within the broader NGSO fee category on a 20/80 basis.¹⁸⁴ In 2022, the Commission adopted a methodology for calculating the regulatory fee for small satellites and small spacecraft (together, small satellites) within the NGSO fee category based on 1/20th (5%) of the average of the non-small satellite NGSO space station regulatory fee rates from the current fiscal year on a per license basis.¹⁸⁵

95. The *FY 2023 NPRM* did not seek comment on the methodology previously adopted to allocate regulatory fees among GSO and NGSO space stations, nor did it seek comment on the definitions of existing subcategories of NGSO space stations or the creation of new subcategories of NGSO space stations in general. It did, however, seek comment generally on whether to adopt new regulatory fee categories and on ways to improve the regulatory fee process regarding “any and all categories of service.”¹⁸⁶ It also sought comment specifically on how to apply regulatory fees to spacecraft performing On-Orbit Servicing (OOS) and Rendezvous and Proximity Operations (RPO) specifically operating near the geostationary satellite orbit arc.¹⁸⁷

96. No comments were received in response to the proposed regulatory fees for earth stations or for small satellites. As stated above, we find that these categories and allocations continue to accurately reflect the allocation of International Bureau FTEs for FY 2023. Accordingly, we adopt the proposed regulatory fees for earth stations and small satellites for FY 2023.

97. Several space station operators, individually or collectively, submitted comments regarding proposed regulatory fees for space stations other than small satellites.¹⁸⁸ Broadly speaking, the comments can be divided into two categories. The first category proposes revisions to our existing methodology and categories for assessing regulatory fees on NGSO space stations. These commenters argue in favor of revising the “20/80” allocation between “less complex” and “other” NGSO space stations, revisiting the definition of “less complex” NGSO space station systems, or proposing to initiate a further notice of proposed rulemaking to revise and expand the subcategories of NGSO space station fees. The second category provides comments on how to apply regulatory fees to OOS and RPO spacecraft. We address each category of comments in turn below, but in each instance conclude that the record is insufficient at this time to adopt changes to the proposed regulatory fees for FY 2023 or to initiate a further notice of proposed rulemaking. Moreover, as observed previously in this order, the Commission's methodology need not reach scientific precision and instead must simply be reasonable.¹⁸⁹

b. NGSO Space Stations “Less Complex” and “Other” Regulatory Fees

98. *20/80 Less Complex/Other Allocation.* The Satellite Operators contend that we should

¹⁸¹ *FY 2020 NPRM*, 35 FCC Rcd at 4993, para. 41.

¹⁸² *FY 2021 NPRM*, 36 FCC Rcd at 8583, para. 6.

¹⁸³ *Id.* at 8583-84, para. 7. EESS is defined under the Commission rules as “a radiocommunication service between earth stations and one or more space stations... in which... information relating to the characteristics of the Earth and its natural phenomena, including data relating to the state of the environment, is obtained from active sensors or passive sensors on Earth satellites...” 47 CFR § 2.1(c).

¹⁸⁴ *FY 2021 Report and Order*, 36 FCC Rcd at 13018-19, para. 58.

¹⁸⁵ *FY 2022 NPRM* at paras. 21-42.

¹⁸⁶ *FY 2023 NPRM* at para. 95.

¹⁸⁷ *Id.* at paras. 78, 82-84.

¹⁸⁸ Space station operators providing comments are included in Appendix A: List of Commenters.

¹⁸⁹ *See supra*, para. 51, n.90.

revisit the “20/80 split” between “less complex” and “other” NGSO space station systems and the assumptions that underly it.¹⁹⁰ They argue that our regulatory fee structure should “not remain stagnant” regarding the nature of “less complex” NGSO space station systems that provide EESS, and that the Commission should initiate a further notice of proposed rulemaking because “[t]oday’s EESS business . . . is virtually unrecognizable from what existed when the Commission first established [the “less complex”] NGSO regulatory fee structure”¹⁹¹ in 2021.

99. We find that the record is insufficient at this time to revisit, or to initiate a further rulemaking to revisit, the 20/80 allocation between “less complex” and “other” NGSO space station systems. The Satellite Operators do not provide any specific alternative proposals to the current allocations, other than to seek comment on the significance of the purported changes to the EESS business in order to build a foundation to take action on next year.¹⁹² As the EESS Operators observe, however, the Satellite Operators offer no new evidence that might cause the Commission to alter its conclusions and change the allocation, but repeat the argument they have made in the regulatory fee proceedings for FY 2020, FY 2021, and FY 2022, and do not provide a basis for the Commission to revisit its decision regarding NGSO fee category definitions adopted in the *FY 2021 NPRM*.^{193, 194} In addition, the purported changes to the EESS business presented by the Satellite Operators (for example, multiplying use cases, mushrooming demand of customers for data, and changes in methods of distribution) do not go to the factors relied on in adopting the 20/80 allocation between “less complex” and “other” NGSO space stations: the amount of staff work involved in regulating NGSO space stations planning to communicate with 20 or fewer U.S. authorized earth stations primarily in EESS and/or AIS versus the amount of work involved in regulating other types of NGSO space station systems. Thus, there is no basis for initiating a further notice of proposed rulemaking at this time.

100. *NGSO Space Station Fee Category Definitions and Expansion.* Some commenters propose to revisit the definition of “less complex” NGSO space station systems to include a broader range of NGSO space station systems, or to initiate a further notice of proposed rulemaking to revise and expand the subcategories of NGSO space station fees. In particular, Kinéis alleges that the Commission did not fully explain the decision in the *FY 2021 NPRM* ¹⁹⁵ to use “the total number of earth stations with which satellite network will communicate” as the “only” factor to distinguish NGSO space station systems as “less complex” for regulatory fee purposes.¹⁹⁶ To the extent that Kinéis’s comments seek reconsideration of our holding in that order, we agree with other comments¹⁹⁷ that such an argument would be untimely.¹⁹⁸ While we decline to revisit our prior holding, we will, however, address the Kinéis comments to the extent it proposes that the Commission should, on a going forward basis, expand the category of “less complex” NGSO space stations to include factors other than “the total number of earth stations with which satellite network will communicate” to distinguish NGSO space station systems as “less complex.”

¹⁹⁰ Satellite Operators Comments at 12.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *FY 2021 NPRM*, 36 FCC Rcd at 8585-89, paras. 11-20.

¹⁹⁴ EESS Reply at 3.

¹⁹⁵ *FY 2021 NPRM*, 36 FCC Rcd at 8583-8589, paras. 11-20; *see also FY 2021 Report and Order*, 36 FCC Rcd at 13016-17, para. 86.

¹⁹⁶ Kinéis Comments at 3, 5-11.

¹⁹⁷ EESS Reply at 4.

¹⁹⁸ 47 CFR § 1.429(d) (requiring that a petition for reconsideration be filed within 30 days from the date of public notice of such action). We refer here to arguments that appear to challenge the sufficiency of the reasoning underlying prior decisions as to what constitutes a “less complex” NGSO space station system for regulatory fee purposes.

101. As an initial matter, Kinéis mischaracterizes the prior decision as to which types of NGSO space station systems are “less complex” as being based only on the number of earth stations utilized by a NGSO space station system.¹⁹⁹ In fact, the number of earth stations was not, and is not, the only factor for determining that a NGSO space station system is “less complex” for regulatory fee purposes. Rather, the Commission found that NGSO space station systems “planning to communicate with 20 or fewer U.S.-authorized earth stations *that are primarily used for [EESS] and/or [AIS]* are significantly less complex to regulate than other types of NGSO systems” (italics added).²⁰⁰ As the Commission explained, multiple factors led to determining that NGSO space station systems communicating with 20 or less U.S.-authorized earth stations used primarily for EESS and/or AIS involved less staff resources to regulate than other NGSO space station systems.²⁰¹

102. Thus, the number of earth stations is not the only factor for determining whether an NGSO space station system is “less complex” for regulatory fee purposes, but it is one factor, together with the service primarily being provided, that serves as a proxies for other factors, such as whether processing rounds are required to process the application, the geographic area being served by the system, the quantity and range of spectrum needs, and how the system utilizes spectrum vis-à-vis other systems. All these factors, not just the number of earth stations, go towards determining the amount of FTE resources required to regulate a NGSO space station system, thereby determining whether an NGSO space station system is “less complex” for regulatory fee purposes.

103. We note that the possibility of other NGSO space station systems being categorized as “less complex” for regulatory fee purposes in the future has not be rejected or precluded. Indeed, such a possibility has been expressly recognized.²⁰² But the inclusion of NGSO space station systems into the “less complex” category must arise from factors that reflect the amount of work that FTEs perform to regulate such systems relative to the work performed for other NGSO space station systems. If the Commission finds in the future that another type of NGSO space station system requires less regulatory work than other NGSO space station systems, that type of NGSO space station system would be eligible for the “less complex” category as well. Although Kinéis and Myriota argue that their non-voice, non-geostationary mobile satellite service (NVNG MSS) designed to provide “Internet of Things” (IoT) connectivity should also be categorized as “less complex,” their arguments focus on the alleged superior benefits received by other NGSO space station systems compared to their own, rather than on the amount of regulatory work that FTEs perform.²⁰³ Such benefits, however, are not material to determining the complexity of regulation of a satellite system, which is the determining criterion for a “less complex” NGSO space station system. As such, we find that the record is not sufficiently developed at this time to determine that NVNG MSS IoT space station systems should be included in the “less complex” NGSO space station regulatory fee category.

¹⁹⁹ Satellite Operators agree with Kinéis that the number of U.S. earth stations is “a poor proxy for system complexity.” Satellite Operators Reply at 9-10.

²⁰⁰ *FY 2021 Report and Order*, 36 FCC Rcd at 13013-14, para. 48, *citing FY 2021 NPRM*, 36 FCC Rcd at 8583-84, para. 7.

²⁰¹ *FY 2021 Report and Order*, 36 FCC Rcd at 13013-14, para. 48, *citing FY 2021 NPRM*, 36 FCC Rcd at 8585-86, para. 12 (explaining that NGSO space station systems planning to communicate with 20 or fewer U.S.-authorized earth stations that are primarily used for EESS and/or AIS “rarely involve resource-intensive NGSO processing rounds, based on their ability to share with other operators in the requested frequency bands. Other types of NGSO systems also typically have a global presence, thereby requiring significantly more resources in connection with international forums. These other NGSO systems also have significant spectrum needs and involve a variety of frequency bands, technical issues, and services, constituting a significant part of the International Bureau’s NGSO work and resource allocation”).

²⁰² *FY 2021 NPRM*, 36 FCC Rcd at 8588, para. 16 (“We do not, however, foreclose the possibility of designating other categories of NGSO systems as “less complex” systems in the future if our experience supports a finding that our regulatory work for such systems is significantly less than those for other NGSO systems.”).

²⁰³ Kinéis Comments at 3-4; Myriota Reply at 1-4.

104. Kinéis also proposes that the Commission adopt a further notice of proposed rulemaking to develop a record to separate the various NGSO networks into more homogenous categories that group providers together with others that provide similar types of services.²⁰⁴ Kinéis proposes that we adopt a multi-tiered approach to the fee categories for NGSO space station systems, using many different factors to group NGSO space station systems into tiers that would “charge each provider an amount commensurate with its demands on Commission resources and the benefits it receives through regulation based on these enumerated factors.”²⁰⁵ Kinéis suggests five NGSO tiers: (1) Global Fixed/Mobile Broadband; (2) Big LEO Voice & Data; (3) EESS Space Imaging & Other; (4) UHF IoT Data Collection & Monitoring/AIS; and (5) SmallSat.²⁰⁶ Although much of the basis for the different tiers is purported differences in the benefits received from FCC regulation, Kinéis also attempts to quantify the amount of FTE work necessitated by each tier by evaluating the number of filings each tier made in our Electronic Comments Filing System (ECFS) from the start of FY 2022 until June 1, 2023.²⁰⁷

105. We find Kinéis’s multi-tiered proposal for defining NGSO fee categories to be potentially useful framework as the Commission has used such multi-tiered approaches for assessing regulatory fees for other services.²⁰⁸ There is not sufficient time, however, to consider such expansive changes in time to adopt regulatory fees for FY 2023 because the conclusions underlying the proposal by Kinéis require further comment and evaluation. Kinéis’s attempts to quantify the amount of FTE work necessitated by each proposed tier rely exclusively on filings made during a limited time period in docketed proceedings such as rulemakings, without consideration of applications and related filings, which would be made through ICFS, not ECFS. In addition, as the Satellite Operators observe, Kinéis has not attempted to explain how we would allocate the FTE time among these categories.²⁰⁹

106. We agree, however, that an examination of our regulatory fees and categories for NGSO space stations would be useful in light of changes resulting from the creation of the Space Bureau and fuller consideration of possible adjustments to into account factors that are reasonably related to the benefits provided by the Commission’s activities. We do not, however, have a sufficient record to initiate such an examination at this time. Section 9 requires regulatory fees be keyed to the FTE burden associated with the oversight and regulation of each regulatory fee category.²¹⁰ We anticipate that the changes in the industry that resulted our decision to create the Space Bureau will likely also result in changes in the relative FTE burden between and among our space and earth station fee payors. Moreover, we anticipate the creation of the Space Bureau will result in the streamlining of the oversight and regulation of space stations, which could also change FTE burdens. Accordingly, we find it will be more efficient to seek comment on proposals to reexamine the categories of regulatory fees for NGSO space station systems, like the one offered by Kinéis, at the same time as other proposals that might arise as part of a more holistic review of the FTE burden of the Space Bureau in FY 2024.

107. *Miscellaneous.* Space X contends that we have miscalculated the space station regulatory fees because we based our calculations on nine units in the “Space Stations (Non-Geostationary, Other)”

²⁰⁴ Kinéis Reply at 3. Kinéis also contends that the Commission should make available details of how FTEs formerly allocated to the International Bureau are now apportioned between the new Space Bureau and Office of International Affairs. Kinéis Reply at 5.

²⁰⁵ Kinéis Comments at 17.

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 17-18.

²⁰⁸ *Id.* at 14-16 (observing that the Commission assesses tiered regulatory fees for television and submarine cable licensees).

²⁰⁹ Satellite Operators Reply at 9-10.

²¹⁰ *FY 2019 Report and Order*, 34 FCC Rcd at 8192-93, paras. 7-8; *see also FY 2019 NPRM*, 34 FCC Rcd at 3275-77, paras. 6-10.

category, instead of ten.²¹¹ Although there are ten such licensed systems, one of the licensed systems was not operational as of October 1, 2022, and we are removing that station from the unit count when calculating the per unit fee.²¹² A unit count of nine is correct.

c. Spacecraft Performing On-Orbit Servicing (OOS) and Rendezvous and Proximity Operations (RPO) (In-Space Servicing Industries)

108. In the *FY 2022 NPRM*, we sought comment on adopting regulatory fee categories for spacecraft performing OOS and RPO.²¹³ OOS and RPO missions, which can include satellite refueling, inspecting and repairing in-orbit spacecraft, capturing and removing debris, and transforming materials through manufacturing while in space, have the potential to benefit all space stations and improve the sustainability of the outer space environment and the space-based services. Due to the nascent nature of the OOS and RPO, or more generally “in-space servicing” industries, we currently do not have a regulatory fee category for such spacecraft. The Commission noted at that time that there have been a limited number of such operations and tentatively concluded that it was too early to identify exactly where operations, such as those in low-Earth orbit (LEO), might fit into the regulatory fee structure in the future.²¹⁴

109. Neither the scope of in-space servicing operations nor the regulatory framework developed sufficiently to adopt regulatory fee categories for FY 2022. As a result, in the *FY 2023 NPRM* we sought comment on defining this emerging category of operations for regulatory fee purposes, including whether a separate regulatory fee category is necessary for those spacecraft that may conduct such in-space servicing operations in the future.²¹⁵ The *FY 2023 NPRM* also observed that some spacecraft conducting satellite servicing operate, or plan to operate, near the GSO arc, but that most of these operations are likely to ultimately be in NGSO.²¹⁶

110. Currently, two spacecraft operate under part 25 for communications while conducting these types of operations with GSO satellites.²¹⁷ These two spacecraft remain operational in FY 2023. In the *FY 2023 NPRM*, the Commission tentatively concluded that, despite being assigned their own call signs, which is the unit usually used to assess fees for satellite regulatees operating in GSO, such spacecraft appear to operate as part of existing GSO systems, rather than as separate independent spacecraft. Therefore, there would be no independent system for a separate fee assessment for these operations near the GSO arc, and the regulatory burden (i.e., the FTE time) for such operations would be included in the fees collected from the GSO regulatory fee payors. The Commission sought comment on this tentative conclusion and whether it may not apply to future operations of OOS and RPO spacecraft, which may operate more independently of the satellites that they will service.²¹⁸ The Commission also observed that, for spacecraft conducting OOS and RPO with GSO satellites, identifying whether such

²¹¹ Space X Comments at 1-3.

²¹² See, e.g., *Regulatory Fact Sheet: FY 2022 Regulatory Fees – International and Satellite Services* at 3 (rel. Sept. 16, 2022) (stating, “A fee payment is required “upon the commencement of operation of a system’s first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to section 25.121(d)(2).”).

²¹³ *FY 2022 NPRM* at paras. 45-46.

²¹⁴ *Id.*

²¹⁵ *FY 2023 NPRM* at paras. 82-84.

²¹⁶ *Id.* at paras. 83-84.

²¹⁷ *Space Logistics, LLC*, IBFS File No. SAT-LOA-20191210-00144; Call Sign S3059 (granted Mar. 25, 2020) (MEV-2); *Space Logistics, LLC*, IBFS File No. SAT-LOA-20170224-00021; Call Sign S2990 (granted June 20, 2019) (MEV-1). The Satellite Division also authorized on an STA basis several U.S. earth stations to communicate with the non-U.S.-licensed Astroscale NGSO spacecraft for TT&C during a mission involving RPO. See, e.g., IBFS File Nos. SES-STA-20200113-00043, SES-STA20200811-00859, SES-STA-20200117-00055.

²¹⁸ *FY 2023 NPRM* at para. 84.

spacecraft operations are part of an existing GSO system appears to be the first step in determining whether the Commission should assess a separate regulatory fee.²¹⁹ The *FY 2023 NPRM* proposed to apply the regulatory fee for “Space Stations (Geostationary Orbit)” to OOS and RPO spacecraft operating near the GSO arc, unless a determination is made that the OOS or RPO spacecraft is operating as part of an existing GSO system and therefore should not be assessed a separate regulatory fee.²²⁰ The Commission sought comment on this approach, as well as on the specific factors that should be considered to determine whether a OOS or RPO spacecraft is operating as part of an existing GSO system for regulatory fee purposes.²²¹

111. We find that the record remains too incomplete to adopt a separate regulatory fee category for spacecraft performing OOS and RPO at this time. Although commenters generally support the creation of new, separate regulatory fee categories for OOS and RPO space stations,²²² we conclude there is insufficient understanding of the nature and regulation of such spacecraft to consider concrete proposals for assessing regulatory fees for OOS and RPO space stations at this time. The Commission is still in the early stages of considering the regulatory environment for such services as a whole,²²³ and the definition of which services would fit into OOS and RPO and the regulatory framework for such services are yet to be developed. Accordingly, we are unable to determine who would be eligible for such a category or the amount of the FTE burden that the Commission would spend in regulating such a category, which is a necessary first step in adopting regulatory fees. We will continue to develop the record regarding a possible separate fee category for OOS, RPO, and in-space servicing more generally, with the benefit of progress made in rulemaking proceedings concerning these emerging services and will revisit this issue as part of the regulatory fees proceeding for FY 2024.

112. We will continue to develop a record that will inform possible establishment of a fee category(ies) and appropriate methodology for assessing such a fee category(ies). We will also continue to consider OOS and RPO spacecraft licensing for those spacecraft operating near the GSO arc on a mission-by-mission basis.²²⁴ Relatedly, Astroscale requests that we also clarify that a determination that the OOS or RPO spacecraft is operating as part of an existing GSO system could also include GSO servicing spacecraft operating in other frequency bands not supported by the client vehicle.²²⁵ We find, however, that the record is insufficiently developed at this time to act on this request. Although some comments oppose ever assessing the fee for GSO space stations on OOS and RPO spacecraft, arguing that the current GSO fee category reflects FTE hours spent on typical GSO spacecraft issues and that these

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² See, e.g., Astroscale Reply at 1-3 (contending that there exists sufficient record to recognize in-space servicing space stations in a new fee category based on technical characteristics and purpose); Momentus Reply at 1-3 (supporting the proposals to create a new, independent fee category for in-space servicing systems, including OTVs, with fees comparable to those established for small satellite systems); CONFERS Reply at 2 (contending that in-space servicing spacecraft belong in a distinct fee category because in-space servicing missions have different operational procedures, end users, and services offered than existing space stations); and Blue Origin Comments at 2 (arguing that application of the existing NGSO fee categories on these new space services would be inappropriate). *But see* Intelsat Comments at 7-8 (arguing that neither the scope of in-space servicing operations nor the regulatory framework has developed sufficiently to adopt such new regulatory fee categories and, in particular, the absence of a data set encompassing the full scope of OOS and RPO operations presents a substantial challenge to determining a fair and effective fee structure).

²²³ See, e.g., *Space Innovation; Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing*, Notice of Proposed Rulemaking, FCC 22-66 (Aug. 8, 2022) (seeking to develop a record on where these in-space servicing capabilities are today and the steps needed to promote their development).

²²⁴ See *FY 2022 NPRM* at para. 46.

²²⁵ Astroscale Comments at 4.

are not efforts that servicing spacecraft near the GSO arc benefit from,²²⁶ there is no other fee category available for space stations operating in geostationary orbit, and section 9 does not permit the Commission to exempt regulatees from paying regulatory fees. Because we are not proposing to adopt, at this time, a regulatory fee category for OOS or RPO operations, or in-space servicing more generally, we need not consider what factors should go into determining the regulatory fees for such categories.²²⁷

113. *Orbital Transfer Vehicle (OTV)*. The *FY 2023 NPRM* also sought comment on additional or different definitions for a potential new fee category, such as including in the definition of OOS concepts of operation such as deployment via an OTV.²²⁸ Spaceflight argues that the new fee category for in-space servicing systems should be broadly defined, encompassing a range of activities, including OTV deployment services, rendezvous and proximity operations, refueling, situational awareness, and debris-related activities.²²⁹ Spaceflight submits that it is essential that OTVs are not simply designated as either GSO or NGSO, but rather recognized as a distinct category within the regulatory framework.²³⁰ Spaceflight believes that OTVs possess distinct capabilities and serve a specific purpose in space operations, making it crucial to establish a separate classification that reflects these characteristics.²³¹ Spaceflight supports a fee assessment comparable to the one applicable for small satellites because there are similarities between OTVs and the small satellite systems.²³² Spaceflight argues that both types of missions are generally characterized by the following factors: (i) limited interference protection, (ii) limited mission durations, (iii) smaller system investments, (iv) less probability of ongoing adjudications, (v) higher chance to require multiple licenses or market grants, and (vi) a limited number of in-space servicing missions.²³³

114. In addition, Spaceflight disagrees with our position that innovative OTVs should not be classified as in-orbit servicing spacecraft but rather as an NGSO spacecraft which deploys other spacecraft and contends that the Commission has not provided a basis by which to characterize Sherpa-AC1, or OTVs more generally, as “less complex” NGSO systems for regulatory fee purposes.²³⁴ Spaceflight explains that the very purpose of OTVs is to support other space missions, and this service is more similar to that of a launch vehicle, rather than a traditional communications or other satellite service.²³⁵ Spaceflight argues that there is nothing in the record or the Commission’s analysis to explain why a physical, in-orbit delivery service is like the satellite services provided by NGSO spacecraft classified in the “less complex” fee category, i.e., Earth imaging or other type of monitoring services. Moreover, Spaceflight purports that simply classifying OTV missions as “less complex” based on the number of earth stations used to communicate with the OTV system would be inappropriate.²³⁶ Spaceflight submits that traditional systems generally rely more heavily on spectrum use, either for the

²²⁶ *Id.* at 4-5.

²²⁷ See, e.g., Astroscale Comments at 4 (contending the Commission should recognize that the administrative burden of servicing space stations is highly comparable to the burden for small satellite systems and adopt a similar fee); Blue Origin Comments at 4 & n.19 (suggesting that if the Commission were to create a fee category for NGSO in-space services, that the fee should be based on the NGSO small satellite annual regulatory fee); Letter from Will Lewis, Counsel, Atomos Space, to Marlene H. Dortch, Secretary, FCC, Attachment at 7 (June 7, 2023) (arguing that fees should reflect less intensive use of Commission resources similar to small satellites).

²²⁸ *FY 2023 NPRM* at para. 83.

²²⁹ Spaceflight Comments at 6.

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.* at 3.

²³⁵ *Id.*

²³⁶ *Id.* at 4.

provision of two-way communications or the transmission of service data, such as imagery of the Earth or other similar commercial data; however, OTVs generally use spectrum simply to operate the spacecraft or for other limited testing.²³⁷ Spaceflight argues that such spectrum use is also typically on a non-interference and unprotected basis because there is no specific spectrum allocation for the physical services provided by OTV operators.²³⁸

115. Spaceflight also argues that OTVs generally have significantly shorter operational lives compared to traditional NGSO satellites, such as mission lifetimes of less than a few hours or days.²³⁹ In contrast, Spaceflight contends, satellites in traditional communications or imaging satellite systems have mission lifetimes measured in years and are generally parts of constellations with 15-year license terms.²⁴⁰ For these reasons, Spaceflight submits that OTVs are unlike “less complex” (or “other”) NGSO systems and should not be treated as such for regulatory fee purposes.²⁴¹ Spaceflight further argues that if the Commission decides that OTV licensees should pay annual regulatory fees associated with “less complex” NGSO licenses, OTV operators should be permitted to seek blanket licenses for the launch and operation of multiple OTV spacecraft per license.²⁴² Spaceflight submits that such a policy would be consistent with the treatment of other NGSO systems and licensees and would more accurately reflect regulatory costs borne by the Commission.²⁴³

116. As stated above, the record is not sufficiently complete to adopt or even propose a separate regulatory fee category for spacecraft performing OOS, regardless of whether OTVs are included within the definition of OOS or not. We will continue to develop the record regarding a possible separate fee category for OOS, RPO, and in-space servicing more generally, and will consider OTVs as part of that record development.²⁴⁴ In addition, Spaceflight’s proposal that OTV operators should be permitted to seek blanket licenses for the launch and operation of multiple OTV spacecraft per license is outside the scope of this proceeding and is more appropriately considered as part of a separate license application or rulemaking.

2. International Bearer Circuit Regulatory Fees—Submarine Cable Systems

117. We reject the Submarine Cable Coalition’s request to revise the Commission’s regulatory fee methodology for submarine cable operators,²⁴⁵ which is based upon the lit capacity²⁴⁶ of the fiber-optic

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.* at 7-8.

²⁴³ *Id.*

²⁴⁴ We remove Spaceflight’s Sherpa AC-1 space station (Call Sign S3133) from the list of NGSO space stations subject to regulatory fees in FY 2023. *See FY 2023 NPRM* at Appendix F. NGSO space station regulatees are assessed fees based on whether an NGSO satellite is operational as of October 1 of the previous year. *See, e.g.,* Regulatory Fees Fact Sheet: FY 2022 Regulatory Fees –International and Satellite Services (Sept. 16, 2022), <https://docs.fcc.gov/public/attachments/DOC-387265A1.pdf>. As of October 1, 2022, the Sherpa AC-1 spacecraft was not operational except for TT&C and radionavigation satellite service (RNSS) transmissions of an experimental nature, due to the restrictions placed on the partial grant of its license application. As such, we deem the Sherpa AC-1 space station as non-operational as of October 1, 2022, when regulatory fees were assessed and remove it from our list of NGSO space stations subject to regulatory fees in FY 2023.

²⁴⁵ Submarine Cable Coalition Comments at 3-4.

²⁴⁶ The submarine cable industry uses the term “lit capacity” for measuring the capacity available for use on submarine cables. *See* Submarine Cable Frequently Asked Questions, <https://www2.telegeography.com/submarine-cable-faqs-frequently-asked-questions> (stating that there are two principal ways of measuring a cable’s capacity: (1) potential capacity; and (2) lit capacity) (last visited July 10, 2023).

submarine cable, because, they contend, that under our current methodology the fees charged to submarine cable operators do not account for the amount of Commission resources and services required for oversight.²⁴⁷ We find that the Submarine Cable Coalition provides no persuasive argument that the Commission's assessment of these regulatory fees based on capacity is contrary to the Communications Act and is not reasonably related to the benefits provided.²⁴⁸ We adopt our proposal to use the same tiers for assessing fees on submarine cable operators for FY 2023 as in FY 2022, which are based on the "lit" capacity of the fiber-optic submarine cable.²⁴⁹

118. International bearer circuits (IBCs) consist of terrestrial and satellite circuits and submarine cable systems.²⁵⁰ In the 2009 *Submarine Cable Order*, based on a consensus proposal made by a large number of submarine cable operators (Consensus Proposal), the Commission adopted a new methodology for assessing IBC fees.²⁵¹ Instead of assessing IBC fees based on 64 kbps circuits for all types of IBCs, the Commission began assessing regulatory fees for submarine cable operators on a per cable landing license basis, with higher fees for larger capacity submarine cable systems and lower fees for smaller capacity submarine cable systems.²⁵² The Commission adopted a five-tier structure for

²⁴⁷ *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Second Report and Order, 24 FCC Rcd 4208, 4214-15, paras. 15-16 (2009) (*Submarine Cable Order*); *FY 2019 Report and Order*, 34 FCC Rcd at 8204-05, paras. 39-41; *FY 2020 Report and Order*, 36 FCC Rcd at 1753, para. 55; *FY 2021 Report and Order*, 36 FCC Rcd at 13010-11, para. 42; *FY 2022 Report and Order* at para. 48.

²⁴⁸ The Submarine Cable Coalition consists of GCX Holdings Limited; GlobeNet Cabos Submarinos America, Inc.; GU Holdings Inc. (an indirect, wholly-owned subsidiary of Google LLC); Hawaiki Submarine Cable USA LLC; SETAR; and Tata Communications (Americas), Inc. Submarine Cable Coalition Comments at 1-3.

²⁴⁹ The International Bureau undertook a review of its work, staffing, and distribution of responsibilities benefiting its fee payors, between the Telecommunications and Analysis Division and the Satellite Division and based on this review, allocated eight FTEs to the international bearer circuit category. *FY 2020 Report and Order*, 36 FCC Rcd at 1753, para. 57. The Commission adopted new tiers for the fees and revised the allocation between submarine cables and terrestrial and satellite circuits, concluding that a ratio attributing 95% to submarine cables and 5% to terrestrial and satellite circuits would be more reasonable than the historic ratio. *FY 2020 Report and Order*, 36 FCC Rcd at 1756, para. 62.

²⁵⁰ Initially, this fee category was for common carrier IBCs. The Commission added non-common carrier satellite IBCs to this regulatory fee category in 1997. See *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Report and Order, 12 FCC Rcd 17161, 17189, para. 71 (1997) (*FY 1997 Report and Order*) (explaining that the expansion of services offered by the non-common carrier satellite operators greatly increased the need for Commission oversight of their commercial activities and imposed a greater burden on staff and other resources). More recently, the Commission added non-common carrier terrestrial IBCs to this regulatory fee category in 2017. See *FY 2017 Report and Order*, 32 FCC Rcd at 7071-72, paras. 34-35. 43. IBC regulatory fees reflect the work performed by the International Bureau, primarily the Telecommunications and Analysis Division and the Office of the Bureau Chief, for the benefit of all U.S. international telecommunications service providers, and our submarine cable licensees and the international telecommunications service is provided over terrestrial, satellite, and submarine cable facilities. *FY 2020 Report and Order*, 36 FCC Rcd at 1752, para. 54.

²⁵¹ As the Commission has stated, "IBC fees consist of (1) active terrestrial and satellite circuits, and (2) lit submarine cable systems." *FY 2020 Report and Order*, 36 FCC Rcd at 1753, para. 55; *FY 2021 Report and Order*, 36 FCC Rcd at 13010-11, para. 42. Prior to 2009, IBC regulatory fees were collected based on the number of 64 kbps circuits for each of the three types of facilities used to provide international service. *FY 2020 Report and Order*, 36 FCC Rcd at 1753, para. 55; *FY 2021 Report and Order*, 36 FCC Rcd at 13011, para. 42.

²⁵² *Submarine Cable Order*, 24 FCC Rcd at 4214-15, paras. 13-18. The parties to the Consensus Proposal were: AT&T, Verizon, Apollo Submarine Cable System, Ltd.; Brasil Telecom of America, Inc.; Columbus Networks USA, Inc.; ARCOS-1 USA, Inc.; A.SUR Net, Inc.; Level 3 Communications, LLC; Hibernia-Atlantic US LLC; Marine Cable Corp.; Pacific Crossing Limited and its subsidiary PC Landing Corp.; Reliance Globalcom Limited and its indirect subsidiary FLAG Network USA Limited; and Tata Communications (US) Inc. *Id.* at 4208, n.3. In the *Submarine Cable Order*, the Commission did not change the methodology of assessing regulatory fees for terrestrial and satellite facilities on a per bearer circuit basis. *Id.* at 4216, para. 20; *FY 2021 Report and Order*, 36 FCC Rcd at 13011, n.147; *FY 2020 Report and Order*, 36 FCC Rcd at 1753, n.162.

assessing fees on submarine cables systems based on lit capacity.²⁵³ The Commission explained that it will define operational submarine cable systems as either “large” or “small” submarine cable systems based on the capacity of each system and the “small” systems will be further subdivided into additional subcategories.²⁵⁴ The Commission concluded that this methodology served the public interest and was competitively neutral because it included both common carrier and non-common carrier submarine cable operators.²⁵⁵ The Commission also explained that the methodology would be easier to administer and for submarine cable operators to comply with.²⁵⁶ The Commission further stated that a lower fee for licensees of smaller cable systems would mitigate concerns that a flat fee may create a barrier to entry for new entrants.²⁵⁷ In the *FY 2020 Report and Order*, the Commission found that lit capacity was an appropriate measure by which to assess IBC fees for submarine cables.²⁵⁸

119. The Submarine Cable Coalition contends that the fee structure continues to impose disproportionate fees on submarine cable operations that do not reflect their limited use of Commission resources and services.²⁵⁹ These commenters argue that the benefits submarine cable licensees receive from the Commission’s work pale significantly in comparison to the regulatory oversight required of other Commission licensees.²⁶⁰ The Submarine Cable Coalition argues that a regulatory fee structure disconnected from and disproportionate to the benefits rendered to the regulatory fee payor is contrary to the Communications Act and imposes an undue burden on the industry.²⁶¹

120. We disagree with the Submarine Cable Coalition’s contention that the Commission’s regulatory fee methodology is contrary to the Communications Act and that the Commission has not developed regulatory fees that are reasonably related to the benefits provided.²⁶² The Commission has long held that capacity is a reasonable basis to assess regulatory costs among the submarine cable regulatory fee payors that benefit from the Commission’s work.²⁶³ As the Commission has previously

²⁵³ *Submarine Cable Order*, 24 FCC Rcd at 4214-15, paras. 15-16; *FY 2020 Report and Order*, 36 FCC Rcd at 1753, para. 55; *FY 2021 Report and Order*, 36 FCC Rcd at 13010-11, para. 42; *see also FY 2019 Report and Order*, 34 FCC Rcd at 8204-05, paras. 39-41. As the Commission explained, it “base[s] the regulatory fee recovery on lit capacity because that is the amount of capacity that submarine cable operators are able to provide services over and the regulatory fee is in part recovering the costs related to the regulation and oversight of such services.” *FY 2019 Report and Order*, 34 FCC Rcd at 8204-05, para. 41.

²⁵⁴ *Submarine Cable Order*, 24 FCC Rcd at 4214, para. 15; *FY 2019 Report and Order*, 34 FCC Rcd at 8204, para. 39. The Commission noted that it “anticipate[s] that the subcategories of small systems and the definitions of large and small systems may change as the submarine cable industry changes.” *Submarine Cable Order*, 24 FCC Rcd at 4214, n.39.

²⁵⁵ *Submarine Cable Order*, 24 FCC Rcd at 4212-13, paras. 8-9.

²⁵⁶ *Id.* at 4213, para. 10; *FY 2019 Report and Order*, 34 FCC Rcd at 8204, para. 39. The Commission explained that, “[b]y ‘flat’ we mean that the regulatory fee is no longer based on the number of active circuits, but is assessed on a per cable system basis . . . we are permitting carriers to pay a lower fee for smaller submarine cable systems.” *Submarine Cable Order*, 24 FCC Rcd at 4210, para. 2 & n.12.

²⁵⁷ *Submarine Cable Order*, 24 FCC Rcd at 4215, para. 18.

²⁵⁸ *FY 2020 Report and Order*, 36 FCC Rcd at 1752, para. 5; *see also FY 2022 Report and Order* at para. 48.

²⁵⁹ Submarine Cable Coalition Comments at 3-4.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.* The Submarine Cable Coalition provides no additional or new support for its arguments, nor does it propose an alternative methodology that the Commission could administer in an equitable and efficient manner.

²⁶³ *See, e.g., FY 2022 Report and Order* at para. 48; *FY 2021 Report and Order*, 36 FCC Rcd at 13010-12, paras. 42-45; *FY 2020 Report and Order*, 36 FCC Rcd at 1752-55, 1759, paras. 53-60, 74-75; *FY 2019 Report and Order*, 34 FCC Rcd at 8204-06, paras. 39-45. The Commission has historically used capacity to assess IBCs. *See FY 2021 Report and Order*, 36 FCC Rcd at 13012, para. 44; *FY 2020 Report and Order*, 36 FCC Rcd at 1753, para. 56.

(continued....)

stated, the fee assessment on submarine cables covers the costs for regulatory activity concerning submarine cables as well as the services provided over the submarine cables.²⁶⁴ We find it reasonable to continue to assess higher regulatory fees on licensees with larger facilities that benefit more from the Commission's work and thus should pay a larger proportion of the Commission's costs.²⁶⁵

121. Since FY 2009, when the Commission adopted the new methodology for assessing submarine cable fees, the level of lit capacity for submarine cable systems has increased and the Commission has expanded the different tiers to take into account this change and accommodate for this rapid growth in capacity. However, the basic methodology for calculating submarine cable fees based on capacity has not changed. Submarine cable fees are still calculated on the basis of "1" unit, ".5" units, ".25" units and so forth. Furthermore, we note that the regulatory fees for FY 2023 have been reduced from those assessed in FY 2022. As discussed above, lit capacity remains a reasonable basis to apportion regulatory costs among the submarine cable regulatory fee payors that benefit from the Commission's work, and our fee methodology with respect to submarine cables continues to reasonably reflect the FTE costs for our regulatory activity concerning submarine cables as well as the services provided over the submarine cables.

F. Broadcaster Regulatory Fees for FY 2023

1. Full Service Television

122. The Commission has utilized a population-based full-service broadcast television regulatory fee since 2020.²⁶⁶ The population-based methodology conforms with the service authorized

When Congress established the Commission's regulatory fee authority in 1993, it adopted a statutory schedule of regulatory fees that included assessing a fee on carriers based on active 64 kbps international circuits. *FY 2021 Report and Order*, 36 FCC Rcd at 13012, para. 44 (citation omitted); *FY 2020 Report and Order*, 36 FCC Rcd at 1753-54, para. 56 (citation omitted); Section 6003(a) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6003(a), 107 Stat 312, 397-401. The Commission continued to assess IBC fees on 64 kbps circuits until 2009 when it adopted a new fee structure based on the Consensus Proposal from the submarine cable industry, but that new structure still used capacity of the submarine cable system for determining the fees so that smaller submarine cable systems were paying a lower fee than larger systems. *FY 2021 Report and Order*, 36 FCC Rcd at 13012, para. 44; *FY 2020 Report and Order*, 36 FCC Rcd at 1753-54, para. 56.

²⁶⁴ *FY 2022 Report and Order* at para. 48; *FY 2020 Report and Order*, 36 FCC Rcd at 1753, para. 55 (citing *FY 2015 Report and Order*, 30 FCC Rcd at 10273, para. 12). For instance, the regulatory fees paid by submarine cable operators also cover the services provided to common carriers using the submarine cable circuits in addition to the services that the International Bureau provides to submarine cable operators. *FY 2015 Report and Order*, 30 FCC Rcd at 10273-74, para. 12. Further, regulatory fees, such as IBC fees, are not intended to recover only the costs of Title II regulation, but also the costs of the Commission's enforcement, policy and rulemaking, user information, and international activities. *See FY 1997 Report and Order*, 12 FCC Rcd at 17188, paras. 68-69. The Commission has found that almost all of the IBC work benefits all international telecommunications service providers no matter what facilities those services are provided over—submarine cable systems, terrestrial facilities, or satellites. *FY 2020 Report and Order*, 36 FCC Rcd at 1754, para. 57. Submarine cable licensees benefit from work that includes among others, maintaining the licensing database, enforcing benchmarks, coordination with other U.S. government agencies, including coordinating with other U.S. agencies' undersea activities to protect submarine cables, protecting U.S. customers and consumers from anticompetitive actions by foreign carriers, licensing international section 214 authorizations and submarine cables including review of transactions, and representing U.S. interests at bilateral and multilateral negotiations and at international organizations. *Id.*

²⁶⁵ *FY 2020 Report and Order*, 36 FCC Rcd at 1754, para. 58; *FY 2019 Report and Order*, 34 FCC Rcd at 8205, para. 43. The Commission has noted, "[w]hile there may be situations in which it would be equitable to set aside differences in capacity for the sake of administrability, to say that a system with roughly 65,000 times the capacity of another system should pay not a penny more in regulatory fees hardly seems equitable or reflective of the benefits each system owner receives from its Commission license and Commission oversight." *FY 2019 Report and Order*, 34 FCC Rcd at 8205, para. 43.

²⁶⁶ Previously, from approximately 1995 through 2018, regulatory fees for full-power television stations were based on the Nielsen Designated Market Area (DMA) groupings 1-10, 11-25, 26-50, 51-100, and remaining markets

(continued....)

here—broadcasting television to the American people. In the *FY 2023 NPRM*, we proposed to continue to assess fees for full-power broadcast stations based on the population covered by a full-service broadcast station's contour and proposed adopting a factor of 0.7799 of one cent (\$0.007799) per population served for FY 2023 full-power broadcast television station fees.²⁶⁷ We received no comments on this issue. We therefore conclude that we will continue to use the population-based methodology for full-service television broadcasters based on the population covered by a full-service broadcast television station's contour. We also adopt a factor of 0.7799 of one cent (\$0.007799) per population served for FY 2023 full-power broadcast television station fees.²⁶⁸ The population data for broadcasters' service areas will continue to be determined using the TVStudy software and the LMS database, based on a station's projected noise-limited service contour.²⁶⁹ The population data for each licensee and the population-based fee (population multiplied by \$0.007799) for each full-power broadcast television station is listed in Appendix G. For those VHF stations whose power had to be increased to obtain a clearer signal, the Commission will continue to use a population count based on that station's lower VHF power level rather than at the increased power level.²⁷⁰

2. Radio Stations

123. In the *FY 2023 NPRM*, we sought comment on the existing tiered fee structure for radio broadcasters regulatory fees and proposed the creation of an additional tier within the lowest population tier to ensure that broadcaster fees fairly represent the regulatory oversight benefits distributed among all radio broadcasters²⁷¹ and that the regulatory fees assessed to the smaller broadcasters are "reasonably related to the benefits provided to the payor of the fee by the Commission's activities" as required by section 9(d) of the Act.²⁷² NAB agrees that we should adopt the proposal to create a new fee tier for the smallest AM and FM radio stations.²⁷³ In its reply comments, the State Associations of Broadcasters agree that the Commission should implement the proposed new radio tier to more fairly distribute the burden of regulatory fees.²⁷⁴ No commenter in the record objected to our proposal. We therefore adopt a

(DMAs 101-210). In the *FY 2018 NPRM*, we sought comment on whether using the actual population covered by the station's contours instead of Designated Market Areas (DMAs) would more accurately reflect the market served by a full-power broadcast television station for purposes of assessing regulatory fees. *See Assessment and Collection of Regulatory Fees for FY 2018*, Report and Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5091, 5102, para. 28 (2018) (*FY 2018 NPRM*). In the *FY 2018 Report and Order*, the Commission adopted a new methodology for assessing regulatory fees for full-service broadcast stations. The Commission determined that it would fully transition to assessing regulatory fees for full-service television broadcast stations based on the population covered by the station's contour by FY 2020 and, in the interim, for FY 2019, adopted a blended fee based partly on the historical DMA methodology and partly on the new population-based methodology. *Assessment and Collection of Regulatory Fees for Fiscal Year 2018*, Report and Order, 33 FCC Rcd 8497, 8501-502, para. 14 (2018) (*FY 2018 Report and Order*).

²⁶⁷ *FY 2023 NPRM* at para. 76.

²⁶⁸ The factor of 0.7799 of one cent (\$0.007799) was derived by taking the revenue amount required from all television fee categories and dividing it by the total population count of all "feeable" call signs. We multiply the population served by the factor to reach the population-based fee.

²⁶⁹ 47 CFR § 73.622(e).

²⁷⁰ As the Commission stated in the *FY 2020 NPRM*, "we will assess the fees for those VHF stations that are licensed with a power level that exceeds the maximum based on the maximum power level specified for channels 2-6 in 73.622(f)(6) and for channels 7-13 in 73.622(f)(7)." *FY 2020 NPRM*, 35 FCC Rcd at 4997, para. 52.

²⁷¹ *See FY 2019 Report and Order*, 34 FCC Rcd 8189, 8204, para. 40 (in which the Commission noted that it had updated its framework for assessing submarine cable system regulatory fees, increasing the number of fee tiers "to provide a more equitable distribution of fees so that a small submarine cable system does not pay the same regulatory fee as a very large submarine cable system that is capable of providing substantially more services.")

²⁷² 47 U.S.C. § 159(d).

²⁷³ NAB Comments at 4.

²⁷⁴ State Broadcasters Associations Reply at 15.

revised radio station regulatory fee table that includes a lower population tier for AM and FM broadcasters. Specifically, we separate the previous years' tier of $\leq 25,000$ population into two tiers: 1) $\leq 10,000$, and 2) 10,001 - 25,000. The remaining population tier thresholds will stay the same as prior years. In addition, beginning in FY 2023, the radio population count that is the basis for assessing regulatory fees will include 2020 U.S. Census data.

FY 2023 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=10,000	\$595	\$430	\$370	\$410	\$650	\$745
10,001 - 25,000	\$990	\$715	\$620	\$680	\$1,085	\$1,240
25,001 – 75,000	\$1,485	\$1,075	\$930	\$1,020	\$1,630	\$1,860
75,001 – 150,000	\$2,230	\$1,610	\$1,395	\$1,530	\$2,440	\$2,790
150,001 – 500,000	\$3,345	\$2,415	\$2,095	\$2,300	\$3,665	\$4,190
500,001 – 1,200,000	\$5,010	\$3,620	\$3,135	\$3,440	\$5,490	\$6,275
1,200,001 – 3,000,000	\$7,525	\$5,435	\$4,710	\$5,170	\$8,245	\$9,425
3,000,001 – 6,000,000	\$11,275	\$8,145	\$7,060	\$7,745	\$12,360	\$14,125
>6,000,000	\$16,920	\$12,220	\$10,595	\$11,620	\$18,545	\$21,190

G. Continuing Flexibility in FY 2023 for Regulatory Fee Payors

124. In FYs 2020, 2021, and 2022, we provided temporary relief to fee payors experiencing financial hardship caused or exacerbated by the COVID-19 pandemic.²⁷⁵ In the *FY 2023 NPRM*, we asked whether we should continue certain of those temporary measures for FY 2023 regulatory fees.²⁷⁶ Both NAB and the State Broadcasters Associations filed comments in support of continuing the temporary measures for FY 2023 regulatory fees.²⁷⁷ While the National Emergency has ended,²⁷⁸ we recognize, as NAB and the State Broadcasters Associations pointed out in their comments to the *FY 2023 NPRM*,²⁷⁹ that extending relief measures for FY 2023 regulatory fees while businesses like broadcasters continue to recover from the economic impact of the pandemic, will benefit fee payors. Therefore, the Commission finds good cause to continue to offer a nominal interest rate and waive its down payment requirement, for installment payment of regulatory fee debt. OMD will continue to exercise its delegated authority to partially waive section 1.1910 of the Commission's rules²⁸⁰ to allow regulatees on "red light" and experiencing financial hardship to nonetheless request waiver, reduction, deferral, and/or installment payment of their FY 2023 regulatory fees, provided that those regulatees resolve all of the delinquent debt they owe to the Commission in advance of the Commission's decision on their relief requests.

125. We also will continue a partial waiver of section 1.1166 of our rules to permit fee payors seeking waiver, deferral or reduction of their FY 2023 regulatory fees to submit documentation supporting their requests after their underlying requests are submitted.²⁸¹ This partial waiver of section

²⁷⁵ *FY 2020 Report and Order*, 36 FCC Rcd at 1760-61, paras. 80-84; *FY 2021 Report and Order*, 36 FCC Rcd at 13024-25, paras. 69-71; *FY 2022 Report and Order* at para. 105.

²⁷⁶ *FY 2023 NPRM* at para. 89.

²⁷⁷ NAB Comments at 4; State Broadcasters Associations Reply at 17.

²⁷⁸ See fn. 8, *infra*.

²⁷⁹ NAB Comments at 5-6; State Broadcasters Associations Reply at 16-18.

²⁸⁰ 47 CFR § 1.1910.

²⁸¹ In the absence of this waiver, parties seeking fee relief must submit all documentation proving the basis for their request with the request. 47 CFR § 1.1166(c), (d). See also *FY 2019 Report and Order*, 34 FCC Rcd at 8208, para. (continued....)

1.1166(c) does not remove the burden of submitting documents in support of individual waiver requests. Parties seeking waiver, deferral or reduction of their FY 2023 regulatory fees must make a good faith effort to submit all necessary documentation with their initial regulatory fee waiver requests. As part of our partial waiver of 1.1166(c), we will provide fee payors, after filing their requests for waiver, reduction or deferral of their FY 2023 regulatory fees, with one opportunity to submit additional documents to support their requests, which submission must occur by January 31, 2024 in order for their supplemental documentation to be considered with their requests.²⁸² We condition our temporary waiver in order to more closely align our practices with the requirements of section 1.1166. This provides fee payors with relief while at the same time scaffolding a return to normal operation of our rules.

126. The State Broadcasters Associations also advocate for making permanent these remaining temporary measures, stating that without them, the Commission's processes and rules, particularly with respect to installment payment requests, are sufficiently onerous as to prevent distressed fee payors from effectively accessing the relief.²⁸³ Because we did not propose to codify the remaining temporary measures in the *FY 2023 NPRM*, the record is insufficient to consider the State Broadcasters Associations' proposal and we therefore decline to consider it at this time.

127. Finally, in the *FY 2023 NPRM*, we amended section 1.1166 of our rules²⁸⁴ to permit parties seeking regulatory fee waiver, reduction and/or deferral to make a single request for all forms of relief sought, rather than requiring separate filings for each form of relief, and to require all requests made under the rule to be submitted electronically to a dedicated email address.²⁸⁵ We also amended section 1.1914 of our rules²⁸⁶ to direct parties seeking to pay their regulatory fees in installments to submit those requests to the same dedicated email address and to permit those parties to combine their installment payment requests with their waiver.²⁸⁷ While we did not receive any comments on this point, it is very unlikely that the OMB PRA approval process will conclude in time for parties seeking installment relief to proceed under the codified revisions to section 1.1914. Therefore, we will continue these revisions to section 1.1914 as temporary measures until their codification is effective.²⁸⁸

128. We also remind regulatory fee payors that we cannot relax the substantive standard for granting a waiver or deferral of fees, penalties, or other charges for late payment of regulatory fees under section 9A of the Act.²⁸⁹ Under the statute, the Commission may only waive a regulatory fee, penalty, or interest charge if it finds there is good cause for the waiver and that the waiver is in the public interest.²⁹⁰ The Commission has only granted financial hardship waivers when the requesting party has shown it "lacks sufficient funds to pay the regulatory fees and to maintain its service to the public."²⁹¹ Other

53 (A party seeking regulatory fee relief must include with its request all documents and information necessary to prove that the relief sought should be granted.)

²⁸² More than one post-filing documentation submission, and/or any submission after January 31, 2024, is outside the scope of our partial waiver of the requirements of section 1.1166(c).

²⁸³ State Broadcasters Associations Reply at 17.

²⁸⁴ 47 CFR § 1.1166.

²⁸⁵ *FY 2023 NPRM* at paras. 16-17.

²⁸⁶ 47 CFR § 1.1914.

²⁸⁷ *Id.*

²⁸⁸ We expect that the OMB PRA approval process will conclude and the rule will become effective approximately six months after the release of this *FY 2023 Report and Order*.

²⁸⁹ 47 U.S.C. § 159A(d).

²⁹⁰ *Id.* In our *FY 2019 Report and Order*, in the context of explaining the implications to the revisions to our regulatory fee authority, we explained in detail the rules pertaining to waiver, reduction, deferral and the responsibility for payment of regulatory fees. *FY 2019 Report and Order*, 34 FCC Rcd at 8207-08, paras 49-53.

²⁹¹ *FY 2020 Report and Order*, 36 FCC Rcd at 1762, para. 87.

statutory limitations include that the Commission must act on waiver requests individually,²⁹² and cannot extend the deadline we set for payment of fees beyond September 30.²⁹³

H. Providing Installment Payment Relief to Small Regulatory Fee Payors

129. In the *FY 2023 NPRM*, we sought comment on a proposal to allow regulatory fee payors to prepay their annual regulatory fees in increments before the annual regulatory fee payment deadline.²⁹⁴ The State Broadcasters Associations asked that the Commission consider the proposal, on the basis that permitting incremental prepayment of regulatory fees would ease broadcasters' regulatory fee burden.²⁹⁵ In seeking comment on the proposal, we noted that implementation of such a program would require modifications to our recordkeeping, financial operations, and accounting systems and additional personnel to administer the program. We asked commenters what concrete benefits the Commission and participating regulatory fee payors would derive from the program, to justify the Commission's cost of implementing and administering a prepayment by installment program.²⁹⁶ In their reply comments, the State Broadcasters Associations concede the significant administrative difficulties of a prepayment program but do not identify any program benefits sufficient to justify implementation and administration of such a program.²⁹⁷ We received no other comments on the proposal. Because the record does not identify any concrete benefits derived from a prepayment program, as distinct from, for example, broadcasters individually setting aside money each month in advance of the payment deadline to pay their regulatory fee obligation, and would increase the Commission's costs, we decline to adopt the proposal to permit regulated parties to prepay their annual regulatory fee obligation in increments in advance of the regulatory fee payment deadline.

I. Technical Corrections to Sections 1.1166 and 1.1914 of the Commission's rules

130. Today, we further amend section 1.1166 to delete certain language added to the rule in error in the *FY 2023 NPRM*.²⁹⁸ Specifically, we delete "or installment payment" in the introductory paragraph of section 1.1166 and in 1.1166(a), make grammatical changes to move the word "or" twice, and we delete "and 1.1914" in 1.1166(a). We also restore the following text (bolded) that was inadvertently deleted from section 1.1166(a) in the *FY 2023 NPRM*: "All requests for waiver, reduction and deferral shall be acted upon by the Managing Director **with the concurrence of the General Counsel.**"

131. We also make two technical corrections to section 1.1914 to clarify the language of the rule. The third sentence of section 1.1914(a) is revised to read as follows: "Requests for installment payment of non-regulatory fee debt shall be filed electronically, by submission to the following email

²⁹² Section 9 of the Act does not permit the Commission to exempt any group of regulatees, other than those expressly exempted under the statute. 47 U.S.C. § 159(e). Instead, the statute requires a case-by-case determination to waive regulatory fees or related charges. *See id.* § 159A(d); *FY 2020 Report and Order*, 36 FCC Rcd at 1761-62, para. 86; *FY 2019 Report and Order*, 34 FCC Rcd at 8207, para. 50.

²⁹³ 47 U.S.C. § 159(b). September 30 marks the end of the Commission's fiscal year. The Commission is required to collect the full amount of its appropriation in the offsetting regulatory fee collection for any given fiscal year by the fiscal year end. 47 U.S.C. § 159(b) ("The Commission shall assess and collect regulatory fees at such rates as the Commission shall establish in a schedule of regulatory fees that will result in the collection, in each fiscal year, of an amount that can reasonably be expected to equal the amounts described in subsection (a) with respect to such fiscal year."). Our annual fiscal year S&E appropriation also explicitly directs the Commission to assess and collect regulatory fees during the relevant fiscal year.

²⁹⁴ *FY 2023 NPRM* at paras. 92-93.

²⁹⁵ Letter from Lauren Lynch Flick, Pillsbury Winthrop Shaw Pittman LLP to Marlene H. Dortch, Secretary, Federal Communications Commission, MD Docket No. 22-301 (Dec. 12, 2022).

²⁹⁶ *FY 2023 NPRM* at para. 93.

²⁹⁷ State Broadcasters Associations Reply at 18.

²⁹⁸ *See FY 2023 NPRM*, Appendix K.

address: installmentplanrequest@fcc.gov.” We make this change to ensure that, for administrative simplicity purposes, installment payment requests that are non-regulatory fee in nature are submitted to a different email address than the email address to which all regulatory fee relief requests, including those for installment payment of regulatory fees, are to be submitted. Finally, we revise the fourth sentence of section 1.1914(a) to more clearly state that requests for installment payment of regulatory fees may be combined with other regulatory fee relief requests that are filed pursuant to section 1.1166 of our rules.

132. We make these technical corrections *sua sponte* without notice and comment because we conclude that they are rules of agency organization, procedure, or practice exempt from the general notice-and-comment requirements of the Administrative Procedure Act (APA).²⁹⁹

J. Advancing Diversity, Equity, Inclusion, and Accessibility

133. In the *FY 2023 NPRM*, we sought 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.³⁰⁰ We did not receive any comments on this issue. While diversity and equity considerations do not impact our methodology for establishing regulatory fee rates, we continue to remain mindful of the importance of these considerations and the impact of our rules on them. We again emphasize, however, that the Commission is not permitted to shift fees from one party of fee payors to another nor to raise fees for any purpose other than as an offsetting collection in the amount of our annual S&E appropriation, consistent with the requirements of section 9 of the Act.³⁰¹

IV. PROCEDURAL MATTERS

134. Included below are procedural items as well as our current payment and collection methods.

135. *Commission’s Registration System.* To increase efficiency, the Commission is using an all-electronic payment system for regulatory fees, which is contained within the Commission’s Registration System (CORES). Before using CORES for the first time, you must obtain an FCC Username through the FCC User Registration System, and subsequently use it to access CORES and either register an FCC Registration Number (FRN) or associate an existing FRN to your password. If you are unable to register electronically, you may fax your application for a Registration Number (FCC Form 160) to the CORES Helpdesk at (202) 418-7869 for filing procedures.

136. *Credit Card Transaction Levels.* In accordance with *Treasury Financial Manual*, Volume I, Part 5, Chapter 7000, Section 7055.20—*Transaction Maximums*, the highest amount that can be charged on a credit card for transactions with federal agencies is \$24,999.99.³⁰² Transactions greater than \$24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the \$24,999.99 limit. Customers who wish to pay an amount greater than \$24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in the CORES system. Further details will be provided regarding payment methods and procedures at the time of FY 2023 regulatory fee collection in Fact Sheets,

²⁹⁹ 5 U.S.C. § 553(b)(A).

³⁰⁰ *FY 2023 NPRM* at para 85.

³⁰¹ *FY 2022 Report and Order* at para. 104.

³⁰² Customers who owe an amount on a bill, debt, or other obligation due to the federal government are prohibited from splitting the total amount due into multiple payments. Splitting an amount owed into several payment transactions violates the credit card network and Fiscal Service rules. An amount owed that exceeds the Fiscal Service maximum dollar amount, \$24,999.99, may not be split into two or more payment transactions in the same day by using one or multiple cards. Also, an amount owed that exceeds the Fiscal Service maximum dollar amount may not be split into two or more transactions over multiple days by using one or more cards. *Treasury Financial Manual*, Volume I, part 5, Chapter 7000, Section 7055.30, *Prohibition on Splitting Transactions*.

<https://www.fcc.gov/regfees>.

137. *Payment Methods.* During the fee season for collecting regulatory fees, regulatees can pay their fees by credit card through Pay.gov,³⁰³ ACH, debit card,³⁰⁴ or by wire transfer. Additional payment instructions are posted on the Commission's website at <https://www.fcc.gov/licensing-databases/fees/wire-transfer>. The receiving bank for all wire payments is the U.S. Treasury, New York, NY (TREAS NYC). Any other form of payment (e.g., checks, cashier's checks, or money orders) will be rejected. For payments by wire, an FCC Form 159-E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. The fax should be sent to the Commission at (202) 418-2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

138. *De Minimis Regulatory Fees, Section 9(e)(2) Exemption.* Under the de minimis rule, and pursuant to our analysis under section 9(e)(2) of the Act, a regulatory fee payor is exempt from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is \$1,000 or less for the fiscal year.³⁰⁵ The de minimis threshold applies only to filers of annual regulatory fees, not regulatory fees paid through multi-year filings, and it is not a permanent exemption. Each regulatory fee payor will need to reevaluate the total annual fee liability each fiscal year to determine whether it meets the de minimis exemption.

139. *Standard Fee Calculations and Payment Dates.* The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2022 for AM/FM radio stations and VHF/UHF broadcast television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2022.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category.³⁰⁶ For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in section 52.103 of the Commission's rules.³⁰⁷ The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2022.
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2022. The number of subscribers, units, or telephone numbers on December 31, 2022 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2022,

³⁰³ *Treasury Financial Manual*, Volume I, Part 5, Chapter 7000, Section 7055—*Transaction Maximums*.

³⁰⁴ *Id.*

³⁰⁵ *FY 2019 Report and Order*, 34 FCC Rcd at 8206-8207, paras. 46-48; 47 U.S.C. § 159(e)(2).

³⁰⁶ Audio bridging services are toll teleconferencing services.

³⁰⁷ 47 CFR § 52.103.

responsibility for payment rests with the holder of the permit or license as of the fee due date.

- *Wireless Services, Multi-year fees:* The first seven regulatory fee categories in our Schedule of Regulatory Fees pay “small multi-year wireless regulatory fees.”³⁰⁸ Entities pay these regulatory fees in advance for the entire amount period covered by the ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed, or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of “small multi-year wireless” licenses that will be renewed or newly obtained in FY 2022.
- *Multichannel Video Programming Distributor Services (cable television operators, CARS licensees, DBS, and IPTV):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2022.³⁰⁹ Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services (Earth Stations and Space Stations):* Regulatory fees must be paid for (1) by all licensed or authorized earth stations on or before October 1, 2022, (2) geostationary orbit space stations and non-geostationary orbit satellite systems that are licensed and operational on or before October 1, 2022, and (3) small satellite space stations that were licensed and operational on or before October 1, 2022. In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date. During the “de-commissioning” phase of satellites, whereby satellites are often not operational, the satellite license must be cancelled by September 30, 2022 to avoid paying FY 2023 regulatory fees.
- *International Services (Submarine Cable Systems, Terrestrial and Satellite Services):* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on lit circuit capacity as of December 31, 2022. Regulatory fees for terrestrial and satellite IBCs are to be paid based on active (used or leased) international bearer circuits as of December 31, 2022 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, entities must include circuits used by themselves or their affiliates. For these purposes, “active circuits” include backup and redundant circuits as of December 31, 2022. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits.³¹⁰ In instances where a permit or license is transferred or assigned after October 1, 2022, responsibility for payment rests with the holder of the permit or license as of the fee due date.

140. *Commercial Mobile Radio Service (CMRS) and Mobile Services Assessments.* The

³⁰⁸ These multiyear licenses are for PLMRS (exclusive), PLMRS (shared), Microwave, Marine (ship), Aviation (aircraft), Marine (coast), and Aviation (ground).

³⁰⁹ Cable television system operators should compute their number of basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on “a typical day in the last full week” of December 2022, rather than on a count as of December 31, 2022.

³¹⁰ We encourage terrestrial and satellite service providers to seek guidance from the International Bureau’s Telecommunications and Analysis Division to verify their particular IBC reporting processes to ensure that their calculation methods comply with our rules.

Commission compiled data from the Numbering Resource Utilization Forecast (NRUF) report that is based on “assigned” telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (“in” and “out”).³¹¹ We have included non-geographic numbers in the calculation of the number of subscribers for each CMRS provider in Appendix B and the CMRS regulatory fee rate. CMRS provider regulatory fees are calculated and should be paid based on the inclusion of non-geographic numbers. CMRS providers can adjust the total number of subscribers, if needed. This information of telephone numbers (subscriber count) will be posted on the Commission’s electronic filing and payment system.

141. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing CORES and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or supporting documentation.³¹² The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in CORES. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response from the provider, or we do not reverse our initial disapproval of the provider’s revised count submission, the fee payment must be based on the number of subscribers listed initially in CORES. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their final telephone counts online in CORES. A final CMRS assessment letter will not be mailed out.

142. Because some carriers do not file the NRUF report, they may not see their telephone number counts in CORES. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (i.e., compute their telephone number counts as of December 31, 2022, and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in CORES or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

143. *Effective Date.* Providing a 30-day period after Federal Register publication before this Report and Order becomes effective as normally required by 5 U.S.C. § 553(d) will not allow sufficient time to collect the FY 2023 fees before FY 2023 ends on September 30, 2023. For this reason, pursuant to 5 U.S.C. § 553(d)(3), we find there is good cause to waive the requirements of section 553(d), and this Report and Order will become effective upon publication in the Federal Register. Because payments of the regulatory fees will not actually be due until late September, persons affected by the Report and Order will still have a reasonable period in which to make their payments and thereby comply with the rules established herein.

144. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),³¹³ 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.”³¹⁴ The Commission has prepared a Final

³¹¹ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2005*, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38-44 (2005).

³¹² In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

³¹³ See 5 U.S.C. §§ 601–612. The RFA, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

³¹⁴ See 5 U.S.C. § 605(b).

Regulatory Flexibility Analysis (FRFA) concerning the possible impact of this Report and Order on small entities. The FRFA is set forth in Appendix I.

145. *Paperwork Reduction Act of 1995 Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

146. *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).

147. *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).

V. ORDERING CLAUSES

148. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 4(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, 159A, and 303(r), this Report and Order **IS HEREBY ADOPTED**.

149. **IT IS FURTHER ORDERED** that the FY 2023 section 9 regulatory fees assessment requirements and the rules set forth in Appendix J **ARE ADOPTED** as specified herein.

150. **IT IS FURTHER ORDERED** that the Report and Order, except for portions containing information collection requirements in sections 1.1166 and 1.1914 that have not been approved by OMB, **SHALL BE EFFECTIVE** upon publication in the Federal Register.

IT IS FURTHER ORDERED that the amendments to section 1.1166 of the Commission's rules, 47 CFR § 1.1166, in this Report and Order **SHALL BE EFFECTIVE** 30 days after publication in the Federal Register, which will not occur until after the Office of Management and Budget has completed review of these amendments under the PRA. The amendments to section 1.1914 of the Commission's rules, 47 CFR § 1.1914, which may contain new or substantively modified information collection requirements, will not become effective until 30 days after publication of a Public Notice in the Federal Register that the Office of Management and Budget has completed review of any information collection requirements that the Office of Managing Director determines is required under the PRA. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date of these provisions.

151. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, Reference Information Center, **SHALL SEND** a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters

Commenter	Abbreviated Name	Date Filed
Astroscale U.S., Inc.	Astroscale	6/14/23 Initial Comments 6/29/23 Reply Comments
Blue Origin	Blue Origin	6/14/23
O3b Limited, SES Americom, Inc., Telesat Canada, and WorldVu Satellites Limited d/b/a OneWeb	Satellite Operators	6/14/23 Initial Comments 6/29/23 Reply Comments
Submarine Cable Coalition	Submarine Cable Coalition	6/14/23
National Association of Broadcasters	NAB	6/14/23 Initial Comments 6/29/23 Reply Comments
TechFreedom	TechFreedom	6/14/23
Spaceflight, Inc.	Spaceflight	6/14/23
Space Exploration Holdings, LLC	Space X	6/14/23
Kinéis	Kinéis	6/14/23
Intelsat License LLC	Intelsat	6/14/23
Tomorrow Companies, Inc. and BlackSky Global, LLC	EESS Operators	6/29/23
Myriota Pty. Ltd.	Myriota	6/28/23
Momentum Space LLC	Momentum	6/29/23
Satellite Industry Association	SIA	6/29/23
CONFERS	CONFERS	6/29/23
WISPA – Broadband Without Boundaries	WISPA	6/29/23
CTIA – The Wireless Association®	CTIA	6/29/23
The Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters	State Broadcasters Associations	6/29/23

Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee		
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Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters		
<i>Ex partes</i>		
Letter from Karis A. Hastings, counsel for SES, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 28, 2023)	Satellite <i>ex parte</i>	6/28/23
Letter from Will Lewis, counsel to Myriota, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 13, 2023)	Myriota <i>ex parte</i>	7/13/23
Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 21, 2023)	NAB 7/21/23 <i>ex parte</i>	7/21/23
Letter from Emily A. Gomes, Assistant General Counsel, Regulatory and Legal Affairs, NAB, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 28, 2023)	NAB 7/28/23 <i>ex parte</i>	7/28/23
Letter from Joel Bernstein, Vice President, Regulatory and Public Policy, Somos, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 1, 2023)	Somos 8/1/23 letter	8/1/23

APPENDIX B

Calculation of FY 2023 Revenue Requirements and Pro-Rata Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee Category	FY 2023 Payment Units	Yrs	FY 2022 Revenue Estimate	Pro-Rated FY 2023 Revenue Require- ment	Computed FY 2023 Regulatory Fee	Rounded FY 2023 Reg. Fee	Expected FY 2023 Revenue
PLMRS (Exclusive Use)	1,200	10	187,500	300,000	25.00	25	300,000
PLMRS (Shared use)	19,000	10	1,250,000	1,900,000	10.00	10	1,900,000
Microwave	16,000	10	4,500,000	4,000,000	25.00	25	4,000,000
Marine (Ship)	7,000	10	1,035,000	1,050,000	15.00	15	1,050,000
Aviation (Aircraft)	4,800	10	420,000	480,000	10.00	10	480,000
Marine (Coast)	240	10	84,000	96,000	40.00	40	96,000
Aviation (Ground)	300	10	70,000	60,000	20.00	20	60,000
AM Class A ¹	60	1	326,740	286,929	4,782	4,780	286,800
AM Class B ¹	1,403	1	4,054,050	3,559,924	2,537	2,535	3,556,605
AM Class C ¹	814	1	1,450,360	1,274,519	1,566	1,565	1,273,910
AM Class D ¹	1,373	1	4,793,460	4,210,959	3,067	3,065	4,208,245
FM Classes A, B1 & C3 ¹	3,043	1	10,109,400	8,880,633	2,918	2,920	8,885,560
FM Classes B, C, C0, C1 & C2 ¹	3,111	1	12,378,460	10,874,394	3,496	3,495	10,872,945
AM Construction Permits ²	5	1	3,450	3,100	620.1	620	3,100
FM Construction Permits ²	16	1	19,360	17,360	1,085	1,085	17,360
Digital Television ⁵ (including Satellite TV)	3.265 billion population	1	28,897,591	25,463,155	.00779893	.007799	25,463,735
Digital TV Construction Permits ²	4	1	20,840	20,400	5,100	5,100	20,400
LPTV/Class A/Translators FM Trans/Boosters	6,325	1	1,858,440	1,630,258	257.7	260	1,644,500
CARS Stations	120	1	230,175	206,629	1,721.9	1,720	206,400
Cable TV Systems, including IPTV & DBS	56,000,000	1	76,475,000	68,642,063	1.226	1.23	68,880,000
Interstate Telecommunication Service Providers	\$25,100,000,000	1	124,597,500	135,463,365	0.005397	0.00540	135,540,000
Toll Free Numbers	34,700,000	1	4,164,000	4,654,582	0.1341	0.13	4,511,000
CMRS Mobile Services (Cellular/Public Mobile)	553,000,000	1	74,900,000	86,750,595	0.1569	0.16	88,480,000
CMRS Messaging Services	1,300,000	1	120,000	104,000	0.0800	0.080	104,000
BRS/ ³	1,195	1	716,625	836,500	700	700	836,500
LMDS	360	1	204,750	252,000	700	700	252,000

Fee Category	FY 2023 Payment Units	Yrs	FY 2022 Revenue Estimate	Pro-Rated FY 2023 Revenue Require- ment	Computed FY 2023 Regulatory Fee	Rounded FY 2023 Reg. Fee	Expected FY 2023 Revenue
Per Gbps circuit Int'l Bearer Circuits Terrestrial (Common & Non-Common) & Satellite (Common & Non- Common)	17,000	1	468,000	433,092	25.48	26	442,000
Submarine Cable Providers (See chart at bottom of Appendix C) ⁴	67.00	1	8,822,138	8,228,737	122,817	122,815	8,228,605
Earth Stations	2,900	1	1,783,500	1,667,486	575	575	1,667,500
Space Stations (Geostationary)	136	1	17,143,565	15,990,883	117,580	117,580	15,990,880
Space Stations (Non- Geostationary, Other)	9	1	3,380,200	3,129,773	347,753	347,755	3,129,795
Space Stations (Non- Geostationary, Less Complex)	6	1	845,040	782,443	130,407	130,405	782,430
Space Stations (Non- Geostationary, Small Satellite)	7	1	60,725	85,505	12,215	12,215	85,505
***** Total Estimated Revenue to be Collected			385,369,869	389,885,391			392,991,324
***** Total Revenue Requirement			381,950,000	390,192,000			390,192,000
Difference			3,419,869	(306,609)			2,799,324

Notes on Appendix B

¹ The fee amounts listed in the column entitled “Rounded New FY 2023 Regulatory Fee” constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2023 regulatory fees for AM/FM radio station are listed on a grid located at the end of Appendix C.

² The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service based on the threshold 10,001 – 25,000, the traditional basis for identifying the lowest licensed fee. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

³ The MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

⁴ The chart at the end of Appendix C lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, Second Report and Order, 24 FCC Rcd 4208 (2009). The Submarine Cable fee in Appendix B is a weighted average of the various fee payers in the chart at the end of Appendix C.

⁵ The actual digital television regulatory fees to be paid by call sign are identified in Appendix G.

APPENDIX C

FY 2023 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. \$s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers)	.16
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 27)	700
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	700
AM Radio Construction Permits	620
FM Radio Construction Permits	1,085
AM and FM Broadcast Radio Station Fees	See Table Below
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	\$.007799 See Appendix G for fee amounts due, also available at https://www.fcc.gov/licensing-databases/fees/regulatory-fees
Digital TV Construction Permits	5,100
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	260

Fee Category	Annual Regulatory Fee (U.S. \$s)
CARS (47 CFR part 78)	1,720
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS)	1.23
Interstate Telecommunication Service Providers (per revenue dollar)	.00540
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.13
Earth Stations (47 CFR part 25)	575
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	117,580
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	347,755
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	130,405
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215
International Bearer Circuits - Terrestrial/Satellites (per Gbps circuit)	\$26
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2023 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=10,000	\$595	\$430	\$370	\$410	\$650	\$745
10,001 - 25,000	\$990	\$715	\$620	\$680	\$1,085	\$1,240
25,001 – 75,000	\$1,485	\$1,075	\$930	\$1,020	\$1,630	\$1,860
75,001 – 150,000	\$2,230	\$1,610	\$1,395	\$1,530	\$2,440	\$2,790
150,001 – 500,000	\$3,345	\$2,415	\$2,095	\$2,300	\$3,665	\$4,190
500,001 – 1,200,000	\$5,010	\$3,620	\$3,135	\$3,440	\$5,490	\$6,275
1,200,001 – 3,000,000	\$7,525	\$5,435	\$4,710	\$5,170	\$8,245	\$9,425
3,000,001 – 6,000,000	\$11,275	\$8,145	\$7,060	\$7,745	\$12,360	\$14,125
>6,000,000	\$16,920	\$12,220	\$10,595	\$11,620	\$18,545	\$21,190

FY 2023 International Bearer Circuits - Submarine Cable Systems

Submarine Cable Systems (capacity as of December 31, 2022)	Fee Ratio	FY 2023 Regulatory Fees
Less than 50 Gbps	.0625 Units	\$7,680
50 Gbps or greater, but less than 250 Gbps	.125 Units	\$15,355
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	\$30,705
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	\$61,410
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	\$122,815
6,500 Gbps or greater	2.0 Units	\$245,630

APPENDIX D

Sources of Payment Unit Estimates for FY 2023

In order to calculate individual service fees for FY 2023, we adjusted FY 2022 payment units for each service to more accurately reflect expected FY 2023 payment liabilities. We obtained our updated estimates through a variety of means and sources. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections, where available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS), Licensing and Management System (LMS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*. Regulatory fee payment units are not all the same for all fee categories. For most fee categories, the term "units" reflect licenses or permits that have been issued, but for other fee categories, the term "units" reflect quantities such as subscribers, population counts, circuit counts, telephone numbers, and revenues. As more current data is received after the *Notice of Proposed Rulemaking (NPRM)* is released, the Commission sometimes adjusts the NPRM fee rates to reflect the new information in the *Report and Order*. This is intended to make sure that the fee rates in the *Report and Order* reflect more recent and accurate information. We realize that by adjusting the unit counts as more accurate information is received may adjust the fee rates for certain regulatory fee categories. Certain entities that collect the fees from customers in advance in order to pay the Commission, such as Cable and DBS companies, ITSP providers, Cell Phone and Toll-Free providers, to name a few, may need to adjust their billings to customers as the Commission adjusts its fee rates. As a result, the Commission understands that these adjustments are necessary so that these regulatees can recover their fee obligations from their customers.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2023 estimates with actual FY 2022 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2023 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2023 payment units are based on FY 2022 actual payment units, it does not necessarily mean that our FY 2023 projection is exactly the same number as in FY 2022. We have either rounded the FY 2023 number or adjusted it slightly to account for these variables.

FEE CATEGORY	SOURCES OF PAYMENT UNIT ESTIMATES
Land Mobile (All), Microwave, Marine (Ship & Coast), Aviation (Aircraft & Ground), Domestic Public Fixed	Based on Wireless Telecommunications Bureau (WTB) information as well as prior year payment information. Estimates have been adjusted to take into consideration the licensing of portions of these services.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 2022 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2022 payment data.
AM/FM Radio Stations	Based on downloaded LMS data, adjusted for exemptions, and actual FY 2022 payment units.
Digital TV Stations (Combined VHF/UHF units)	Based on LMS data, fee rate adjusted for exemptions, and population figures are calculated based on individual station parameters.

AM/FM/TV Construction Permits	Based on LMS data, adjusted for exemptions, and actual FY 2022 payment units.
LPTV, Translators and Boosters, Class A Television	Based on LMS data, adjusted for exemptions, and actual FY 2022 payment units.
BRS (formerly MDS/MMDS)LMDS	Based on WTB reports and actual FY 2022 payment units. Based on WTB reports and actual FY 2022 payment units.
Cable Television Relay Service (CARS) Stations	Based on cable trend data, data from the Media Bureau's COALS database, and actual FY 2022 payment units.
Cable Television System Subscribers, Including IPTV Subscribers	Based on publicly available data sources for estimated subscriber counts, trend information from past payment data, and actual FY 2022 payment units.
Interstate Telecommunication Service Providers	Based on FCC Form 499-A worksheets due in April 2023, and any data assistance provided by the Wireline Competition Bureau.
Earth Stations	Based on International Bureau licensing data and actual FY 2022 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau data reports and actual FY 2022 payment units.
International Bearer Circuits	Based on assistance provided by the International Bureau, any data submissions by licensees, adjusted as necessary, and actual FY 2022 payment units.
Submarine Cable Licenses	Based on International Bureau license information, and actual FY 2022 payment units.

APPENDIX E

Factors, Measurements, and Calculations that Determine Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2020 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50-50) propagation curves specified in 47 CFR § 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2020 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

APPENDIX F

Satellite Charts for FY 2023 Regulatory Fees

U.S.-Licensed Space Stations

<u>LICENSEE</u>	<u>CALL SIGN</u>	<u>SATELLITE NAME</u>	<u>TYPE</u>
DIRECTV Enterprises, LLC	S2922	SKY-B1	GSO
DIRECTV Enterprises, LLC	S2640	DIRECTV T11	GSO
DIRECTV Enterprises, LLC	S2632	DIRECTV T8	GSO
DIRECTV Enterprises, LLC	S2669	DIRECTV T9S	GSO
DIRECTV Enterprises, LLC	S2641	DIRECTV T10	GSO
DIRECTV Enterprises, LLC	S2797	DIRECTV T12	GSO
DIRECTV Enterprises, LLC	S2930	DIRECTV T15	GSO
DIRECTV Enterprises, LLC	S2673	DIRECTV T5	GSO
DIRECTV Enterprises, LLC	S2133	SPACEWAY 2	GSO
DIRECTV Enterprises, LLC	S3039	DIRECTV T16	GSO
DISH Operating L.L.C.	S2931	ECHOSTAR 18	GSO
DISH Operating L.L.C.	S2738	ECHOSTAR 11	GSO
DISH Operating L.L.C.	S2694	ECHOSTAR 10	GSO
DISH Operating L.L.C.	S2740	ECHOSTAR 7	GSO
DISH Operating L.L.C.	S2790	ECHOSTAR 14	GSO
EchoStar Satellite Operating Corporation	S2811	ECHOSTAR 15	GSO
EchoStar Satellite Operating Corporation	S2844	ECHOSTAR 16	GSO
EchoStar Satellite Services L.L.C.	S2179	ECHOSTAR 9	GSO
ES 172 LLC	S2610	EUTELSAT 174A	GSO
ES 172 LLC	S3021	EUTELSAT 172B	GSO
Horizon-3 Satellite LLC	S2947	HORIZONS-3e	GSO
Hughes Network Systems, LLC	S2663	SPACEWAY 3	GSO
Hughes Network Systems, LLC	S2834	ECHOSTAR 19	GSO
Hughes Network Systems, LLC	S2753	ECHOSTAR XVII	GSO
Intelsat License LLC/ViaSat, Inc.	S2160	GALAXY 28	GSO
Intelsat License LLC	S2414	INTELSAT 10-02	GSO
Intelsat License LLC	S2972	INTELSAT 37e	GSO
Intelsat License LLC	S2854	NSS-7	GSO
Intelsat License LLC	S2409	INELSAT 905	GSO
Intelsat License LLC	S2405	INTELSAT 901	GSO
Intelsat License LLC	S2408	INTELSAT 904	GSO
Intelsat License LLC	S2804	INTELSAT 25	GSO
Intelsat License LLC	S2959	INTELSAT 35e	GSO
Intelsat License LLC	S2237	INTELSAT 11	GSO
Intelsat License LLC	S2785	INTELSAT 14	GSO
Intelsat License LLC	S2380	INTELSAT 9	GSO

Intelsat License LLC	S2831	INTELSAT 23	GSO
Intelsat License LLC	S2915	INTELSAT 34	GSO
Intelsat License LLC	S2863	INTELSAT 21	GSO
Intelsat License LLC	S2750	INTELSAT 16	GSO
Intelsat License LLC	S2715	GALAXY 17	GSO
Intelsat License LLC	S2154	GALAXY 25	GSO
Intelsat License LLC	S2253	GALAXY 11	GSO
Intelsat License LLC	S2381	GALAXY 3C	GSO
Intelsat License LLC	S2887	INTELSAT 30	GSO
Intelsat License LLC	S2924	INTELSAT 31	GSO
Intelsat License LLC	S2647	GALAXY 19	GSO
Intelsat License LLC	S2687	GALAXY 16	GSO
Intelsat License LLC	S2733	GALAXY 18	GSO
Intelsat License LLC	S2385	GALAXY 14	GSO
Intelsat License LLC	S2386	GALAXY 13	GSO
Intelsat License LLC	S2422	GALAXY 12	GSO
Intelsat License LLC	S2387	GALAXY 15	GSO
Intelsat License LLC	S2704	INTELSAT 5	GSO
Intelsat License LLC	S2817	INTELSAT 18	GSO
Intelsat License LLC	S2850	INTELSAT 19	GSO
Intelsat License LLC	S2368	INTELSAT 1R	GSO
Intelsat License LLC	S2789	INTELSAT 15	GSO
Intelsat License LLC	S2423	HORIZONS 2	GSO
Intelsat License LLC	S2846	INTELSAT 22	GSO
Intelsat License LLC	S2847	INTELSAT 20	GSO
Intelsat License LLC	S2948	INTELSAT 36	GSO
Intelsat License LLC	S2814	INTELSAT 17	GSO
Intelsat License LLC	S2410	INTELSAT 906	GSO
Intelsat License LLC	S2406	INTELSAT 902	GSO
Intelsat License LLC	S2939	INTELSAT 33e	GSO
Intelsat License LLC	S2382	INTELSAT 10	GSO
Intelsat License LLC	S2751	NEW DAWN	GSO
Intelsat License LLC	S3023	INTELSAT 39	GSO
Ligado Networks Subsidiary, LLC	S2358	SKYTERRA-1	GSO
Ligado Networks Subsidiary, LLC	AMSC-1	MSAT-2	GSO
Novavision Group, Inc.	S2861	DIRECTV KU-79W	GSO
Satellite CD Radio LLC	S2812	FM-6	GSO
SES Americom, Inc.	S2415	NSS-10	GSO
SES Americom, Inc.	S2162	AMC-3	GSO
SES Americom, Inc.	S2347	AMC-6	GSO
SES Americom, Inc.	S2826	SES-2	GSO
SES Americom, Inc.	S2807	SES-1	GSO

SES Americom, Inc.	S2892	SES-3	GSO
SES Americom, Inc.	S2180	AMC-15	GSO
SES Americom, Inc.	S2445	AMC-1	GSO
SES Americom, Inc.	S2135	AMC-4	GSO
SES Americom, Inc.	S2713	AMC-18	GSO
SES Americom, Inc.	S2433	AMC-11	GSO
SES Americom, Inc./Alascom, Inc.	S2379/S3138	AMC-8/SES-22	GSO
Sirius XM Radio Inc.	S2710	FM-5	GSO
Sirius XM Radio Inc.	S3034/S2617/S2616	XM-8/XM-3/XM-4	GSO
Skynet Satellite Corporation	S2933	TELSTAR 12V	GSO
Skynet Satellite Corporation	S2357	TELSTAR 11N	GSO
ViaSat, Inc.	S2747	VIASAT-1	GSO
XM Radio LLC	S2786/S3033	XM-5/XM-7	GSO

Non-U.S.-Licensed Space Stations – Market Access Through Petition for Declaratory Ruling

<u>LICENSEE</u>	<u>CALL SIGN</u>	<u>SATELLITE COMMON NAME</u>	<u>SATELLITE TYPE</u>
ABS Global Ltd.	S2987	ABS-3A	GSO
Avanti Hylas 2 Ltd.	S3130	HYLAS-4	GSO
DBSD Services Ltd	S2651	DBSD G1	GSO
Empresa Argentina de Soluciones Satelitales S.A.	S2956	ARSAT-2	GSO
Eutelsat S.A.	S3031	EUTELSAT 133 WEST A	GSO
Eutelsat S. A.	S3056	EUTELSAT 8 WEST B	GSO
Eutelsat S.A.	S3055	EUTELSAT 139 WEST A	GSO
Gamma Acquisition L.L.C.	S2633	TerreStar 1	GSO
Hisparmar Satélites, S.A.	S2793	AMAZONAS-2	GSO
Hisparmar Satélites, S.A.	S2886	AMAZONAS-3	GSO
Hispasat, S.A.	S2969	HISPASAT 30W-6	GSO
Inmarsat PLC	S2932	Inmarsat-4 F3	GSO
Inmarsat PLC	S2949	Inmarsat-3 F5	GSO
New Skies Satellites B.V.	S2756	NSS-9	GSO
New Skies Satellites B.V.	S2870	SES-6	GSO
New Skies Satellites B.V.	S3048	NSS-6	GSO
New Skies Satellites B.V.	S2828	SES-4	GSO
New Skies Satellites B.V.	S2950	SES-10	GSO
Satelites Mexicanos, S.A. de C.V.	S2695	EUTELSAT 113 WEST A	GSO
Satelites Mexicanos, S.A. de C.V.	S2926	EUTELSAT 117 WEST B	GSO
Satelites Mexicanos, S.A. de C.V.	S2938	EUTELSAT 115 WEST B	GSO
Satelites Mexicanos, S.A. de C.V.	S2873	EUTELSAT 117 WEST A	GSO
SES Satellites (Gibraltar) Ltd.	S2676	AMC 21	GSO

SES Americom, Inc.	S3037	NSS-11	GSO
SES Americom, Inc.	S2964	SES-11	GSO
SES DTH do Brasil Ltda	S2974	SES-14	GSO
SES Satellites (Gibraltar) Ltd.	S2951	SES-15	GSO
SES-17 S.a.r.l.	S3043	SES-17	GSO
Embratel Tvsat Telecomunicacoes S.A.	S2678	STAR ONE C2	GSO
Embratel Tvsat Telecomunicacoes S.A.	S2845	STAR ONE C3	GSO
Telesat Brasil Capacidade de Satelites Ltda.	S2821	ESTRELA DO SUL 2	GSO
Telesat Canada	S2745	ANIK F1	GSO
Telesat Canada	S2674	ANIK F1R	GSO
Telesat Canada	S2703	ANIK F3	GSO
Telesat Canada	S2646/S2472	ANIK F2	GSO
Telesat International Ltd.	S2955	TELSTAR 19 VANTAGE	GSO
Viasat, Inc.	S2902	VIASAT-2	GSO

Non-U.S.-Licensed Space Stations - Market Access Through Earth Station Licenses

<u>ITU Name (if available)</u>	<u>Common Name</u>	<u>Call Sign</u>	<u>GSO/NGSO</u>
APSTAR VI	APSTAR 6	M292090	GSO
AUSSAT B 152E	OPTUS D2	M221170	GSO
Ciel Satellite Group	Ciel-2	E050029	GSO
Eutelsat 65 West A	Eutelsat 65 West A	E160081	GSO
INMARSAT 4F1	INMARSAT 4F1	KA25	GSO
INMARSAT 5F2	INMARSAT 5F2	E120072	GSO
INMARSAT 5F3	INMARSAT 5F3	E150028	GSO
JCSAT-2B	JCSAT-2B	M174163	GSO
NIMIQ 5	NIMIQ 5	E080107	GSO
QUETZSAT-1(MEX)	QUETZSAT-1	NUS1101	GSO
Superbird C2	Superbird C2	M334100	GSO
WILDBLUE-1	WILDBLUE-1	E040213	GSO

Non-Geostationary Space Stations (NGSO)

U.S.-Licensed NGSO Systems

<u>ITU Name (if available)</u>	<u>Common Name</u>	<u>Call Sign</u>	<u>NGSO</u>
ORBCOMM License Corp	ORBCOMM	S2103	Other
Iridium Constellation LLC	IRIDIUM	S2110	Other
Space Exploration Holdings, LLC	SPACEX Ku/Ka-Band	S2983/S3018	Other
Swarm Technologies	SWARM	S3041	Other

Planet Labs	Flock/Skysats	S2912	Less Complex
Maxar License	WorldView 1,2 & 3, GeoEye-1	S2129/S2348	Less Complex
BlackSky Global	Global	S3032	Less Complex
Astro Digital U.S., Inc.	LANDMAPPER	S3014	Less Complex
Hawkeye 360	HE360	S3042	Less Complex

Non-U.S.-Licensed NGSO Systems – Market Access Through Petition for Declaratory Ruling

<u>ITU Name (if available)</u>	<u>Common Name</u>	<u>Call Sign</u>	<u>NGSO</u>
Telesat Canada	TELESAT Ku/Ka-Band	S2976	Other
Kepler Communications, Inc.	KEPLER	S2981	Other
WorldVu Satellites Ltd.	ONEWEB	S2963	Other
O3b Ltd.	O3b	S2935	Other

NGSO Systems that Are Partly U.S.-Licensed and Partly Non-U.S.-Licensed with Market Access Through Petition for Declaratory Ruling

<u>ITU Name (if available)</u>	<u>Common Name</u>	<u>Call Sign</u>	<u>NGSO</u>
Globalstar License LLC	GLOBALSTAR	S2115	Other
Spire Global	LEMUR & MINAS	S2946/S3045	Less Complex

NGSO Systems Licensed Under the Streamlined Small Satellite Rules

<u>ITU Name (if available)</u>	<u>Common Name</u>	<u>Call Sign</u>	<u>NGSO</u>
Capella Space Corp.	Capella-2, Capella-3, Capella-4	S3073	Small Satellite
Capella Space Corp.	Capella-5, Capella-6	S3080	Small Satellite
Capella Space Corp.	Capella -7, Capella-8	S3100	Small Satellite
Loft Orbital Solutions Inc.	YAM-3	S3072	Small Satellite
R2 Space, Inc.	XR-1	S3067	Small Satellite
ICEYE US, Inc.	ICEYE	S3082	Small Satellite
Umbra Lab Inc.	Umbra SAR	S3095	Small Satellite

APPENDIX G
FY 2023 Full-Service Broadcast Television Stations by Call Sign

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
3246	KA AH-TV	955,391	879,906	\$ 6,862
18285	KAAL	589,502	568,169	\$ 4,431
11912	KAAS-TV	220,262	219,922	\$ 1,715
56528	KABB	2,474,296	2,456,689	\$ 19,160
282	KABC-TV	17,540,791	16,957,292	\$ 132,250
1236	KACV-TV	372,627	372,330	\$ 2,904
33261	KADN-TV	877,965	877,965	\$ 6,847
8263	KA EF-TV	138,085	122,808	\$ 958
2728	KAET	4,217,217	4,184,386	\$ 32,634
2767	KAFT	1,204,376	1,122,928	\$ 8,758
62442	KAID	711,035	702,721	\$ 5,481
4145	KA II-TV	188,810	165,396	\$ 1,290
67494	KAIL	1,947,635	1,914,765	\$ 14,933
13988	KAIT	605,456	596,232	\$ 4,650
40517	KAJB	383,886	383,195	\$ 2,989
65522	KAKE	803,937	799,254	\$ 6,233
804	KAKM	380,240	379,105	\$ 2,957
148	KAKW-DT	2,615,956	2,531,813	\$ 19,746
51598	KALB-TV	943,307	942,043	\$ 7,347
51241	KALO	954,557	910,409	\$ 7,100
40820	KAMC	390,519	390,487	\$ 3,045
8523	KAMR-TV	366,476	366,335	\$ 2,857
65301	KAMU-TV	346,892	342,455	\$ 2,671
2506	KAPP	319,797	283,944	\$ 2,214
3658	KARD	703,234	700,887	\$ 5,466
23079	KARE	3,868,806	3,861,502	\$ 30,116
33440	KARK-TV	1,212,038	1,196,196	\$ 9,329

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
37005	KARZ-TV	1,113,486	1,095,224	\$ 8,542
32311	KASA-TV	1,161,837	1,119,457	\$ 8,731
41212	KASN	1,175,627	1,159,721	\$ 9,045
7143	KASW	4,174,437	4,160,497	\$ 32,448
55049	KASY-TV	1,145,133	1,100,391	\$ 8,582
33471	KATC	1,348,897	1,348,897	\$ 10,520
13813	KATN	97,466	97,128	\$ 758
21649	KATU	3,030,547	2,881,993	\$ 22,477
33543	KATV	1,257,777	1,234,933	\$ 9,631
50182	KAUT-TV	1,637,333	1,636,330	\$ 12,762
21488	KAUU	381,413	380,355	\$ 2,966
6864	KAUZ-TV	381,671	379,435	\$ 2,959
73101	KAVU-TV	319,618	319,484	\$ 2,492
49579	KAWB	186,919	186,845	\$ 1,457
49578	KAWE	136,033	133,937	\$ 1,045
58684	KAYU-TV	809,464	750,766	\$ 5,855
29234	KAZA-TV	14,973,535	13,810,130	\$ 107,705
17433	KAZD	6,776,778	6,774,172	\$ 52,832
1151	KAZQ	1,097,010	1,084,327	\$ 8,457
35811	KAZT-TV	436,925	359,273	\$ 2,802
4148	KBAK-TV	1,510,400	1,263,910	\$ 9,857
16940	KBCA	479,260	479,219	\$ 3,737
53586	KBCB	1,323,222	1,295,924	\$ 10,107
69619	KBCW	8,227,562	7,375,199	\$ 57,519
22685	KBDI-TV	4,042,177	3,683,394	\$ 28,727
56384	KBEH	17,736,497	17,695,306	\$ 138,006
65395	KBFD-DT	953,207	834,341	\$ 6,507
169030	KBGS-TV	159,269	156,802	\$ 1,223
61068	KBHE-TV	140,860	133,082	\$ 1,038
48556	KBIM-TV	205,701	205,647	\$ 1,604
29108	KBIN-TV	912,921	911,725	\$ 7,111

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
33658	KBJR-TV	275,585	271,298	\$ 2,116
83306	KBLN-TV	297,384	134,927	\$ 1,052
63768	KBLR	1,964,979	1,915,861	\$ 14,942
53324	KBME-TV	123,571	123,485	\$ 963
10150	KBMT	767,572	766,414	\$ 5,977
22121	KBMY	119,993	119,908	\$ 935
49760	KBOI-TV	715,191	708,374	\$ 5,525
55370	KBRR	149,869	149,868	\$ 1,169
66414	KBSD-DT	155,012	154,891	\$ 1,208
66415	KBSH-DT	102,781	100,433	\$ 783
19593	KBSI	756,501	754,722	\$ 5,886
66416	KBSL-DT	49,814	48,483	\$ 378
4939	KBSV	1,352,166	1,262,708	\$ 9,848
62469	KBTC-TV	3,697,981	3,621,965	\$ 28,248
61214	KBTV-TV	734,008	734,008	\$ 5,725
6669	KBTX-TV	4,404,648	4,401,048	\$ 34,324
35909	KBVO	1,498,015	1,312,360	\$ 10,235
58618	KBVU	135,249	120,827	\$ 942
6823	KBYU-TV	2,389,548	2,209,060	\$ 17,228
33756	KBZK	123,523	109,131	\$ 851
21422	KCAL-TV	17,499,483	16,889,157	\$ 131,719
11265	KCAU-TV	714,315	706,224	\$ 5,508
14867	KCBA	3,088,394	2,369,803	\$ 18,482
27507	KCBD	414,804	414,091	\$ 3,229
9628	KCBS-TV	17,853,152	16,656,778	\$ 129,906
49750	KCBY-TV	89,156	73,211	\$ 571
33710	KCCI	1,109,952	1,102,514	\$ 8,599
9640	KCCW-TV	284,280	276,935	\$ 2,160
63158	KCDO-TV	2,798,103	2,650,225	\$ 20,669
62424	KCDT	698,389	657,101	\$ 5,125
83913	KCEB	417,491	417,156	\$ 3,253

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
57219	KCEC	3,831,192	3,613,287	\$ 28,180
10245	KCEN-TV	1,795,767	1,757,018	\$ 13,703
13058	KCET	17,129,650	15,689,832	\$ 122,365
18079	KCFW-TV	177,697	140,192	\$ 1,093
132606	KCGE-DT	123,930	123,930	\$ 967
60793	KCHF	1,118,671	1,085,205	\$ 8,464
33722	KCIT	382,477	381,818	\$ 2,978
62468	KCKA	953,680	804,362	\$ 6,273
41969	KCLO-TV	138,413	132,157	\$ 1,031
47903	KCNC-TV	3,794,400	3,541,089	\$ 27,617
71586	KCNS	8,270,858	7,381,656	\$ 57,570
33742	KCOP-TV	17,386,133	16,647,708	\$ 129,835
19117	KCOS	1,014,396	1,014,205	\$ 7,910
63165	KCOY-TV	664,655	459,468	\$ 3,583
33894	KCPQ	4,439,875	4,312,133	\$ 33,630
53843	KCPT	2,507,879	2,506,224	\$ 19,546
33875	KCRA-TV	10,612,483	6,500,774	\$ 50,700
9719	KCRG-TV	1,136,762	1,107,130	\$ 8,635
60728	KCSD-TV	273,553	273,447	\$ 2,133
59494	KCSG	174,814	164,765	\$ 1,285
33749	KCTS-TV	4,177,824	4,115,603	\$ 32,098
41230	KCTV	2,547,456	2,545,645	\$ 19,853
58605	KCVU	684,900	674,585	\$ 5,261
10036	KCWC-DT	44,216	39,439	\$ 308
64444	KCWE	2,459,924	2,458,302	\$ 19,172
51502	KCWI-TV	1,043,811	1,042,642	\$ 8,132
42008	KCWO-TV	50,707	50,685	\$ 395
166511	KCWV	207,398	207,370	\$ 1,617
24316	KCWX	3,961,268	3,954,787	\$ 30,843
68713	KCWY-DT	80,904	80,479	\$ 628
22201	KDAF	6,648,507	6,645,226	\$ 51,826

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
33764	KDBC-TV	1,015,564	1,015,162	\$ 7,917
79258	KDCK	43,088	43,067	\$ 336
166332	KDCU-DT	753,204	753,190	\$ 5,874
38375	KDEN-TV	3,376,799	3,351,182	\$ 26,136
17037	KDFI	6,684,439	6,682,487	\$ 52,117
33770	KDFW	6,659,312	6,657,023	\$ 51,918
29102	KDIN-TV	1,088,376	1,083,845	\$ 8,453
25454	KDKA-TV	3,611,796	3,450,690	\$ 26,912
60740	KDKF	71,413	64,567	\$ 504
4691	KDLH	263,422	260,394	\$ 2,031
41975	KDLO-TV	208,354	208,118	\$ 1,623
55379	KDLT-TV	639,284	628,281	\$ 4,900
55375	KDLV-TV	96,873	96,620	\$ 754
25221	KDMD	376,906	374,641	\$ 2,922
78915	KDMI	1,141,990	1,140,939	\$ 8,898
56524	KDNL-TV	2,987,219	2,982,311	\$ 23,259
24518	KDOC-TV	17,503,793	16,701,233	\$ 130,253
1005	KDOR-TV	1,112,060	1,108,556	\$ 8,646
60736	KDRV	519,706	440,002	\$ 3,432
61064	KDSD-TV	64,314	59,635	\$ 465
53329	KDSE	42,896	41,432	\$ 323
56527	KDSM-TV	1,096,220	1,095,478	\$ 8,544
49326	KDTN	6,602,327	6,600,186	\$ 51,475
83491	KDTP	26,564	24,469	\$ 191
33778	KDTV-DT	7,959,349	7,129,638	\$ 55,604
67910	KDTX-TV	6,680,738	6,679,424	\$ 52,093
126	KDVR	3,644,912	3,521,884	\$ 27,467
18084	KECI-TV	211,745	193,803	\$ 1,511
51208	KECY-TV	399,372	394,379	\$ 3,076
58408	KEDT	513,683	513,683	\$ 4,006
55435	KEET	177,313	159,960	\$ 1,248

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
37103	KEKE	97,959	94,560	\$ 737
41983	KELO-TV	705,364	646,126	\$ 5,039
34440	KEMO-TV	8,270,858	7,381,656	\$ 57,570
2777	KEMV	619,889	559,135	\$ 4,361
26304	KENS	2,544,094	2,529,382	\$ 19,727
63845	KENV-DT	47,220	40,677	\$ 317
18338	KENW	87,017	87,017	\$ 679
50591	KEPB-TV	576,964	523,655	\$ 4,084
56029	KEPR-TV	453,259	433,260	\$ 3,379
49324	KERA-TV	6,681,083	6,677,852	\$ 52,081
40878	KERO-TV	1,285,357	1,164,979	\$ 9,086
61067	KESD-TV	166,018	159,195	\$ 1,242
25577	KESQ-TV	1,334,172	572,057	\$ 4,461
50205	KETA-TV	1,702,441	1,688,227	\$ 13,166
62182	KETC	2,913,924	2,911,313	\$ 22,705
37101	KETD	3,323,570	3,285,231	\$ 25,622
2768	KETG	426,883	409,511	\$ 3,194
12895	KETH-TV	6,088,821	6,088,677	\$ 47,486
55643	KETK-TV	1,031,567	1,030,122	\$ 8,034
2770	KETS	1,185,111	1,166,796	\$ 9,100
53903	KETV	1,355,238	1,350,292	\$ 10,531
92872	KETZ	526,890	523,877	\$ 4,086
68853	KEYC-TV	544,900	531,079	\$ 4,142
33691	KEYE-TV	2,732,257	2,652,529	\$ 20,687
60637	KEYT-TV	1,419,564	1,239,577	\$ 9,667
83715	KEYU	339,348	339,302	\$ 2,646
34406	KEZI	1,113,171	1,065,880	\$ 8,313
34412	KFBB-TV	93,519	91,964	\$ 717
125	KFCT	795,114	788,747	\$ 6,151
51466	KFDA-TV	385,064	383,977	\$ 2,995
22589	KFDM	732,665	732,588	\$ 5,713

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
65370	KFDX-TV	381,703	381,318	\$ 2,974
49264	KFFV	4,020,926	3,987,153	\$ 31,096
12729	KFFX-TV	409,952	403,692	\$ 3,148
83992	KFJX	689,090	663,506	\$ 5,175
42122	KFMB-TV	3,947,735	3,699,981	\$ 28,856
53321	KFME	393,045	392,472	\$ 3,061
74256	KFNB	80,382	79,842	\$ 623
21613	KFNE	54,988	54,420	\$ 424
21612	KFNR	10,988	10,965	\$ 86
66222	KFOR-TV	1,616,459	1,615,614	\$ 12,600
33716	KFOX-TV	1,023,999	1,018,549	\$ 7,944
41517	KFPH-DT	347,579	282,838	\$ 2,206
81509	KFPX-TV	963,969	963,846	\$ 7,517
31597	KFQX	186,473	163,637	\$ 1,276
59013	KFRE-TV	1,721,275	1,705,484	\$ 13,301
51429	KFSF-DT	7,348,828	6,528,430	\$ 50,915
66469	KFSM-TV	906,728	884,919	\$ 6,901
8620	KFSN-TV	1,836,607	1,819,585	\$ 14,191
29560	KFTA-TV	818,859	809,173	\$ 6,311
83714	KFTC	61,990	61,953	\$ 483
60537	KFTH-DT	6,080,688	6,080,373	\$ 47,421
60549	KFTR-DT	17,560,679	16,305,726	\$ 127,168
61335	KFTS	74,936	65,126	\$ 508
81441	KFTU-DT	113,876	109,731	\$ 856
34439	KFTV-DT	1,794,984	1,779,917	\$ 13,882
664	KFVE	82,902	73,553	\$ 574
592	KFVS-TV	895,871	873,777	\$ 6,815
29015	KFWD	6,666,428	6,660,565	\$ 51,946
35336	KFXA	875,538	874,070	\$ 6,817
17625	KFXB-TV	373,280	368,466	\$ 2,874
70917	KFXK-TV	934,043	931,791	\$ 7,267

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
84453	KFXL-TV	862,531	854,678	\$ 6,666
56079	KFXV	1,225,732	1,225,732	\$ 9,559
41427	KFYR-TV	130,881	128,301	\$ 1,001
25685	KGAN	1,083,213	1,057,597	\$ 8,248
34457	KGBT-TV	1,239,001	1,238,870	\$ 9,662
7841	KGCW	949,575	945,476	\$ 7,374
24485	KGEB	1,186,225	1,150,201	\$ 8,970
34459	KGET-TV	917,927	874,332	\$ 6,819
53320	KGFE	114,564	114,564	\$ 893
7894	KGIN	230,535	228,338	\$ 1,781
83945	KGLA-DT	1,636,922	1,636,922	\$ 12,766
34445	KGMB	953,398	851,088	\$ 6,638
58608	KGMC	1,936,675	1,914,168	\$ 14,929
36914	KGMD-TV	94,323	93,879	\$ 732
36920	KGMV	193,564	162,230	\$ 1,265
10061	KGNS-TV	267,236	259,548	\$ 2,024
34470	KGO-TV	8,637,074	7,929,294	\$ 61,841
56034	KGPE	1,699,131	1,682,082	\$ 13,119
81694	KGPX-TV	685,626	624,955	\$ 4,874
25511	KGTF	161,885	160,568	\$ 1,252
40876	KGTW	3,960,667	3,682,219	\$ 28,718
36918	KGUN-TV	1,398,527	1,212,484	\$ 9,456
34874	KGW	3,026,617	2,878,510	\$ 22,449
63177	KGWC-TV	80,475	80,009	\$ 624
63162	KGWL-TV	38,125	38,028	\$ 297
63166	KGWN-TV	469,467	440,388	\$ 3,435
63170	KGWR-TV	51,315	50,957	\$ 397
4146	KHAW-TV	95,204	94,851	\$ 740
60353	KHBS	631,770	608,052	\$ 4,742
27300	KHCE-TV	2,353,883	2,348,391	\$ 18,315
26431	KHET	959,060	944,568	\$ 7,367

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
21160	KHGI-TV	233,973	229,173	\$ 1,787
36917	KHII-TV	953,895	851,585	\$ 6,642
29085	KHIN	1,041,244	1,039,383	\$ 8,106
17688	KHME	181,345	179,706	\$ 1,402
47670	KHMT	175,601	170,957	\$ 1,333
47987	KHNE-TV	203,931	202,944	\$ 1,583
34867	KHNL	953,398	851,088	\$ 6,638
60354	KHOG-TV	765,360	702,984	\$ 5,483
4144	KHON-TV	953,207	886,431	\$ 6,913
34529	KHOU	6,083,315	6,081,936	\$ 47,433
4690	KHQA-TV	318,469	316,134	\$ 2,466
34537	KHQ-TV	822,371	774,821	\$ 6,043
30601	KHRR	1,227,847	1,166,890	\$ 9,101
34348	KHSD-TV	188,735	185,202	\$ 1,444
24508	KHSL-TV	625,904	608,850	\$ 4,748
69677	KHSV	2,059,794	2,020,045	\$ 15,754
64544	KHVO	94,226	93,657	\$ 730
23394	KIAH	6,099,694	6,099,297	\$ 47,568
34564	KICU-TV	8,233,041	7,174,316	\$ 55,952
56028	KIDK	305,509	302,535	\$ 2,359
58560	KIDY	116,614	116,596	\$ 909
53382	KIEM-TV	174,390	160,801	\$ 1,254
66258	KIFI-TV	324,422	320,118	\$ 2,497
16950	KIFR	2,180,045	2,160,460	\$ 16,849
10188	KIII	569,864	566,796	\$ 4,420
29095	KIIN	1,365,215	1,335,707	\$ 10,417
34527	KIKU	953,896	850,963	\$ 6,637
63865	KILM	17,256,205	15,804,489	\$ 123,259
56033	KIMA-TV	308,604	260,593	\$ 2,032
66402	KIMT	654,083	643,384	\$ 5,018
67089	KINC	2,002,066	1,920,903	\$ 14,981

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
34847	KING-TV	4,074,288	4,036,926	\$ 31,484
51708	KINT-TV	1,015,582	1,015,274	\$ 7,918
26249	KION-TV	2,400,317	855,808	\$ 6,674
62427	KIPT	171,405	170,455	\$ 1,329
66781	KIRO-TV	4,058,101	4,030,968	\$ 31,438
62430	KISU-TV	311,827	307,651	\$ 2,399
12896	KITU-TV	712,362	712,362	\$ 5,556
64548	KITV	953,207	839,906	\$ 6,550
59255	KIVI-TV	710,819	702,619	\$ 5,480
47285	KIXE-TV	467,518	428,118	\$ 3,339
13792	KJJC-TV	82,749	81,865	\$ 638
14000	KJLA	17,929,100	16,794,896	\$ 130,983
20015	KJNP-TV	98,403	98,097	\$ 765
53315	KJRE	16,187	16,170	\$ 126
59439	KJRH-TV	1,416,108	1,397,311	\$ 10,898
55364	KJRR	45,515	44,098	\$ 344
7675	KJTL	379,594	379,263	\$ 2,958
55031	KJTV-TV	406,283	406,260	\$ 3,168
13814	KJUD	31,229	30,106	\$ 235
36607	KJZZ-TV	2,388,965	2,209,183	\$ 17,229
83180	KKAI	953,400	919,742	\$ 7,173
58267	KKAP	957,786	923,172	\$ 7,200
24766	KKCO	206,018	172,628	\$ 1,346
35097	KKJB	629,939	624,784	\$ 4,873
22644	KKPX-TV	7,588,288	6,758,490	\$ 52,709
35037	KKTV	2,892,126	2,478,864	\$ 19,333
35042	KLAS-TV	2,094,297	1,940,030	\$ 15,130
52907	KLAX-TV	367,212	366,839	\$ 2,861
3660	KLBK-TV	387,783	387,743	\$ 3,024
65523	KLBY	31,102	31,096	\$ 243
38430	KLCS	17,129,650	15,689,832	\$ 122,365

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
77719	KLCW-TV	381,889	381,816	\$ 2,978
51479	KLDO-TV	250,832	250,832	\$ 1,956
37105	KLEI	175,045	138,087	\$ 1,077
56032	KLEW-TV	164,908	148,256	\$ 1,156
35059	KLFY-TV	1,355,890	1,355,409	\$ 10,571
54011	KLJB	1,027,104	1,012,309	\$ 7,895
11264	KLKN	1,161,979	1,122,111	\$ 8,751
52593	KLML	270,089	218,544	\$ 1,704
47975	KLNE-TV	123,324	123,246	\$ 961
38590	KLPA-TV	414,699	414,447	\$ 3,232
38588	KLPB-TV	749,053	749,053	\$ 5,842
749	KLRN	2,374,472	2,353,440	\$ 18,354
11951	KLRT-TV	1,171,678	1,152,541	\$ 8,989
8564	KLRU	2,614,658	2,575,518	\$ 20,086
8322	KLSR-TV	564,415	508,157	\$ 3,963
31114	KLST	199,067	169,551	\$ 1,322
24436	KLTJ	6,034,131	6,033,867	\$ 47,058
38587	KLTL-TV	423,574	423,574	\$ 3,303
38589	KLTM-TV	694,280	688,915	\$ 5,373
38591	KLTS-TV	947,141	944,257	\$ 7,364
68540	KLTV	1,069,690	1,051,361	\$ 8,200
12913	KLUJ-TV	1,195,751	1,195,751	\$ 9,326
57220	KLUZ-TV	1,079,718	1,019,302	\$ 7,950
11683	KLVX	2,044,150	1,936,083	\$ 15,100
82476	KLWB	1,065,748	1,065,748	\$ 8,312
40250	KLWY	541,043	538,231	\$ 4,198
64551	KMAU	213,060	188,953	\$ 1,474
51499	KMAX-TV	10,767,605	7,132,240	\$ 55,624
65686	KMBC-TV	2,506,035	2,504,622	\$ 19,534
35183	KMCB	69,357	66,203	\$ 516
41237	KMCC	2,064,592	2,010,262	\$ 15,678

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
42636	KMCI-TV	2,429,392	2,428,626	\$ 18,941
38584	KMCT-TV	267,004	266,880	\$ 2,081
22127	KMCY	71,797	71,793	\$ 560
162016	KMDE	35,409	35,401	\$ 276
26428	KMEB	221,810	203,470	\$ 1,587
39665	KMEG	708,748	704,130	\$ 5,492
35123	KMEX-DT	17,628,354	16,318,720	\$ 127,270
40875	KMGH-TV	3,815,224	3,574,344	\$ 27,876
35131	KMID	383,449	383,439	\$ 2,990
16749	KMIR-TV	2,760,914	730,764	\$ 5,699
63164	KMIZ	532,025	530,008	\$ 4,134
53541	KMLM-DT	293,290	293,290	\$ 2,287
52046	KMLU	711,951	708,107	\$ 5,523
47981	KMNE-TV	47,232	44,189	\$ 345
24753	KMOH-TV	199,885	184,283	\$ 1,437
4326	KMOS-TV	804,745	803,129	\$ 6,264
41425	KMOT	81,517	79,504	\$ 620
70034	KMOV	3,035,077	3,029,405	\$ 23,626
51488	KMPH-TV	1,754,037	1,717,555	\$ 13,395
73701	KMPX	6,678,829	6,674,706	\$ 52,056
44052	KMSB	1,321,614	1,039,442	\$ 8,107
68883	KMSP-TV	3,857,891	3,829,859	\$ 29,869
12525	KMSS-TV	1,067,838	1,066,106	\$ 8,315
43095	KMTP-TV	5,242,638	4,441,372	\$ 34,638
35189	KMTR	589,948	520,666	\$ 4,061
35190	KMTV-TV	1,346,549	1,344,796	\$ 10,488
77063	KMTW	761,521	761,516	\$ 5,939
35200	KMVT	184,647	176,351	\$ 1,375
32958	KMVU-DT	308,150	231,506	\$ 1,806
86534	KMYA-DT	200,764	200,725	\$ 1,565
51518	KMYS	2,273,888	2,267,913	\$ 17,687

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
54420	KMYT-TV	1,314,197	1,302,378	\$ 10,157
35822	KMYU	133,563	130,198	\$ 1,015
993	KNAT-TV	1,157,630	1,124,619	\$ 8,771
24749	KNAZ-TV	332,321	227,658	\$ 1,776
47906	KNBC	17,244,237	15,812,389	\$ 123,321
81464	KNBN	145,493	136,995	\$ 1,068
9754	KNCT	1,751,838	1,726,148	\$ 13,462
82611	KNDB	118,154	118,122	\$ 921
82615	KNDM	72,216	72,209	\$ 563
12395	KNDO	314,875	270,892	\$ 2,113
12427	KNDU	475,612	462,556	\$ 3,607
17683	KNEP	101,389	95,890	\$ 748
48003	KNHL	277,777	277,308	\$ 2,163
125710	KNIC-DT	2,398,296	2,383,294	\$ 18,587
59363	KNIN-TV	708,289	703,838	\$ 5,489
48525	KNLC	2,981,508	2,978,979	\$ 23,233
48521	KNLJ	655,000	642,705	\$ 5,012
84215	KNMD-TV	1,135,642	1,108,358	\$ 8,644
55528	KNME-TV	1,148,741	1,105,095	\$ 8,619
47707	KNMT	2,887,142	2,794,995	\$ 21,798
48975	KNOE-TV	733,097	729,703	\$ 5,691
49273	KNOP-TV	87,904	85,423	\$ 666
10228	KNPB	604,614	462,732	\$ 3,609
55362	KNRR	25,957	25,931	\$ 202
35277	KNSD	3,861,660	3,618,321	\$ 28,219
19191	KNSN-TV	611,981	459,485	\$ 3,584
23302	KNSO	1,824,786	1,803,796	\$ 14,068
35280	KNTV	8,525,818	8,027,505	\$ 62,607
144	KNVA	2,550,225	2,529,184	\$ 19,725
33745	KNVN	495,902	470,252	\$ 3,667
69692	KNVO	1,247,014	1,247,014	\$ 9,725

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
29557	KNWA-TV	822,906	804,682	\$ 6,276
59440	KNXV-TV	4,183,943	4,173,022	\$ 32,545
59014	KOAA-TV	1,608,528	1,203,731	\$ 9,388
50588	KOAB-TV	207,070	203,371	\$ 1,586
50590	KOAC-TV	1,957,282	1,543,401	\$ 12,037
58552	KOAM-TV	793,563	767,962	\$ 5,989
53928	KOAT-TV	1,132,372	1,105,116	\$ 8,619
35313	KOB	1,152,841	1,113,162	\$ 8,682
35321	KOBF	201,911	166,177	\$ 1,296
8260	KOBI	562,463	519,063	\$ 4,048
62272	KOBR	211,709	211,551	\$ 1,650
50170	KOCB	1,629,783	1,629,152	\$ 12,706
4328	KOCE-TV	17,446,133	16,461,581	\$ 128,384
84225	KOCM	1,434,325	1,433,605	\$ 11,181
12508	KOCO-TV	1,716,569	1,708,085	\$ 13,321
83181	KOCW	83,807	83,789	\$ 653
18283	KODE-TV	740,156	731,512	\$ 5,705
66195	KOED-TV	1,497,297	1,459,833	\$ 11,385
50198	KOET	658,606	637,640	\$ 4,973
51189	KOFY-TV	5,242,638	4,441,372	\$ 34,638
34859	KOGG	190,829	161,310	\$ 1,258
166534	KOHD	201,310	197,662	\$ 1,542
35380	KOIN	3,028,482	2,881,460	\$ 22,473
35388	KOKH-TV	1,627,116	1,625,246	\$ 12,675
11910	KOKI-TV	1,366,220	1,352,227	\$ 10,546
48663	KOLD-TV	1,216,228	887,754	\$ 6,924
7890	KOLN	1,421,223	1,337,970	\$ 10,435
63331	KOLO-TV	959,178	826,985	\$ 6,450
28496	KOLR	1,076,144	1,038,613	\$ 8,100
21656	KOMO-TV	4,132,260	4,087,435	\$ 31,878
65583	KOMU-TV	551,658	542,544	\$ 4,231

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
35396	KONG	3,998,831	3,981,688	\$ 31,053
60675	KOOD	113,416	113,285	\$ 884
50589	KOPB-TV	3,059,231	2,875,815	\$ 22,428
2566	KOPX-TV	1,501,110	1,500,883	\$ 11,705
64877	KORO	560,983	560,983	\$ 4,375
6865	KOSA-TV	340,978	338,070	\$ 2,637
34347	KOTA-TV	174,876	152,861	\$ 1,192
8284	KOTI	298,175	97,132	\$ 758
35434	KOTV-DT	1,417,753	1,403,838	\$ 10,949
56550	KOVR	10,784,477	7,162,989	\$ 55,864
51101	KOZJ	429,982	427,991	\$ 3,338
51102	KOZK	839,841	834,308	\$ 6,507
3659	KOZL-TV	992,495	963,281	\$ 7,513
35455	KPAX-TV	206,895	193,201	\$ 1,507
67868	KPAZ-TV	4,190,080	4,176,323	\$ 32,571
6124	KPBS	3,584,237	3,463,189	\$ 27,009
50044	KPBT-TV	340,080	340,080	\$ 2,652
77452	KPCB-DT	30,861	30,835	\$ 240
35460	KPDX	2,970,703	2,848,423	\$ 22,215
12524	KPEJ-TV	368,212	368,208	\$ 2,872
41223	KPHO-TV	4,195,073	4,175,139	\$ 32,562
61551	KPIC	156,687	105,807	\$ 825
86205	KPIF	265,080	258,174	\$ 2,013
25452	KPIX-TV	8,226,463	7,360,625	\$ 57,406
58912	KPJK	7,884,411	6,955,179	\$ 54,243
166510	KPJR-TV	3,402,088	3,372,831	\$ 26,305
13994	KPLC	1,406,085	1,403,853	\$ 10,949
41964	KPLO-TV	55,827	52,765	\$ 412
35417	KPLR-TV	2,991,598	2,988,106	\$ 23,304
12144	KPMR	1,731,370	1,473,251	\$ 11,490
47973	KPNE-TV	92,675	89,021	\$ 694

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
35486	KPNX	4,180,982	4,176,442	\$ 32,572
77512	KPNZ	2,394,311	2,208,707	\$ 17,226
73998	KPOB-TV	144,525	143,656	\$ 1,120
26655	KPPX-TV	4,186,998	4,171,450	\$ 32,533
53117	KPRC-TV	6,099,422	6,099,076	\$ 47,567
48660	KPRY-TV	42,521	42,426	\$ 331
61071	KPSD-TV	19,886	18,799	\$ 147
53544	KPTB-DT	322,780	320,646	\$ 2,501
81445	KPTF-DT	84,512	84,512	\$ 659
77451	KPTH	660,556	655,373	\$ 5,111
51491	KPTM	1,405,533	1,404,364	\$ 10,953
33345	KPTS	832,000	827,866	\$ 6,457
50633	KPTV	2,998,460	2,847,263	\$ 22,206
82575	KPTW	89,433	82,522	\$ 644
1270	KPVI-DT	271,379	264,204	\$ 2,061
58835	KPXB-TV	6,062,458	6,062,238	\$ 47,279
68695	KPXC-TV	3,362,518	3,341,951	\$ 26,064
68834	KPXD-TV	6,555,157	6,553,373	\$ 51,110
33337	KPXE-TV	2,437,178	2,436,024	\$ 18,999
5801	KPXG-TV	3,026,219	2,882,598	\$ 22,481
81507	KPXJ	1,138,632	1,135,626	\$ 8,857
61173	KPXL-TV	2,257,007	2,243,520	\$ 17,497
35907	KPXM-TV	3,507,312	3,506,503	\$ 27,347
58978	KPXN-TV	17,256,205	15,804,489	\$ 123,259
77483	KPXO-TV	953,329	913,341	\$ 7,123
21156	KPXR-TV	828,915	821,250	\$ 6,405
10242	KQCA	10,077,891	6,276,197	\$ 48,948
41430	KQCD-TV	35,623	33,415	\$ 261
18287	KQCK	3,216,059	3,185,307	\$ 24,842
78322	KQCW-DT	1,128,198	1,123,324	\$ 8,761
35525	KQDS-TV	304,935	301,439	\$ 2,351

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
35500	KQED	8,195,398	7,283,828	\$ 56,807
35663	KQEH	8,195,398	7,283,828	\$ 56,807
8214	KQET	2,981,040	2,076,157	\$ 16,192
5471	KQIN	596,371	596,277	\$ 4,650
17686	KQME	188,783	184,719	\$ 1,441
61063	KQSD-TV	32,526	31,328	\$ 244
8378	KQSL	199,123	142,419	\$ 1,111
20427	KQTV	1,494,987	1,401,160	\$ 10,928
78921	KQUP	697,016	551,824	\$ 4,304
306	KRBC-TV	229,395	229,277	\$ 1,788
166319	KRBK	983,888	966,187	\$ 7,535
22161	KRCA	17,540,791	16,957,292	\$ 132,250
57945	KRCB	8,783,441	8,503,802	\$ 66,321
41110	KRCG	737,927	722,255	\$ 5,633
8291	KRCR-TV	423,000	402,594	\$ 3,140
10192	KRCW-TV	2,966,912	2,842,523	\$ 22,169
49134	KRDK-TV	349,941	349,929	\$ 2,729
52579	KRDO-TV	2,622,603	2,272,383	\$ 17,722
70578	KREG-TV	149,306	95,141	\$ 742
34868	KREM	817,619	752,113	\$ 5,866
51493	KREN-TV	810,039	681,212	\$ 5,313
70596	KREX-TV	145,700	145,606	\$ 1,136
70579	KREY-TV	74,963	65,700	\$ 512
48589	KREZ-TV	148,079	105,121	\$ 820
43328	KRGV-TV	1,247,057	1,247,029	\$ 9,726
82698	KRII	133,840	132,912	\$ 1,037
29114	KRIN	949,313	923,735	\$ 7,204
25559	KRIS-TV	565,112	565,044	\$ 4,407
22204	KRIV	6,078,936	6,078,846	\$ 47,409
14040	KRMA-TV	3,722,512	3,564,949	\$ 27,803
14042	KRMJ	174,094	159,511	\$ 1,244

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
20476	KRMT	2,956,144	2,864,236	\$ 22,338
84224	KRMU	85,274	72,499	\$ 565
20373	KRMZ	36,293	33,620	\$ 262
47971	KRNE-TV	47,473	38,273	\$ 298
60307	KRNV-DT	955,490	792,543	\$ 6,181
65526	KRON-TV	8,573,167	8,028,256	\$ 62,612
53539	KRPV-DT	65,943	65,943	\$ 514
48575	KRQE	1,135,461	1,105,093	\$ 8,619
57431	KRSU-TV	1,000,289	998,310	\$ 7,786
82613	KRTN-TV	84,231	68,550	\$ 535
35567	KRTV	92,645	90,849	\$ 709
84157	KRWB-TV	111,538	110,979	\$ 866
35585	KRWF	85,596	85,596	\$ 668
55516	KRWG-TV	894,492	661,703	\$ 5,161
48360	KRXI-TV	725,391	548,865	\$ 4,281
307	KSAN-TV	135,063	135,051	\$ 1,053
11911	KSAS-TV	752,513	752,504	\$ 5,869
53118	KSAT-TV	2,539,658	2,502,246	\$ 19,515
35584	KSAX	365,209	365,209	\$ 2,848
35587	KSAZ-TV	4,203,126	4,178,448	\$ 32,588
38214	KSBI	1,577,231	1,575,865	\$ 12,290
19653	KSBW	5,083,461	4,429,165	\$ 34,543
19654	KSBY	535,029	495,562	\$ 3,865
82910	KSCC	517,740	517,740	\$ 4,038
10202	KSCE	1,015,148	1,010,581	\$ 7,882
35608	KSCI	17,446,133	16,461,581	\$ 128,384
72348	KSCW-DT	915,691	910,511	\$ 7,101
46981	KSDK	2,986,776	2,979,047	\$ 23,234
35594	KSEE	1,761,193	1,746,282	\$ 13,619
48658	KSFY-TV	670,536	607,844	\$ 4,741
17680	KSGW-TV	62,178	57,629	\$ 449

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Facility Id.	Call Sign	Population	Population	Fee Amount
59444	KSHB-TV	2,432,205	2,431,273	\$ 18,961
73706	KSHV-TV	943,947	942,978	\$ 7,354
29096	KSIN-TV	340,143	338,811	\$ 2,642
34846	KSIX-TV	74,884	74,884	\$ 584
35606	KSKN	731,818	643,590	\$ 5,019
70482	KSLA	1,017,556	1,016,667	\$ 7,929
6359	KSL-TV	2,390,742	2,206,920	\$ 17,212
71558	KSMN	320,813	320,808	\$ 2,502
33336	KSMO-TV	2,401,201	2,398,686	\$ 18,707
28510	KSMQ-TV	524,391	507,983	\$ 3,962
35611	KSMS-TV	1,589,263	882,948	\$ 6,886
21161	KSNB-TV	664,079	662,726	\$ 5,169
72359	KSNC	174,135	173,744	\$ 1,355
67766	KSNF	621,919	617,868	\$ 4,819
72361	KSNG	145,058	144,822	\$ 1,129
72362	KSNK	48,715	45,414	\$ 354
67335	KSNT	622,818	594,604	\$ 4,637
10179	KSNV	1,967,781	1,919,296	\$ 14,969
72358	KSNW	791,403	791,127	\$ 6,170
61956	KSPS-TV	819,101	769,852	\$ 6,004
52953	KSPX-TV	7,078,228	5,275,946	\$ 41,147
166546	KSQA	382,328	374,290	\$ 2,919
53313	KSRE	75,181	75,181	\$ 586
35843	KSTC-TV	3,843,788	3,835,674	\$ 29,914
63182	KSTF	51,317	51,122	\$ 399
28010	KSTP-TV	3,788,898	3,782,053	\$ 29,496
60534	KSTR-DT	6,632,577	6,629,296	\$ 51,702
64987	KSTS	8,363,473	7,264,852	\$ 56,659
22215	KSTU	2,384,996	2,201,716	\$ 17,171
23428	KSTW	4,265,956	4,186,266	\$ 32,649
5243	KSVI	175,390	173,667	\$ 1,354

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Facility Id.	Call Sign	Population	Population	Fee Amount
58827	KSWB-TV	3,677,190	3,488,655	\$ 27,208
60683	KSWK	79,012	78,784	\$ 614
35645	KSWO-TV	483,132	458,057	\$ 3,572
61350	KSYS	519,209	443,204	\$ 3,457
59988	KTAB-TV	274,707	274,536	\$ 2,141
999	KTAJ-TV	2,343,843	2,343,227	\$ 18,275
35648	KTAL-TV	1,094,332	1,092,958	\$ 8,524
12930	KTAS	471,882	464,149	\$ 3,620
81458	KTAZ	4,182,503	4,160,481	\$ 32,448
35649	KTBC	3,242,215	2,956,614	\$ 23,059
67884	KTBN-TV	17,929,445	16,750,096	\$ 130,634
67999	KTBO-TV	1,585,293	1,583,553	\$ 12,350
35652	KTBS-TV	1,163,228	1,159,665	\$ 9,044
28324	KTBU	6,035,927	6,035,725	\$ 47,073
67950	KTBW-TV	4,202,104	4,108,031	\$ 32,039
35655	KTBY	348,080	346,562	\$ 2,703
68594	KTCA-TV	3,693,877	3,684,081	\$ 28,732
68597	KTCI-TV	3,606,606	3,597,183	\$ 28,054
35187	KTCW	103,341	89,207	\$ 696
36916	KTDO	1,015,336	1,010,771	\$ 7,883
2769	KTEJ	419,750	417,368	\$ 3,255
83707	KTEL-TV	52,878	52,875	\$ 412
35666	KTEN	602,788	599,778	\$ 4,678
24514	KTFD-TV	3,210,669	3,172,543	\$ 24,743
35512	KTFF-DT	2,225,169	2,203,398	\$ 17,184
20871	KTFK-DT	6,969,307	5,211,719	\$ 40,646
68753	KTFN	1,017,335	1,013,157	\$ 7,902
35084	KTFQ-TV	1,151,433	1,117,061	\$ 8,712
29232	KTGM	159,358	159,091	\$ 1,241
2787	KTHV	1,275,053	1,246,348	\$ 9,720
29100	KTIN	281,096	279,385	\$ 2,179

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Facility Id.	Call Sign	Population	Population	Fee Amount
66170	KTIV	751,089	746,274	\$ 5,820
49397	KTKA-TV	759,369	746,370	\$ 5,821
35670	KTLA	18,156,910	16,870,262	\$ 131,571
62354	KTLM	1,044,526	1,044,509	\$ 8,146
49153	KTLN-TV	5,381,955	4,740,894	\$ 36,974
64984	KTMD	6,095,741	6,095,606	\$ 47,540
14675	KTMF	187,251	168,526	\$ 1,314
10177	KTMW	2,261,671	2,144,791	\$ 16,727
21533	KTNC-TV	8,270,858	7,381,656	\$ 57,570
47996	KTNE-TV	100,341	95,324	\$ 743
60519	KTNL-TV	8,642	8,642	\$ 67
74100	KTNV-TV	2,094,506	1,936,752	\$ 15,105
71023	KTNW	450,926	432,398	\$ 3,372
8651	KTOO-TV	31,269	31,176	\$ 243
7078	KTPX-TV	1,066,196	1,063,754	\$ 8,296
68541	KTRE	441,879	421,406	\$ 3,287
35675	KTRK-TV	6,114,259	6,112,870	\$ 47,674
28230	KTRV-TV	714,833	707,557	\$ 5,518
69170	KTSC	3,124,536	2,949,795	\$ 23,005
61066	KTSD-TV	83,645	82,828	\$ 646
37511	KTSF	7,959,349	7,129,638	\$ 55,604
67760	KTSM-TV	1,015,348	1,011,264	\$ 7,887
35678	KTTC	815,213	731,919	\$ 5,708
28501	KTTM	76,133	73,664	\$ 575
11908	KTTU	1,324,801	1,060,613	\$ 8,272
22208	KTTV	17,380,551	16,693,085	\$ 130,189
28521	KTTW	329,633	326,405	\$ 2,546
65355	KTTZ-TV	380,240	380,225	\$ 2,965
35685	KTUL	1,416,959	1,388,183	\$ 10,826
10173	KTUU-TV	380,240	379,047	\$ 2,956
77480	KTUZ-TV	1,668,531	1,666,026	\$ 12,993

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Facility Id.	Call Sign	Population	Population	Fee Amount
49632	KTVA	342,517	342,300	\$ 2,670
34858	KTVB	714,865	707,882	\$ 5,521
31437	KTVC	137,239	100,204	\$ 781
68581	KTVD	3,800,970	3,547,607	\$ 27,668
35692	KTVE	641,139	640,201	\$ 4,993
49621	KTVF	98,068	97,929	\$ 764
5290	KTVH-DT	228,832	184,264	\$ 1,437
35693	KTVI	2,995,764	2,991,513	\$ 23,331
40993	KTVK	4,184,825	4,173,028	\$ 32,545
22570	KTVL	419,849	369,469	\$ 2,881
18066	KTVM-TV	260,105	217,694	\$ 1,698
59139	KTVN	955,490	800,420	\$ 6,242
21251	KTVO	227,128	226,616	\$ 1,767
35694	KTVQ	179,797	173,271	\$ 1,351
50592	KTVR	147,808	54,480	\$ 425
23422	KTVT	6,912,366	6,908,715	\$ 53,881
35703	KTVU	8,297,634	7,406,751	\$ 57,765
35705	KTVW-DT	4,174,310	4,160,877	\$ 32,451
68889	KTVX	2,389,392	2,200,520	\$ 17,162
55907	KTVZ	201,828	198,558	\$ 1,549
18286	KTWO-TV	80,426	79,905	\$ 623
70938	KTWU	1,703,798	1,562,305	\$ 12,184
51517	KTXA	6,915,461	6,911,822	\$ 53,905
42359	KTXD-TV	6,706,651	6,704,781	\$ 52,291
51569	KTXH	6,092,627	6,092,442	\$ 47,515
10205	KTXL	8,306,449	5,896,320	\$ 45,985
308	KTXS-TV	247,603	246,760	\$ 1,924
69315	KUAC-TV	98,717	98,189	\$ 766
51233	KUAM-TV	159,358	159,358	\$ 1,243
2722	KUAS-TV	994,802	977,391	\$ 7,623
2731	KUAT-TV	1,485,024	1,253,342	\$ 9,775

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Facility Id.	Call Sign	Population	Population	Fee Amount
60520	KUBD	14,817	13,363	\$ 104
70492	KUBE-TV	6,090,970	6,090,817	\$ 47,502
1136	KUCW	2,388,889	2,199,787	\$ 17,156
69396	KUED	2,388,995	2,203,093	\$ 17,182
69582	KUEN	2,364,481	2,184,483	\$ 17,037
82576	KUES	30,925	25,978	\$ 203
82585	KUEW	132,168	120,411	\$ 939
66611	KUFM-TV	187,680	166,697	\$ 1,300
169028	KUGF-TV	86,622	85,986	\$ 671
68717	KUHM-TV	154,836	145,241	\$ 1,133
69269	KUHT	6,080,222	6,078,866	\$ 47,409
62382	KUID-TV	432,855	284,023	\$ 2,215
169027	KUKL-TV	124,505	115,844	\$ 903
35724	KULR-TV	177,242	170,142	\$ 1,327
41429	KUMV-TV	41,607	41,224	\$ 322
81447	KUNP	130,559	43,472	\$ 339
4624	KUNS-TV	4,027,849	4,015,626	\$ 31,318
86532	KUOK	28,974	28,945	\$ 226
66589	KUON-TV	1,375,257	1,360,005	\$ 10,607
86263	KUPB	318,914	318,914	\$ 2,487
65535	KUPK	149,642	148,180	\$ 1,156
27431	KUPT	87,602	87,602	\$ 683
89714	KUPU	956,178	948,005	\$ 7,393
57884	KUPX-TV	2,374,672	2,191,229	\$ 17,089
23074	KUSA	3,802,407	3,560,546	\$ 27,769
61072	KUSD-TV	460,480	460,277	\$ 3,590
10238	KUSI-TV	3,572,818	3,435,670	\$ 26,795
43567	KUSM-TV	122,678	109,830	\$ 857
69694	KUTF	1,210,774	1,031,870	\$ 8,048
81451	KUTH-DT	2,219,788	2,027,174	\$ 15,810
68886	KUTP	4,191,015	4,176,014	\$ 32,569

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Facility Id.	Call Sign	Population	Population	Fee Amount
35823	KUTV	2,388,625	2,199,731	\$ 17,156
63927	KUVE-DT	1,294,971	964,396	\$ 7,521
7700	KUVI-DT	1,204,490	1,009,943	\$ 7,877
35841	KUVN-DT	6,680,126	6,678,157	\$ 52,083
58609	KUVS-DT	4,043,413	4,005,657	\$ 31,240
49766	KVAL-TV	1,016,673	866,173	\$ 6,755
32621	KVAW	76,153	76,153	\$ 594
58795	KVCR-DT	18,215,524	17,467,140	\$ 136,226
35846	KVCT	288,221	287,446	\$ 2,242
10195	KVCW	1,967,550	1,918,809	\$ 14,965
64969	KVDA	2,566,563	2,548,720	\$ 19,877
19783	KVEA	17,538,249	16,335,335	\$ 127,399
12523	KVEO-TV	1,244,504	1,244,504	\$ 9,706
2495	KVEW	476,720	464,347	\$ 3,621
35852	KVHP	747,917	747,837	\$ 5,832
49832	KVIA-TV	1,015,350	1,011,266	\$ 7,887
35855	KVIE	10,759,440	7,467,369	\$ 58,238
40450	KVIH-TV	91,912	91,564	\$ 714
40446	KVII-TV	379,042	378,218	\$ 2,950
61961	KVLY-TV	362,850	362,838	\$ 2,830
16729	KVMD	15,274,297	14,512,400	\$ 113,182
83825	KVME-TV	26,711	22,802	\$ 178
25735	KVOA	1,317,956	1,030,404	\$ 8,036
35862	KVOS-TV	2,202,674	2,131,652	\$ 16,625
69733	KVPT	1,744,349	1,719,318	\$ 13,409
55372	KVRR	356,645	356,645	\$ 2,781
166331	KVSN-DT	2,706,244	2,283,409	\$ 17,808
608	KVTH-DT	303,755	299,230	\$ 2,334
2784	KVTJ-DT	1,466,426	1,465,802	\$ 11,432
607	KVTN-DT	936,328	925,884	\$ 7,221
35867	KVUE	2,661,290	2,611,314	\$ 20,366

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Facility Id.	Call Sign	Population	Population	Fee Amount
78910	KVUI	257,964	251,872	\$ 1,964
35870	KVVU-TV	2,045,255	1,935,583	\$ 15,096
36170	KVYE	396,495	392,498	\$ 3,061
35095	KWBA-TV	1,129,524	1,073,029	\$ 8,369
78314	KWBM	657,822	639,560	\$ 4,988
27425	KWBN	953,207	840,455	\$ 6,555
76268	KWBQ	1,149,598	1,107,211	\$ 8,635
66413	KWCH-DT	883,647	881,674	\$ 6,876
71549	KWCM-TV	252,284	244,033	\$ 1,903
35419	KWDK	4,194,152	4,117,852	\$ 32,115
42007	KWES-TV	424,854	423,536	\$ 3,303
50194	KWET	127,976	112,750	\$ 879
35881	KWEX-DT	2,376,463	2,370,469	\$ 18,487
35883	KWGN-TV	3,706,455	3,513,537	\$ 27,402
37099	KWHB	979,393	978,719	\$ 7,633
36846	KWHE	952,966	834,341	\$ 6,507
26231	KWHY-TV	17,736,497	17,695,306	\$ 138,006
35096	KWKB	1,121,676	1,111,629	\$ 8,670
162115	KWKS	39,708	39,323	\$ 307
12522	KWKT-TV	1,299,675	1,298,478	\$ 10,127
21162	KWNB-TV	91,093	89,332	\$ 697
67347	KWOG	512,412	505,049	\$ 3,939
56852	KWPX-TV	4,220,008	4,148,577	\$ 32,355
6885	KWQC-TV	1,063,507	1,054,618	\$ 8,225
29121	KWSD	280,675	280,672	\$ 2,189
53318	KWSE	54,471	53,400	\$ 416
71024	KWSU-TV	725,554	468,295	\$ 3,652
25382	KWTV-DT	1,628,106	1,627,198	\$ 12,691
35903	KWTV-TV	2,071,023	1,972,365	\$ 15,382
593	KWWL	1,089,498	1,078,458	\$ 8,411
84410	KWWT	293,291	293,291	\$ 2,287

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Facility Id.	Call Sign	Population	Population	Fee Amount
14674	KWYB	86,495	69,598	\$ 543
10032	KWYP-DT	148,473	133,470	\$ 1,041
35920	KXAN-TV	2,678,666	2,624,648	\$ 20,470
49330	KXAS-TV	6,774,295	6,771,827	\$ 52,813
24287	KXGN-TV	14,217	13,883	\$ 108
35954	KXII	2,323,974	2,264,951	\$ 17,664
55083	KXLA	17,929,100	16,794,896	\$ 130,983
35959	KXLF-TV	258,100	217,808	\$ 1,699
53847	KXLN-DT	6,085,891	6,085,712	\$ 47,462
35906	KXLT-TV	348,025	347,296	\$ 2,709
61978	KXLY-TV	772,116	740,960	\$ 5,779
55684	KXMA-TV	32,005	31,909	\$ 249
55686	KXMB-TV	142,755	138,506	\$ 1,080
55685	KXMC-TV	97,569	89,483	\$ 698
55683	KXMD-TV	37,962	37,917	\$ 296
47995	KXNE-TV	305,839	304,682	\$ 2,376
81593	KXNW	602,168	597,747	\$ 4,662
35991	KXRM-TV	1,843,363	1,500,689	\$ 11,704
1255	KXTF	140,746	140,312	\$ 1,094
25048	KXTV	10,759,864	7,477,140	\$ 58,314
35994	KXTX-TV	6,721,578	6,718,616	\$ 52,398
62293	KXVA	185,478	185,276	\$ 1,445
23277	KXVO	1,397,072	1,396,085	\$ 10,888
9781	KXXV	1,771,620	1,748,287	\$ 13,635
31870	KYAZ	6,038,257	6,038,071	\$ 47,091
29086	KYIN	581,748	574,691	\$ 4,482
60384	KYLE-TV	323,330	323,225	\$ 2,521
33639	KYMA-DT	396,278	391,619	\$ 3,054
47974	KYNE-TV	980,094	979,887	\$ 7,642
53820	KYOU-TV	651,334	640,935	\$ 4,999
36003	KYTV	1,095,904	1,083,524	\$ 8,450

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
55644	KYTX	927,327	925,550	\$ 7,218
13815	KYUR	379,943	379,027	\$ 2,956
5237	KYUS-TV	12,496	12,356	\$ 96
33752	KYVE	301,951	259,559	\$ 2,024
55762	KYVV-TV	67,201	67,201	\$ 524
25453	KYW-TV	11,212,189	11,008,413	\$ 85,855
69531	KZJL	6,037,458	6,037,272	\$ 47,085
69571	KZJO	4,147,016	4,097,776	\$ 31,959
61062	KZSD-TV	41,207	35,825	\$ 279
33079	KZTV	567,635	564,464	\$ 4,402
57292	WAAY-TV	1,531,377	1,452,612	\$ 11,329
1328	WABC-TV	20,948,273	20,560,001	\$ 160,347
4190	WABE-TV	5,308,575	5,291,523	\$ 41,269
43203	WABG-TV	393,020	392,348	\$ 3,060
17005	WABI-TV	530,773	510,729	\$ 3,983
16820	WABM	1,772,367	1,742,240	\$ 13,588
23917	WABW-TV	1,097,560	1,096,376	\$ 8,551
19199	WACH	1,403,222	1,400,385	\$ 10,922
189358	WACP	9,415,263	9,301,049	\$ 72,539
23930	WACS-TV	786,536	783,207	\$ 6,108
60018	WACX	4,292,829	4,288,149	\$ 33,443
361	WACY-TV	946,580	946,071	\$ 7,378
455	WADL	4,610,065	4,606,521	\$ 35,926
589	WAFB	1,857,882	1,857,418	\$ 14,486
591	WAFF	1,527,517	1,456,436	\$ 11,359
70689	WAGA-TV	6,000,355	5,923,191	\$ 46,195
48305	WAGM-TV	64,721	63,331	\$ 494
37809	WAGV	1,614,321	1,282,063	\$ 9,999
706	WAIQ	611,733	609,794	\$ 4,756
701	WAKA	799,637	793,645	\$ 6,190
4143	WALA-TV	1,320,419	1,318,127	\$ 10,280

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
70713	WALB	773,899	772,467	\$ 6,024
60536	WAMI-DT	5,449,193	5,449,193	\$ 42,498
70852	WAND	1,388,118	1,386,074	\$ 10,810
39270	WANE-TV	1,146,442	1,146,442	\$ 8,941
72120	WANF	6,027,276	5,961,471	\$ 46,494
52280	WAOE	2,963,253	2,907,224	\$ 22,673
64546	WAOW	636,957	629,068	\$ 4,906
52073	WAPA-TV ^{2,7}	3,759,648	2,784,044	\$ 21,713
49712	WAPT	793,621	791,620	\$ 6,174
67792	WAQP	2,135,670	2,131,399	\$ 16,623
13206	WATC-DT	5,732,204	5,705,819	\$ 44,500
71082	WATE-TV	1,874,433	1,638,059	\$ 12,775
22819	WATL	5,882,837	5,819,099	\$ 45,383
20287	WATM-TV	893,989	749,183	\$ 5,843
11907	WATN-TV	1,787,595	1,784,560	\$ 13,918
13989	WAVE	1,891,797	1,880,563	\$ 14,667
71127	WAVY-TV	2,080,708	2,080,691	\$ 16,227
54938	WAWD	579,079	579,023	\$ 4,516
65247	WAWV-TV	705,790	700,361	\$ 5,462
12793	WAXN-TV	2,677,951	2,669,224	\$ 20,817
65696	WBAL-TV	9,743,335	9,344,875	\$ 72,881
74417	WBAY-TV	1,226,036	1,225,443	\$ 9,557
71085	WBBH-TV	2,017,267	2,017,267	\$ 15,733
65204	WBBJ-TV	662,148	658,839	\$ 5,138
9617	WBBM-TV	9,914,233	9,907,806	\$ 77,271
9088	WBBZ-TV	1,269,256	1,260,686	\$ 9,832
70138	WBDT	3,831,757	3,819,550	\$ 29,789
51349	WBEC-TV	5,421,355	5,421,355	\$ 42,281
10758	WBFF	8,523,983	8,381,042	\$ 65,364
12497	WBFS-TV	5,349,613	5,349,613	\$ 41,722
6568	WBGU-TV	1,343,816	1,343,816	\$ 10,480

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
81594	WBIF	309,707	309,707	\$ 2,415
84802	WBIH	718,439	706,994	\$ 5,514
717	WBIQ	1,563,080	1,532,266	\$ 11,950
46984	WBIR-TV	1,978,347	1,701,857	\$ 13,273
67048	WBKB-TV	136,823	130,625	\$ 1,019
34167	WBKI	2,104,090	2,085,393	\$ 16,264
4692	WBKO	963,413	862,651	\$ 6,728
76001	WBKP	55,655	55,305	\$ 431
68427	WBMM	562,284	562,123	\$ 4,384
73692	WBNA	1,699,683	1,666,248	\$ 12,995
23337	WBNG-TV	1,435,634	1,051,932	\$ 8,204
71217	WBNS-TV	2,847,721	2,784,795	\$ 21,719
72958	WBNX-TV	3,639,256	3,630,531	\$ 28,315
71218	WBOC-TV	813,888	813,888	\$ 6,348
71220	WBOY-TV	711,302	621,367	\$ 4,846
60850	WBPH-TV	10,613,847	9,474,797	\$ 73,894
7692	WPX-TV	6,833,712	6,761,949	\$ 52,736
5981	WBRA-TV	1,726,408	1,677,204	\$ 13,081
71221	WBRC	1,884,007	1,849,135	\$ 14,421
71225	WBRE-TV	2,879,196	2,244,735	\$ 17,507
38616	WBRZ-TV	2,223,336	2,222,309	\$ 17,332
82627	WBSF	1,836,543	1,832,446	\$ 14,291
30826	WBTW	4,433,795	4,296,893	\$ 33,511
66407	WBTW	1,975,457	1,959,172	\$ 15,280
16363	WBUI	981,884	981,868	\$ 7,658
59281	WBUP	126,472	112,603	\$ 878
60830	WBUY-TV	1,569,254	1,567,815	\$ 12,227
72971	WBXX-TV	2,142,759	1,984,544	\$ 15,477
25456	WBZ-TV	7,960,556	7,730,847	\$ 60,293
63153	WCAU	11,269,831	11,098,540	\$ 86,558
363	WCAV	1,032,270	874,886	\$ 6,823

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
46728	WCAX-TV	784,748	665,685	\$ 5,192
39659	WCBB	964,079	910,222	\$ 7,099
10587	WCBD-TV	1,149,489	1,149,489	\$ 8,965
12477	WCBI-TV	680,511	678,424	\$ 5,291
9610	WCBS-TV	22,087,789	21,511,236	\$ 167,766
49157	WCCB	3,642,232	3,574,928	\$ 27,881
9629	WCCO-TV	3,862,571	3,855,451	\$ 30,069
14050	WCCT-TV	5,818,471	5,307,612	\$ 41,394
69544	WCCU	694,550	693,317	\$ 5,407
3001	WCCV-TV	3,391,703	2,062,994	\$ 16,089
23937	WCES-TV	1,098,868	1,097,706	\$ 8,561
65666	WCET	3,123,290	3,110,519	\$ 24,259
46755	WCFE-TV	459,417	419,756	\$ 3,274
71280	WCHS-TV	1,352,824	1,274,766	\$ 9,942
42124	WCIA	834,084	833,547	\$ 6,501
711	WCIQ	3,186,320	3,016,907	\$ 23,529
71428	WCIU-TV	10,052,136	10,049,244	\$ 78,374
9015	WCIV	1,152,800	1,152,800	\$ 8,991
42116	WCIX	554,002	549,911	\$ 4,289
16993	WCJB-TV	977,492	977,492	\$ 7,623
11125	WCLF	4,097,389	4,096,624	\$ 31,950
68007	WCLJ-TV	2,305,723	2,303,534	\$ 17,965
50781	WCMH-TV	2,756,260	2,712,989	\$ 21,159
9917	WCML	233,439	224,255	\$ 1,749
9908	WCMU-TV	707,702	699,551	\$ 5,456
9922	WCMV	425,499	411,288	\$ 3,208
9913	WCMW	106,975	104,859	\$ 818
32326	WCNC-TV	3,883,049	3,809,706	\$ 29,712
53734	WCNY-TV	1,342,821	1,279,429	\$ 9,978
73642	WCOV-TV	889,102	884,417	\$ 6,898
40618	WCPB	567,809	567,809	\$ 4,428

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
59438	WCPO-TV	3,330,885	3,313,654	\$ 25,843
10981	WCPX-TV	9,753,235	9,751,916	\$ 76,055
71297	WCSC-TV	1,028,018	1,028,018	\$ 8,018
39664	WCSH	1,755,325	1,548,824	\$ 12,079
69479	WCTE	612,760	541,314	\$ 4,222
18334	WCTI-TV	1,688,065	1,685,638	\$ 13,146
31590	WCTV	1,065,524	1,065,464	\$ 8,310
33081	WCTX	7,844,936	7,332,431	\$ 57,186
65684	WCVB-TV	7,780,868	7,618,496	\$ 59,417
9987	WCVE-TV	1,721,004	1,712,249	\$ 13,354
83304	WCVI-TV	50,601	50,495	\$ 394
34204	WCVN-TV	2,129,816	2,120,349	\$ 16,537
9989	WCVW	1,505,484	1,505,330	\$ 11,740
73042	WCWF	1,131,390	1,130,818	\$ 8,819
35385	WCWG	3,630,551	3,299,114	\$ 25,730
29712	WCWJ	1,661,270	1,661,132	\$ 12,955
73264	WCWN	1,909,223	1,621,751	\$ 12,648
2455	WCYB-TV	2,363,002	2,057,404	\$ 16,046
11291	WDAF-TV	2,539,581	2,537,411	\$ 19,789
21250	WDAM-TV	512,594	500,343	\$ 3,902
22129	WDAY-TV	339,239	338,856	\$ 2,643
22124	WDAZ-TV	151,720	151,659	\$ 1,183
71325	WDBB	1,792,728	1,762,643	\$ 13,747
71326	WDBD	940,665	939,489	\$ 7,327
71329	WDBJ	1,626,017	1,435,762	\$ 11,198
51567	WDCA	8,101,358	8,049,329	\$ 62,777
16530	WDCQ-TV	1,269,199	1,269,199	\$ 9,898
30576	WDCW	8,155,998	8,114,847	\$ 63,288
54385	WDEF-TV	1,730,762	1,530,403	\$ 11,936
32851	WDFX-TV	271,499	270,942	\$ 2,113
43846	WDHN	452,377	451,978	\$ 3,525

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Facility Id.	Call Sign	Population	Population	Fee Amount
71338	WDIO-DT	341,506	327,469	\$ 2,554
714	WDIQ	663,062	620,124	\$ 4,836
53114	WDIV-TV	5,450,318	5,450,174	\$ 42,506
71427	WDJT-TV	3,267,652	3,256,507	\$ 25,397
39561	WDKA	658,699	658,277	\$ 5,134
64017	WDKY-TV	1,204,817	1,173,579	\$ 9,153
67893	WDLI-TV	4,147,298	4,114,920	\$ 32,092
72335	WDPB	596,888	596,888	\$ 4,655
83740	WDPM-DT	1,365,977	1,364,744	\$ 10,644
1283	WDPN-TV	11,594,463	11,467,616	\$ 89,436
6476	WDPX-TV	6,833,712	6,761,949	\$ 52,736
28476	WDRB	2,054,813	2,037,086	\$ 15,887
12171	WDSC-TV	3,389,559	3,389,559	\$ 26,435
17726	WDSE	330,994	316,643	\$ 2,469
71353	WDSI-TV	1,100,302	1,042,191	\$ 8,128
71357	WDSU	1,649,083	1,649,083	\$ 12,861
7908	WDTI	2,092,242	2,091,941	\$ 16,315
65690	WDTN	3,831,757	3,819,550	\$ 29,789
70592	WDTV	566,592	524,961	\$ 4,094
25045	WDVM-TV	3,074,837	2,646,508	\$ 20,640
4110	WDWL	2,638,361	1,977,410	\$ 15,422
49421	WEAO	3,960,217	3,945,408	\$ 30,770
71363	WEAR-TV	1,520,973	1,520,386	\$ 11,857
7893	WEAU	1,006,393	971,050	\$ 7,573
61003	WEBA-TV	641,354	632,282	\$ 4,931
19561	WECN	2,886,669	2,157,288	\$ 16,825
48666	WECT	1,156,807	1,156,807	\$ 9,022
13602	WEDH	5,328,800	4,724,167	\$ 36,844
13607	WEDN	3,451,170	2,643,344	\$ 20,615
69338	WEDQ	5,379,887	5,365,612	\$ 41,846
21808	WEDU	5,379,887	5,365,612	\$ 41,846

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
13594	WEDW	5,996,408	5,544,708	\$ 43,243
13595	WEDY	5,328,800	4,724,167	\$ 36,844
24801	WEEK-TV	752,596	752,539	\$ 5,869
6744	WEFS	3,380,743	3,380,743	\$ 26,366
24215	WEHT	857,558	844,070	\$ 6,583
721	WEIQ	1,055,632	1,055,193	\$ 8,229
18301	WEIU-TV	458,480	458,416	\$ 3,575
69271	WEKW-TV	1,263,049	773,108	\$ 6,029
60825	WELF-TV	1,477,691	1,387,044	\$ 10,818
26602	WELU	2,315,163	1,721,317	\$ 13,425
40761	WEMT	1,726,085	1,186,706	\$ 9,255
69237	WENH-TV	4,500,498	4,328,222	\$ 33,756
71508	WENY-TV	656,240	517,754	\$ 4,038
83946	WEPH	604,105	602,833	\$ 4,701
81508	WEPX-TV	950,012	950,012	\$ 7,409
25738	WESH	4,063,973	4,053,252	\$ 31,611
65670	WETA-TV	8,315,499	8,258,807	\$ 64,410
69944	WETK	670,087	558,842	\$ 4,358
60653	WETM-TV	870,206	770,731	\$ 6,011
18252	WETP-TV	2,167,383	1,888,574	\$ 14,729
2709	WEUX	380,569	373,680	\$ 2,914
72041	WEVV-TV	752,417	751,094	\$ 5,858
59441	WEWS-TV	4,112,984	4,078,299	\$ 31,807
72052	WEYI-TV	3,715,686	3,652,991	\$ 28,490
72054	WFAA	6,917,502	6,907,616	\$ 53,872
81669	WFBD	817,914	817,389	\$ 6,375
69532	WFDC-DT	8,155,998	8,114,847	\$ 63,288
10132	WFFF-TV	633,649	552,182	\$ 4,306
25040	WFFT-TV	1,095,429	1,095,411	\$ 8,543
11123	WFGC	3,018,351	3,018,351	\$ 23,540
6554	WFGX	1,493,866	1,493,319	\$ 11,646

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
13991	WFIE	743,079	740,909	\$ 5,778
715	WFIQ	546,563	544,258	\$ 4,245
64592	WFLA-TV	5,583,544	5,576,649	\$ 43,492
22211	WFLD	9,957,301	9,954,828	\$ 77,638
72060	WFLI-TV	1,294,209	1,189,897	\$ 9,280
39736	WFLX	5,740,086	5,740,086	\$ 44,767
72062	WFMJ-TV	4,328,477	3,822,691	\$ 29,813
72064	WFMY-TV	4,772,783	4,746,167	\$ 37,015
39884	WFMZ-TV	10,613,847	9,474,797	\$ 73,894
83943	WFNA	1,391,519	1,390,447	\$ 10,844
47902	WFOR-TV	5,398,266	5,398,266	\$ 42,101
11909	WFOX-TV	1,603,324	1,603,324	\$ 12,504
40626	WFPT	5,829,153	5,442,279	\$ 42,444
21245	WFPX-TV	2,637,949	2,634,141	\$ 20,544
25396	WFQX-TV	537,340	534,314	\$ 4,167
9635	WFRV-TV	1,263,353	1,256,376	\$ 9,798
53115	WFSB	4,752,788	4,370,519	\$ 34,086
6093	WFSG	364,961	364,796	\$ 2,845
21801	WFSU-TV	576,105	576,093	\$ 4,493
11913	WFTC	3,787,177	3,770,207	\$ 29,404
64588	WFTS-TV	5,236,379	5,236,287	\$ 40,838
16788	WFTT-TV	4,523,828	4,521,879	\$ 35,266
72076	WFTV	3,882,888	3,882,888	\$ 30,283
70649	WFTX-TV	1,758,172	1,758,172	\$ 13,712
60553	WFTY-DT	5,678,755	5,560,460	\$ 43,366
25395	WFUP	234,863	234,436	\$ 1,828
60555	WFUT-DT	20,538,272	20,130,459	\$ 156,997
22108	WFWA	1,035,114	1,034,862	\$ 8,071
9054	WFXB	1,393,865	1,393,510	\$ 10,868
3228	WFXG	1,070,032	1,057,760	\$ 8,249
70815	WFXL	793,637	785,106	\$ 6,123

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
19707	WFXP	583,315	562,500	\$ 4,387
24813	WFXR	1,426,061	1,286,450	\$ 10,033
6463	WFXT	7,494,070	7,400,830	\$ 57,719
22245	WFXU	218,273	218,273	\$ 1,702
43424	WFXV	702,682	612,494	\$ 4,777
25236	WFXW	274,078	270,967	\$ 2,113
41397	WFYI	2,389,627	2,388,970	\$ 18,632
53930	WGAL	6,287,688	5,610,833	\$ 43,759
2708	WGBA-TV	1,170,375	1,170,127	\$ 9,126
24314	WGBC	249,415	249,235	\$ 1,944
72099	WGBH-TV	7,711,842	7,601,732	\$ 59,286
12498	WGB0-DT	9,828,737	9,826,530	\$ 76,637
11113	WGBP-TV	1,820,589	1,812,232	\$ 14,134
72098	WGBX-TV	7,803,280	7,636,641	\$ 59,558
72096	WGBY-TV	4,470,009	3,739,675	\$ 29,166
62388	WGPU	1,510,671	1,510,671	\$ 11,782
54275	WGEM-TV	361,598	356,682	\$ 2,782
27387	WGEN-TV	43,037	43,037	\$ 336
7727	WGFL	877,163	877,163	\$ 6,841
25682	WGBB-TV	3,443,386	3,053,436	\$ 23,814
11027	WGGN-TV	4,002,841	3,981,382	\$ 31,051
9064	WGS-TV	2,759,326	2,705,067	\$ 21,097
72106	WGHP	4,174,964	4,123,106	\$ 32,156
710	WGIQ	363,849	363,806	\$ 2,837
12520	WGMB-TV	1,742,708	1,742,659	\$ 13,591
25683	WGME-TV	1,495,724	1,325,465	\$ 10,337
24618	WGNM	742,458	741,502	\$ 5,783
72119	WGNO	1,641,765	1,641,765	\$ 12,804
9762	WGNT	2,128,079	2,127,891	\$ 16,595
72115	WGN-TV	9,983,395	9,981,137	\$ 77,843
40619	WGPT	578,294	344,300	\$ 2,685

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Facility Id.	Call Sign	Population	Population	Fee Amount
65074	WGPX-TV	2,765,350	2,754,743	\$ 21,484
64547	WGRZ	1,878,725	1,812,309	\$ 14,134
63329	WGTA	1,061,654	1,030,538	\$ 8,037
66285	WGTE-TV	2,210,496	2,208,927	\$ 17,227
59279	WGTQ	116,301	112,633	\$ 878
59280	WGTU	358,543	353,477	\$ 2,757
23948	WGTV	5,989,342	5,917,966	\$ 46,154
7623	WGTW-TV	807,797	807,797	\$ 6,300
24783	WGVK	2,439,225	2,437,526	\$ 19,010
24784	WGVU-TV	1,825,744	1,784,264	\$ 13,915
21536	WGWG	986,963	986,963	\$ 7,697
56642	WGWW	1,677,166	1,647,976	\$ 12,853
58262	WGXA	779,955	779,087	\$ 6,076
73371	WHAM-TV	1,381,564	1,334,653	\$ 10,409
32327	WHAS-TV	1,955,983	1,925,901	\$ 15,020
6096	WHA-TV	1,635,777	1,628,950	\$ 12,704
13950	WHBF-TV	1,712,339	1,704,072	\$ 13,290
12521	WHBQ-TV	1,736,335	1,708,345	\$ 13,323
10894	WHBR	1,302,764	1,302,041	\$ 10,155
65128	WHDF	1,553,469	1,502,852	\$ 11,721
72145	WHDH	7,441,208	7,343,735	\$ 57,274
83929	WHDY	5,768,239	5,768,239	\$ 44,986
70041	WHEC-TV	1,322,243	1,279,606	\$ 9,980
67971	WHFT-TV	5,417,409	5,417,409	\$ 42,250
41458	WHIO-TV	3,877,520	3,868,597	\$ 30,171
713	WHIQ	1,278,174	1,225,940	\$ 9,561
61216	WHIZ-TV	911,245	840,696	\$ 6,557
65919	WHKY-TV	3,358,493	3,294,261	\$ 25,692
18780	WHLA-TV	554,446	515,561	\$ 4,021
48668	WHLT	484,432	483,532	\$ 3,771
24582	WHLV-TV	3,906,201	3,906,201	\$ 30,464

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
37102	WHMB-TV	2,959,585	2,889,145	\$ 22,532
61004	WHMC	774,921	774,921	\$ 6,044
36117	WHME-TV	1,455,358	1,455,110	\$ 11,348
37106	WHNO	1,499,653	1,499,653	\$ 11,696
72300	WHNS	2,549,610	2,270,868	\$ 17,710
48693	WHNT-TV	1,569,885	1,487,578	\$ 11,602
66221	WHO-DT	1,120,480	1,099,818	\$ 8,577
6866	WHOI	736,125	736,047	\$ 5,740
72313	WHP-TV	4,030,693	3,538,096	\$ 27,594
51980	WHPX-TV	5,579,464	5,114,336	\$ 39,887
73036	WHRM-TV	535,778	532,820	\$ 4,155
25932	WHRO-TV	2,169,238	2,169,237	\$ 16,918
68058	WHSB-TV	5,870,314	5,808,605	\$ 45,301
4688	WHSV-TV	845,013	711,912	\$ 5,552
9990	WHTJ	807,960	690,381	\$ 5,384
72326	WHTM-TV	3,211,085	2,799,192	\$ 21,831
11117	WHTN	1,914,755	1,905,733	\$ 14,863
27772	WHUT-TV	7,953,119	7,915,675	\$ 61,734
18793	WHWC-TV	1,123,941	1,091,281	\$ 8,511
72338	WHYY-TV	10,448,829	10,049,700	\$ 78,378
5360	WIAT	1,868,854	1,830,924	\$ 14,279
63160	WIBW-TV	1,234,347	1,181,009	\$ 9,211
25684	WICD	1,238,332	1,237,046	\$ 9,648
25686	WICS	1,101,798	1,099,718	\$ 8,577
24970	WICU-TV	740,115	683,435	\$ 5,330
62210	WICZ-TV	1,249,974	965,416	\$ 7,529
18410	WIDP	2,559,306	1,899,768	\$ 14,816
26025	WIFS	1,583,693	1,578,870	\$ 12,314
720	WIIQ	353,241	347,685	\$ 2,712
68939	WILL-TV	1,178,545	1,158,147	\$ 9,032
6863	WILX-TV	3,378,644	3,218,221	\$ 25,099

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
22093	WINK-TV	1,818,122	1,818,122	\$ 14,180
67787	WINM	1,001,485	971,031	\$ 7,573
41314	WINP-TV	2,935,057	2,883,944	\$ 22,492
3646	WIPB	1,965,353	1,965,174	\$ 15,326
48408	WIPL	850,656	799,165	\$ 6,233
53863	WIPM-TV ¹	2,280,935	1,648,150	\$ 2,251
53859	WIPR-TV ¹	3,596,802	2,811,148	\$ 21,924
10253	WIPX-TV	2,305,723	2,303,534	\$ 17,965
39887	WIRS ¹²	1,091,825	757,978	\$ 4,676
71336	WIRT-DT	127,001	126,300	\$ 985
13990	WIS	2,644,715	2,600,887	\$ 20,284
65143	WISC-TV	1,734,112	1,697,537	\$ 13,239
13960	WISE-TV	1,070,155	1,070,155	\$ 8,346
39269	WISH-TV	2,912,963	2,855,253	\$ 22,268
65680	WISN-TV	3,003,636	2,997,695	\$ 23,379
73083	WITF-TV	2,412,561	2,191,501	\$ 17,092
73107	WITI	3,111,641	3,102,097	\$ 24,193
594	WITN-TV	1,861,458	1,836,905	\$ 14,326
61005	WITV	871,783	871,783	\$ 6,799
7780	WIVB-TV	1,900,503	1,820,106	\$ 14,195
11260	WIVT	855,138	613,934	\$ 4,788
60571	WIWN	3,338,845	3,323,941	\$ 25,923
62207	WIYC	639,641	637,499	\$ 4,972
73120	WJAC-TV	2,219,529	1,897,986	\$ 14,802
10259	WJAL	8,750,706	8,446,074	\$ 65,871
50780	WJAR	7,108,180	6,976,099	\$ 54,407
35576	WJAX-TV	1,630,782	1,630,782	\$ 12,718
27140	WJBF	1,601,088	1,588,444	\$ 12,388
73123	WJBK	5,748,623	5,711,224	\$ 44,542
37174	WJCL	938,086	938,086	\$ 7,316
73130	WJCT	1,618,817	1,617,292	\$ 12,613

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
29719	WJEB-TV	1,607,603	1,607,603	\$ 12,538
65749	WJET-TV	747,431	717,721	\$ 5,598
7651	WJFB	2,310,517	2,302,217	\$ 17,955
49699	WJFW-TV	277,530	268,295	\$ 2,092
73136	WJHG-TV	864,121	859,823	\$ 6,706
57826	WJHL-TV	2,034,663	1,462,129	\$ 11,403
68519	WJKT	655,780	655,373	\$ 5,111
1051	WJLA-TV	8,750,706	8,447,643	\$ 65,883
86537	WJLP	21,384,080	21,119,164	\$ 164,708
9630	WJMN-TV	160,991	154,424	\$ 1,204
61008	WJPM-TV	623,939	623,787	\$ 4,865
58340	WJPX ^{6,10,12}	3,254,481	2,500,195	\$ 19,499
21735	WJRT-TV	2,788,684	2,543,446	\$ 19,836
23918	WJSP-TV	4,225,860	4,188,428	\$ 32,666
41210	WJTC	1,381,529	1,379,283	\$ 10,757
48667	WJTV	987,206	980,717	\$ 7,649
73150	WJW	3,977,148	3,905,325	\$ 30,458
61007	WJWJ-TV	1,034,555	1,034,555	\$ 8,068
58342	WJWN-TV ⁶	2,063,156	1,461,497	\$ 4,676
53116	WJXT	1,622,616	1,622,616	\$ 12,655
11893	WJXX	1,618,191	1,617,272	\$ 12,613
32334	WJYS	9,667,341	9,667,317	\$ 75,395
25455	WJZ-TV	9,743,335	9,350,346	\$ 72,923
73152	WJZY	4,432,745	4,301,117	\$ 33,544
64983	WKAQ-TV ³	3,697,088	2,731,588	\$ 2,628
6104	WKAR-TV	1,693,373	1,689,830	\$ 13,179
34171	WKAS	542,308	512,994	\$ 4,001
51570	WKBD-TV	5,065,617	5,065,350	\$ 39,505
73153	WKBN-TV	4,898,622	4,535,576	\$ 35,373
13929	WKBS-TV	1,082,894	937,847	\$ 7,314
74424	WKBT-DT	866,325	824,795	\$ 6,433

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
54176	WKBW-TV	2,247,191	2,161,366	\$ 16,856
53465	WKCF	4,241,181	4,240,354	\$ 33,071
73155	WKEF	3,730,595	3,716,127	\$ 28,982
34177	WKGB-TV	413,268	411,587	\$ 3,210
34196	WKHA	511,281	400,721	\$ 3,125
34207	WKLE	856,237	846,630	\$ 6,603
34212	WKMA-TV	524,617	524,035	\$ 4,087
71293	WKMG-TV	3,817,673	3,817,673	\$ 29,774
34195	WKMJ-TV	1,477,906	1,470,645	\$ 11,470
34202	WKMR	463,316	428,462	\$ 3,342
34174	WKMU	344,430	344,050	\$ 2,683
42061	WKNO	1,645,867	1,642,092	\$ 12,807
83931	WKNX-TV	1,684,178	1,459,493	\$ 11,383
34205	WKOI-TV	584,645	579,258	\$ 4,518
67869	WKOI-TV	3,831,757	3,819,550	\$ 29,789
34211	WKON	1,080,274	1,072,320	\$ 8,363
18267	WKOP-TV	1,555,654	1,382,098	\$ 10,779
64545	WKOW	1,918,224	1,899,746	\$ 14,816
21432	WKPC-TV	1,525,919	1,517,701	\$ 11,837
65758	WKPD	283,454	282,250	\$ 2,201
34200	WKPI-TV	606,666	481,220	\$ 3,753
27504	WKPT-TV	1,131,213	887,806	\$ 6,924
58341	WKPV ¹⁰	1,132,932	731,199	\$ 4,676
11289	WKRC-TV	3,281,914	3,229,223	\$ 25,185
73187	WKRK-TV	1,526,600	1,526,075	\$ 11,902
73188	WKRN-TV	2,409,767	2,388,588	\$ 18,629
34222	WKSO-TV	658,441	642,090	\$ 5,008
40902	WKTC	1,387,229	1,386,779	\$ 10,815
60654	WKTV	1,573,503	1,342,387	\$ 10,469
73195	WKYC	4,180,327	4,124,135	\$ 32,164
24914	WKYT-TV	1,174,615	1,156,978	\$ 9,023

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Facility Id.	Call Sign	Population	Population	Fee Amount
71861	WKYU-TV	411,448	409,310	\$ 3,192
34181	WKZT-TV	1,044,532	1,020,878	\$ 7,962
18819	WLAE-TV	1,397,967	1,397,967	\$ 10,903
36533	WLAJ	4,100,475	4,063,963	\$ 31,695
2710	WLAX	469,017	447,381	\$ 3,489
68542	WLBT	948,671	947,857	\$ 7,392
39644	WLBZ	373,129	364,346	\$ 2,842
69328	WLED-TV	332,718	174,998	\$ 1,365
63046	WLEF-TV	200,517	199,188	\$ 1,553
73203	WLEX-TV	969,481	964,735	\$ 7,524
37806	WLFB	798,916	688,519	\$ 5,370
37808	WLFG	1,614,321	1,282,063	\$ 9,999
73204	WLFI-TV	2,243,009	2,221,313	\$ 17,324
73205	WLFL	3,747,583	3,743,960	\$ 29,199
19777	WLII-DT ^{4,8}	2,801,102	2,153,564	\$ 16,796
37503	WLIO	1,067,232	1,050,170	\$ 8,190
38336	WLIW	20,027,920	19,717,729	\$ 153,779
27696	WLJC-TV	1,401,072	1,281,256	\$ 9,993
71645	WLJT-DT	385,493	385,380	\$ 3,006
53939	WLKY	1,927,997	1,919,810	\$ 14,973
11033	WLLA	2,081,693	2,081,436	\$ 16,233
1222	WLMA	1,646,714	1,644,206	\$ 12,823
17076	WLMB	2,754,484	2,747,490	\$ 21,428
68518	WLMT	1,736,552	1,733,496	\$ 13,520
22591	WLNE-TV	6,429,522	6,381,825	\$ 49,772
74420	WLNS-TV	4,100,475	4,063,963	\$ 31,695
73206	WLNY-TV	7,501,199	7,415,578	\$ 57,834
84253	WLOO	913,960	912,674	\$ 7,118
56537	WLOS	3,086,751	2,544,410	\$ 19,844
37732	WLOV-TV	609,526	607,780	\$ 4,740
13995	WLOX	1,182,149	1,170,659	\$ 9,130

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Facility Id.	Call Sign	Population	Population	Fee Amount
38586	WLPB-TV	1,219,624	1,219,407	\$ 9,510
73189	WLPX-TV	1,066,912	1,022,543	\$ 7,975
66358	WLRN-TV	5,447,399	5,447,399	\$ 42,484
73226	WLS-TV	10,174,464	10,170,757	\$ 79,322
73230	WLTW-DT	5,427,398	5,427,398	\$ 42,328
37176	WLTX	1,580,677	1,578,645	\$ 12,312
37179	WLTZ	689,521	685,358	\$ 5,345
21259	WLUC-TV	92,246	85,393	\$ 666
4150	WLUK-TV	1,187,616	1,186,861	\$ 9,256
73238	WLVI	7,441,208	7,343,735	\$ 57,274
36989	WLVT-TV	10,613,847	9,474,797	\$ 73,894
3978	WLWC	3,281,532	3,150,875	\$ 24,574
46979	WLWT	3,367,381	3,355,009	\$ 26,166
54452	WLXI	4,184,851	4,166,318	\$ 32,493
55350	WLYH	3,211,085	2,799,192	\$ 21,831
43192	WMAB-TV	405,483	399,560	\$ 3,116
43170	WMAE-TV	686,076	653,173	\$ 5,094
43197	WMAH-TV	1,257,393	1,256,995	\$ 9,803
43176	WMAO-TV	369,696	369,343	\$ 2,881
47905	WMAQ-TV	9,914,395	9,913,272	\$ 77,314
59442	WMAR-TV	9,198,495	9,072,076	\$ 70,753
43184	WMAU-TV	642,328	636,504	\$ 4,964
43193	WMAV-TV	1,008,339	1,008,208	\$ 7,863
43169	WMAW-TV	726,173	715,450	\$ 5,580
46991	WMAZ-TV	1,185,678	1,136,616	\$ 8,864
66398	WMBB	935,027	914,607	\$ 7,133
43952	WMBC-TV	18,706,132	18,458,331	\$ 143,957
42121	WMBD-TV	742,729	742,660	\$ 5,792
83969	WMBF-TV	445,363	445,363	\$ 3,473
60829	WMCF-TV	612,942	609,635	\$ 4,755
9739	WMCN-TV	10,448,829	10,049,700	\$ 78,378

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Facility Id.	Call Sign	Population	Population	Fee Amount
19184	WMC-TV	2,047,403	2,043,125	\$ 15,934
189357	WMDE	6,384,827	6,257,910	\$ 48,805
73255	WMDN	278,227	278,018	\$ 2,168
16455	WMDT	731,868	731,868	\$ 5,708
39656	WMEA-TV	902,755	853,857	\$ 6,659
39648	WMEB-TV	511,761	494,574	\$ 3,857
70537	WMEC	218,027	217,839	\$ 1,699
39649	WMED-TV	30,488	29,577	\$ 231
39662	WMEM-TV	71,700	69,981	\$ 546
41893	WMFD-TV	1,561,367	1,324,244	\$ 10,328
41436	WMFP	5,792,048	5,564,295	\$ 43,396
61111	WMGM-TV	807,797	807,797	\$ 6,300
43847	WMGT-TV	601,894	601,309	\$ 4,690
73263	WMHT	1,719,949	1,550,977	\$ 12,096
68545	WMLW-TV	1,843,933	1,843,663	\$ 14,379
53819	WMOR-TV	5,394,541	5,394,541	\$ 42,072
81503	WMOW	121,150	105,957	\$ 826
65944	WMPB	7,452,728	7,343,061	\$ 57,269
43168	WMPN-TV	856,237	854,089	\$ 6,661
65942	WMPT	8,637,742	8,584,398	\$ 66,950
60827	WMPV-TV	1,423,052	1,422,411	\$ 11,093
10221	WMSN-TV	1,947,942	1,927,158	\$ 15,030
2174	WMTJ ¹¹	3,143,148	2,365,308	\$ 18,447
6870	WMTV	1,548,616	1,545,459	\$ 12,053
73288	WMTW	1,940,292	1,658,816	\$ 12,937
23935	WMUM-TV	925,814	920,835	\$ 7,182
73292	WMUR-TV	5,242,334	5,057,770	\$ 39,446
42663	WMVS	3,172,534	3,112,231	\$ 24,272
42665	WMVT	3,172,534	3,112,231	\$ 24,272
81946	WMWC-TV	946,858	916,989	\$ 7,152
56548	WMYA-TV	1,650,798	1,571,594	\$ 12,257

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Facility Id.	Call Sign	Population	Population	Fee Amount
74211	WMYD	5,750,989	5,750,873	\$ 44,851
20624	WMYT-TV	4,432,745	4,301,117	\$ 33,544
25544	WMYV	3,901,915	3,875,210	\$ 30,223
73310	WNAB	2,176,984	2,166,809	\$ 16,899
73311	WNAC-TV	7,310,183	6,959,064	\$ 54,274
47535	WNBC	21,952,082	21,399,204	\$ 166,892
83965	WNBW-DT	1,400,631	1,396,012	\$ 10,887
72307	WNCF	667,683	665,950	\$ 5,194
50782	WNCN	3,795,494	3,783,131	\$ 29,505
57838	WNCT-TV	1,935,414	1,887,929	\$ 14,724
41674	WNDU-TV	1,863,764	1,835,398	\$ 14,314
28462	WNDY-TV	2,912,963	2,855,253	\$ 22,268
71928	WNED-TV	1,387,961	1,370,480	\$ 10,688
60931	WNEH	1,261,482	1,255,218	\$ 9,789
41221	WNEM-TV	1,475,094	1,471,908	\$ 11,479
49439	WNEO	3,353,869	3,271,369	\$ 25,513
73318	WNEP-TV	3,429,213	2,838,000	\$ 22,134
18795	WNET	21,113,760	20,615,190	\$ 160,778
51864	WNEU	7,135,190	7,067,520	\$ 55,120
23942	WNGH-TV	5,744,856	5,595,366	\$ 43,638
67802	WNIN	908,275	891,946	\$ 6,956
41671	WNIT	1,305,447	1,305,447	\$ 10,181
48457	WNJB	20,787,272	20,036,393	\$ 156,264
48477	WNJN	20,787,272	20,036,393	\$ 156,264
48481	WNJS	7,383,483	7,343,269	\$ 57,270
48465	WNJT	7,383,483	7,343,269	\$ 57,270
73333	WNJU	21,952,082	21,399,204	\$ 166,892
73336	WNJX-TV ²	1,628,732	1,170,083	\$ 2,462
61217	WNKY	379,002	377,357	\$ 2,943
71905	WNLO	1,900,503	1,820,106	\$ 14,195
4318	WNMU	181,736	179,662	\$ 1,401

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Facility Id.	Call Sign	Population	Population	Fee Amount
73344	WNNE	792,551	676,539	\$ 5,276
54280	WNOL-TV	1,632,389	1,632,389	\$ 12,731
71676	WNPB-TV	2,130,047	1,941,707	\$ 15,143
62137	WNPI-DT	167,931	161,748	\$ 1,261
41398	WNPT	2,266,543	2,235,316	\$ 17,433
28468	WNPX-TV	2,084,890	2,071,017	\$ 16,152
61009	WNSC-TV	2,431,154	2,425,044	\$ 18,913
61010	WNTV	2,419,841	2,211,019	\$ 17,244
16539	WNTZ-TV	344,704	343,849	\$ 2,682
7933	WNUV	9,098,694	8,906,508	\$ 69,462
9999	WNVC	807,960	690,381	\$ 5,384
10019	WNVN	1,721,004	1,712,249	\$ 13,354
73354	WNWO-TV	2,872,428	2,872,250	\$ 22,401
136751	WNYA	1,923,118	1,651,777	\$ 12,882
30303	WNYB	1,785,269	1,756,096	\$ 13,696
6048	WNYE-TV	19,414,613	19,180,858	\$ 149,592
34329	WNYI	1,627,542	1,338,811	\$ 10,441
67784	WNYO-TV	1,430,491	1,409,756	\$ 10,995
73363	WNYT	1,679,494	1,516,775	\$ 11,829
22206	WNYW	20,075,874	19,753,060	\$ 154,054
69618	WOAI-TV	2,525,811	2,513,887	\$ 19,606
66804	WOAY-TV	581,486	443,210	\$ 3,457
41225	WOFL	4,048,104	4,043,672	\$ 31,537
70651	WOGX	1,112,408	1,112,408	\$ 8,676
8661	WOI-DT	1,173,757	1,170,432	\$ 9,128
39746	WOIO	3,821,233	3,745,335	\$ 29,210
71725	WOLE-DT ⁴	1,784,094	1,312,984	\$ 7,379
73375	WOLF-TV	2,990,646	2,522,858	\$ 19,676
60963	WOLO-TV	2,635,715	2,594,980	\$ 20,238
36838	WOOD-TV	2,507,053	2,501,084	\$ 19,506
67602	WOPX-TV	3,877,863	3,877,805	\$ 30,243

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Facility Id.	Call Sign	Population	Population	Fee Amount
64865	WORA-TV ^{3,13}	3,594,115	2,762,755	\$ 21,547
73901	WORO-DT	3,236,498	2,516,588	\$ 19,627
60357	WOST	1,193,381	853,762	\$ 6,658
66185	WOSU-TV	2,843,651	2,776,901	\$ 21,657
131	WOTF-TV	3,451,383	3,451,383	\$ 26,917
10212	WOTV	2,368,797	2,368,397	\$ 18,471
50147	WOUB-TV	756,762	734,988	\$ 5,732
50141	WOUC-TV	1,713,515	1,649,853	\$ 12,867
23342	WOWK-TV	1,159,175	1,083,663	\$ 8,451
65528	WOWT	1,380,979	1,377,287	\$ 10,741
31570	WPAN	1,254,821	1,254,636	\$ 9,785
51988	WPBF	3,190,307	3,186,405	\$ 24,851
21253	WPBN-TV	442,005	430,953	\$ 3,361
62136	WPBS-TV	338,448	301,692	\$ 2,353
13456	WPBT	5,416,604	5,416,604	\$ 42,244
13924	WPCB-TV	2,934,614	2,800,516	\$ 21,841
64033	WPCH-TV	5,948,778	5,874,163	\$ 45,813
4354	WPCT	195,270	194,869	\$ 1,520
69880	WPCW	3,393,365	3,188,441	\$ 24,867
17012	WPDE-TV	1,772,233	1,769,553	\$ 13,801
52527	WPEC	5,764,571	5,764,571	\$ 44,958
84088	WPFO	1,329,690	1,209,873	\$ 9,436
54728	WPGA-TV	559,495	559,025	\$ 4,360
60820	WPGD-TV	2,355,629	2,343,715	\$ 18,279
73875	WPGH-TV	3,236,098	3,121,767	\$ 24,347
2942	WPGX	425,098	422,872	\$ 3,298
73879	WPHL-TV	10,421,216	10,246,856	\$ 79,915
73881	WPIX	20,948,273	20,501,774	\$ 159,893
53113	WPLG	5,588,748	5,588,748	\$ 43,587
11906	WPMI-TV	1,468,001	1,467,594	\$ 11,446
10213	WPMT	2,412,561	2,191,501	\$ 17,092

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Facility Id.	Call Sign	Population	Population	Fee Amount
18798	WPNE-TV	1,161,295	1,160,631	\$ 9,052
73907	WPNT	3,172,170	3,064,423	\$ 23,899
28480	WPPT	10,613,847	9,474,797	\$ 73,894
51984	WPPX-TV	8,044,823	7,839,141	\$ 61,137
47404	WPRI-TV	7,254,721	6,990,606	\$ 54,520
51991	WPSD-TV	883,814	879,213	\$ 6,857
12499	WPSG	10,798,264	10,529,460	\$ 82,119
66219	WPSU-TV	1,055,133	868,013	\$ 6,770
73905	WPTA	1,099,180	1,099,180	\$ 8,573
25067	WPTD	3,423,417	3,411,727	\$ 26,608
25065	WPTO	2,961,254	2,951,883	\$ 23,022
59443	WPTV-TV	5,840,102	5,840,102	\$ 45,547
57476	WPTZ	792,551	676,539	\$ 5,276
8616	WPVI-TV	11,491,587	11,302,701	\$ 88,150
48772	WPWR-TV	9,957,301	9,954,828	\$ 77,638
51969	WPXA-TV	6,587,205	6,458,510	\$ 50,370
71236	WPXC-TV	1,561,014	1,561,014	\$ 12,174
5800	WPXD-TV	5,249,447	5,249,447	\$ 40,940
37104	WPXE-TV	3,067,071	3,057,388	\$ 23,845
48406	WPXG-TV	2,577,848	2,512,150	\$ 19,592
73312	WPXH-TV	1,471,601	1,451,634	\$ 11,321
73910	WPXI	3,300,896	3,197,864	\$ 24,940
2325	WPXJ-TV	2,357,870	2,289,706	\$ 17,857
52628	WPXK-TV	1,801,997	1,577,806	\$ 12,305
21729	WPXL-TV	1,639,180	1,639,180	\$ 12,784
48608	WPXM-TV	5,153,621	5,153,621	\$ 40,193
73356	WPXN-TV	20,878,066	20,454,468	\$ 159,524
27290	WPXP-TV	5,565,072	5,565,072	\$ 43,402
50063	WPXQ-TV	3,281,532	3,150,875	\$ 24,574
70251	WPXR-TV	1,375,640	1,200,331	\$ 9,361
40861	WPXS	2,339,305	2,251,498	\$ 17,559

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
53065	WPXT	1,002,128	952,535	\$ 7,429
37971	WPXU-TV	700,488	700,488	\$ 5,463
67077	WPXV-TV	1,919,794	1,919,794	\$ 14,972
74091	WPXW-TV	8,075,268	8,024,342	\$ 62,582
21726	WPXX-TV	1,562,675	1,560,834	\$ 12,173
73319	WQAD-TV	1,101,012	1,089,523	\$ 8,497
65130	WQCW	1,307,345	1,236,020	\$ 9,640
71561	WQEC	183,969	183,690	\$ 1,433
41315	WQED	3,529,305	3,426,684	\$ 26,725
3255	WQHA	3,322,840	2,368,215	\$ 18,470
60556	WQHS-DT	3,996,567	3,952,672	\$ 30,827
53716	WQLN	602,232	577,633	\$ 4,505
52075	WQMY	410,269	254,586	\$ 1,986
64550	WQOW	369,066	358,576	\$ 2,797
5468	WQPT-TV	941,381	933,107	\$ 7,277
64690	WQPX-TV	1,644,283	1,212,587	\$ 9,457
52408	WQRF-TV	1,375,774	1,354,979	\$ 10,567
2175	WQTO ¹¹	2,864,201	1,598,365	\$ 5,728
8688	WRAL-TV	3,852,675	3,848,801	\$ 30,017
10133	WRAY-TV	4,184,851	4,166,318	\$ 32,493
64611	WRAZ	3,800,594	3,797,515	\$ 29,617
136749	WRBJ-TV	1,030,831	1,028,010	\$ 8,017
3359	WRBL	1,493,140	1,461,459	\$ 11,398
57221	WRBU	2,933,497	2,929,776	\$ 22,849
54940	WRBW	4,080,267	4,077,341	\$ 31,799
59137	WRCB	1,587,742	1,363,582	\$ 10,635
47904	WRC-TV	8,188,601	8,146,696	\$ 63,536
54963	WRDC	3,972,477	3,966,864	\$ 30,938
55454	WRDQ	3,930,315	3,930,315	\$ 30,653
73937	WRDW-TV	1,564,584	1,533,682	\$ 11,961
66174	WREG-TV	1,642,307	1,638,585	\$ 12,779

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Facility Id.	Call Sign	Population	Population	Fee Amount
61011	WRET-TV	2,419,841	2,211,019	\$ 17,244
73940	WREX	2,303,027	2,047,951	\$ 15,972
54443	WRFB ¹³	2,674,527	1,975,375	\$ 2,628
73942	WRGB	1,759,432	1,550,958	\$ 12,096
411	WRGT-TV	3,451,036	3,416,078	\$ 26,642
74416	WRIC-TV	2,059,152	1,996,075	\$ 15,567
61012	WRJA-TV	1,204,291	1,201,900	\$ 9,374
412	WRLH-TV	2,017,508	1,959,111	\$ 15,279
61013	WRLK-TV	1,229,094	1,228,616	\$ 9,582
43870	WRLM	3,960,217	3,945,408	\$ 30,770
74156	WRNN-TV	19,853,836	19,615,370	\$ 152,980
73964	WROC-TV	1,203,412	1,185,203	\$ 9,243
159007	WRPT	110,009	109,937	\$ 857
20590	WRPX-TV	2,637,949	2,634,141	\$ 20,544
62009	WRSP-TV	1,102,162	1,100,077	\$ 8,580
40877	WRTV	2,919,683	2,895,164	\$ 22,579
15320	WRUA	2,985,428	2,224,902	\$ 17,352
71580	WRXY-TV	1,784,000	1,784,000	\$ 13,913
48662	WSAV-TV	1,000,315	1,000,309	\$ 7,801
6867	WSAW-TV	652,442	646,386	\$ 5,041
36912	WSAZ-TV	1,239,187	1,168,954	\$ 9,117
56092	WSBE-TV	7,535,710	7,266,304	\$ 56,670
73982	WSBK-TV	7,290,901	7,225,463	\$ 56,351
72053	WSBS-TV	42,952	42,952	\$ 335
73983	WSBT-TV	1,763,215	1,752,698	\$ 13,669
23960	WSB-TV	5,897,425	5,828,269	\$ 45,455
69446	WSCG	867,516	867,490	\$ 6,766
64971	WSCV	5,465,435	5,465,435	\$ 42,625
70536	WSEC	538,090	536,891	\$ 4,187
49711	WSEE-TV	613,176	595,476	\$ 4,644
21258	WSES	1,829,499	1,796,561	\$ 14,011

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73988	WSET-TV	1,575,886	1,340,273	\$ 10,453
13993	WSFA	1,166,744	1,132,826	\$ 8,835
11118	WSFJ-TV	1,675,987	1,667,150	\$ 13,002
10203	WSFL-TV	5,344,129	5,344,129	\$ 41,679
72871	WSFX-TV	970,833	970,833	\$ 7,572
73999	WSIL-TV	672,560	669,176	\$ 5,219
4297	WSIU-TV	1,019,939	937,070	\$ 7,308
74007	WSJV	1,651,178	1,644,683	\$ 12,827
78908	WSKA	546,588	431,354	\$ 3,364
74034	WSKG-TV	892,402	633,163	\$ 4,938
76324	WSKY-TV	1,934,585	1,934,519	\$ 15,087
57840	WSLS-TV	1,447,286	1,277,753	\$ 9,965
21737	WSMH	2,339,224	2,327,660	\$ 18,153
41232	WSMV-TV	2,447,769	2,404,766	\$ 18,755
70119	WSNS-TV	9,914,395	9,913,272	\$ 77,314
74070	WSOC-TV	3,706,808	3,638,832	\$ 28,379
66391	WSPA-TV	3,388,945	3,227,025	\$ 25,168
64352	WSPX-TV	1,298,295	1,174,763	\$ 9,162
17611	WSRE	1,354,495	1,353,634	\$ 10,557
63867	WSST-TV	331,907	331,601	\$ 2,586
60341	WSTE-DT	3,723,967	3,000,000	\$ 23,397
21252	WSTM-TV	1,455,586	1,379,393	\$ 10,758
11204	WSTR-TV	3,297,280	3,286,795	\$ 25,634
19776	WSUR-DT ⁸	3,714,790	3,000,000	\$ 7,379
2370	WSVI	50,601	50,601	\$ 395
63840	WSVN	5,588,748	5,588,748	\$ 43,587
73374	WSWB	1,530,002	1,102,316	\$ 8,597
28155	WSWG	381,004	380,910	\$ 2,971
71680	WSWP-TV	902,592	694,697	\$ 5,418
74094	WSYM-TV	1,568,403	1,567,920	\$ 12,228
73113	WSYR-TV	1,329,977	1,243,098	\$ 9,695

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Facility Id.	Call Sign	Population	Population	Fee Amount
40758	WSYT	1,970,721	1,739,071	\$ 13,563
56549	WSYX	2,635,937	2,592,420	\$ 20,218
65681	WTAE-TV	2,995,755	2,860,979	\$ 22,313
23341	WTAJ-TV	1,187,718	948,598	\$ 7,398
4685	WTAP-TV	512,358	494,914	\$ 3,860
416	WTAT-TV	1,111,476	1,111,476	\$ 8,668
67993	WTBY-TV	15,858,470	15,766,438	\$ 122,962
29715	WTCE-TV	2,620,599	2,620,599	\$ 20,438
65667	WTCI	1,216,209	1,104,698	\$ 8,616
67786	WTCT	608,457	607,620	\$ 4,739
28954	WTCV ^{5,9}	3,254,481	2,500,195	\$ 19,499
74422	WTEN	1,902,431	1,613,747	\$ 12,586
9881	WTGL	3,707,507	3,707,507	\$ 28,915
27245	WTGS	966,519	966,357	\$ 7,537
70655	WTHI-TV	978,126	928,582	\$ 7,242
70162	WTHR	2,949,339	2,901,633	\$ 22,630
147	WTIC-TV	5,318,753	4,707,697	\$ 36,715
26681	WTIN-TV ⁷	3,716,312	2,987,150	\$ 2,462
66536	WTIU	1,570,257	1,569,135	\$ 12,238
1002	WTJP-TV	1,947,743	1,907,300	\$ 14,875
4593	WTJR	334,527	334,221	\$ 2,607
70287	WTJX-TV	135,017	121,498	\$ 948
47401	WTKR	2,149,376	2,149,375	\$ 16,763
82735	WTLF	349,696	349,691	\$ 2,727
23486	WTLH	1,065,127	1,065,105	\$ 8,307
67781	WTLJ	1,622,365	1,621,227	\$ 12,644
65046	WTLV	1,757,600	1,739,021	\$ 13,563
74098	WTMJ-TV	3,096,406	3,085,983	\$ 24,068
74109	WTNH	7,845,782	7,332,431	\$ 57,186
19200	WTNZ	1,699,427	1,513,754	\$ 11,806
590	WTOC-TV	993,098	992,658	\$ 7,742

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74112	WTOG	5,268,364	5,267,177	\$ 41,079
4686	WTOK-TV	417,919	412,276	\$ 3,215
13992	WTOL	4,487,440	4,479,518	\$ 34,936
21254	WTOM-TV	120,369	117,121	\$ 913
74122	WTOV-TV	3,892,886	3,619,899	\$ 28,232
82574	WTPC-TV	2,049,246	2,042,851	\$ 15,932
86496	WTPX-TV	255,972	255,791	\$ 1,995
6869	WTRF-TV	2,941,511	2,565,375	\$ 20,007
67798	WTSF	922,441	851,465	\$ 6,641
11290	WTSP	5,506,869	5,489,954	\$ 42,816
4108	WTTA	5,583,544	5,576,649	\$ 43,492
74137	WTTE	2,690,341	2,650,354	\$ 20,670
22207	WTTG	8,101,358	8,049,329	\$ 62,777
56526	WTTK	2,844,384	2,825,807	\$ 22,038
74138	WTTT	1,877,570	1,844,214	\$ 14,383
56523	WTTV	2,522,077	2,518,133	\$ 19,639
10802	WTTW	9,776,348	9,776,348	\$ 76,246
74148	WTVA	823,492	810,123	\$ 6,318
22590	WTVC	1,579,628	1,366,976	\$ 10,661
8617	WTVD	3,790,354	3,775,757	\$ 29,447
55305	WTVE	5,156,905	5,152,997	\$ 40,188
36504	WTVF	2,384,622	2,367,601	\$ 18,465
74150	WTVG	4,405,350	4,397,113	\$ 34,293
74151	WTVH	1,390,502	1,327,319	\$ 10,352
10645	WTVI	2,856,703	2,829,960	\$ 22,071
63154	WTVJ	5,458,451	5,458,451	\$ 42,570
595	WTVM	1,498,667	1,405,957	\$ 10,965
72945	WTVS	1,409,708	1,398,825	\$ 10,909
28311	WTVR	678,884	678,539	\$ 5,292
51597	WTVQ-DT	989,786	983,552	\$ 7,671
57832	WTVR-TV	1,816,197	1,809,035	\$ 14,109

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Facility Id.	Call Sign	Population	Population	Fee Amount
16817	WTVS	5,511,091	5,510,837	\$ 42,979
68569	WTVT	5,473,148	5,460,179	\$ 42,584
3661	WTVW	839,003	834,187	\$ 6,506
35575	WTVX	3,157,609	3,157,609	\$ 24,626
4152	WTVY	974,532	971,173	\$ 7,574
40759	WTVZ-TV	2,156,534	2,156,346	\$ 16,817
66908	WTWC-TV	1,061,101	1,061,079	\$ 8,275
20426	WTWO	737,341	731,294	\$ 5,703
81692	WTWV	1,527,511	1,526,625	\$ 11,906
51568	WTFX-TV	10,784,256	10,492,549	\$ 81,831
41065	WTFX-TV	1,054,514	1,054,322	\$ 8,223
8532	WUAB	3,821,233	3,745,335	\$ 29,210
12855	WUCF-TV	3,707,507	3,707,507	\$ 28,915
36395	WUCW	3,664,480	3,657,236	\$ 28,523
69440	WUFT	1,372,142	1,372,142	\$ 10,701
413	WUHF	1,152,580	1,147,972	\$ 8,953
8156	WUJA	2,638,361	1,977,410	\$ 15,422
69080	WUNC-TV	4,184,851	4,166,318	\$ 32,493
69292	WUND-TV	1,504,532	1,504,532	\$ 11,734
69114	WUNE-TV	3,146,865	2,625,942	\$ 20,480
69300	WUNF-TV	2,625,583	2,331,723	\$ 18,185
69124	WUNG-TV	3,605,143	3,588,220	\$ 27,985
60551	WUNI	7,209,571	7,084,349	\$ 55,251
69332	WUNJ-TV	1,116,458	1,116,458	\$ 8,707
69149	WUNK-TV	1,991,039	1,985,696	\$ 15,486
69360	WUNL-TV	3,055,263	2,834,274	\$ 22,105
69444	WUNM-TV	1,357,346	1,357,346	\$ 10,586
69397	WUNP-TV	1,402,186	1,393,524	\$ 10,868
69416	WUNU	1,202,495	1,201,481	\$ 9,370
83822	WUNW	1,856,918	1,333,273	\$ 10,398
6900	WUPA	5,966,454	5,888,379	\$ 45,923

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13938	WUPL	1,721,320	1,721,320	\$ 13,425
10897	WUPV	1,933,664	1,914,643	\$ 14,932
19190	WUPW	2,100,914	2,099,572	\$ 16,375
23128	WUPX-TV	1,102,435	1,089,118	\$ 8,494
65593	WUSA	8,750,706	8,446,074	\$ 65,871
4301	WUSI-TV	339,507	339,507	\$ 2,648
60552	WUTB	8,523,983	8,381,042	\$ 65,364
30577	WUTF-TV	7,918,927	7,709,189	\$ 60,124
57837	WUTR	526,114	481,957	\$ 3,759
415	WUTV	1,589,376	1,557,474	\$ 12,147
16517	WUVC-DT	3,768,817	3,748,841	\$ 29,237
48813	WUVG-DT	6,029,495	5,965,975	\$ 46,529
3072	WUVN	1,233,568	1,157,140	\$ 9,025
60560	WUVP-DT	10,421,216	10,246,856	\$ 79,915
9971	WUXP-TV	2,316,872	2,305,293	\$ 17,979
417	WVAH-TV	1,373,555	1,295,383	\$ 10,103
23947	WVAN-TV	1,026,862	1,025,950	\$ 8,001
65387	WVBT	1,885,169	1,885,169	\$ 14,702
72342	WVCY-TV	3,111,641	3,102,097	\$ 24,193
60559	WVEA-TV	4,553,004	4,552,113	\$ 35,502
74167	WVEC	2,098,679	2,092,868	\$ 16,322
5802	WVEN-TV	3,921,016	3,919,361	\$ 30,567
61573	WVEO ⁵	1,091,825	757,978	\$ 4,676
69946	WVER	888,756	758,441	\$ 5,915
10976	WVFX	711,483	618,730	\$ 4,825
47929	WVIA-TV	3,429,213	2,838,000	\$ 22,134
3667	WVII-TV	368,022	346,874	\$ 2,705
70309	WVIR-TV	1,945,637	1,908,395	\$ 14,884
74170	WVIT	5,846,093	5,357,639	\$ 41,784
18753	WVIZ	3,695,223	3,689,173	\$ 28,772
70021	WVLA-TV	1,897,179	1,897,007	\$ 14,795

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Facility Id.	Call Sign	Population	Population	Fee Amount
81750	WVLR	1,412,728	1,300,554	\$ 10,143
35908	WVLT-TV	1,888,607	1,633,633	\$ 12,741
74169	WVNS-TV	916,451	588,963	\$ 4,593
11259	WVNY	742,579	659,270	\$ 5,142
29000	WVOZ-TV ⁹	1,132,932	731,199	\$ 4,676
71657	WVPB-TV	992,798	959,526	\$ 7,483
60111	WVPT	767,268	642,173	\$ 5,008
70491	WVPX-TV	4,147,298	4,114,920	\$ 32,092
66378	WVPY	756,696	632,649	\$ 4,934
67190	WVSN	2,948,832	2,137,333	\$ 16,669
66943	WVTA	760,072	579,703	\$ 4,521
69940	WVTB	455,880	257,445	\$ 2,008
74173	WVTM-TV	2,009,346	1,940,153	\$ 15,131
74174	WVTV	3,091,132	3,083,108	\$ 24,045
77496	WVUA	2,209,921	2,160,101	\$ 16,847
4149	WVUE-DT	1,658,125	1,658,125	\$ 12,932
4329	WVUT	273,293	273,215	\$ 2,131
74176	WVVA	1,037,632	722,666	\$ 5,636
3113	WVXF	85,191	78,556	\$ 613
12033	WWAY	1,208,625	1,208,625	\$ 9,426
30833	WWBT	1,924,502	1,892,842	\$ 14,762
20295	WWCP-TV	2,811,278	2,548,691	\$ 19,877
24812	WWCW	1,390,985	1,212,308	\$ 9,455
23671	WWDP	5,792,048	5,564,295	\$ 43,396
21158	WWHO	2,762,344	2,721,504	\$ 21,225
14682	WWJE-DT	7,209,571	7,084,349	\$ 55,251
72123	WWJ-TV	5,562,031	5,561,777	\$ 43,376
166512	WWJX	518,866	518,846	\$ 4,046
6868	WWLP	3,838,272	3,077,800	\$ 24,004
74192	WWL-TV	1,788,624	1,788,624	\$ 13,949
3133	WWMB	1,547,974	1,544,778	\$ 12,048

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74195	WWMT	2,538,485	2,531,309	\$ 19,742
68851	WWNY-TV	375,600	346,623	\$ 2,703
74197	WWOR-TV	19,853,836	19,615,370	\$ 152,980
65943	WWPB	3,197,858	2,775,966	\$ 21,650
23264	WWPX-TV	2,299,441	2,231,612	\$ 17,404
68547	WWRs-TV	2,324,155	2,321,066	\$ 18,102
61251	WWSB	3,340,133	3,340,133	\$ 26,050
23142	WWSI	11,269,831	11,098,540	\$ 86,558
16747	WWTI	196,531	190,097	\$ 1,483
998	WWTO-TV	6,760,133	6,760,133	\$ 52,722
26994	WWTV	1,034,174	1,022,322	\$ 7,973
84214	WWTW	1,527,511	1,526,625	\$ 11,906
26993	WWUP-TV	116,638	110,592	\$ 863
23338	WXBU	4,030,693	3,538,096	\$ 27,594
61504	WXCW	1,687,947	1,687,947	\$ 13,164
61084	WXEL-TV	5,416,604	5,416,604	\$ 42,244
60539	WXFT-DT	10,174,464	10,170,757	\$ 79,322
23929	WXGA-TV	608,494	606,849	\$ 4,733
51163	WXIA-TV	6,179,680	6,035,625	\$ 47,072
53921	WXII-TV	3,630,551	3,299,114	\$ 25,730
146	WXIN	2,836,532	2,814,815	\$ 21,953
39738	WXIX-TV	2,911,054	2,900,875	\$ 22,624
414	WXLV-TV	4,364,244	4,334,365	\$ 33,804
68433	WXMI	1,988,970	1,988,589	\$ 15,509
64549	WXOW	425,378	413,264	\$ 3,223
6601	WXPX-TV	4,594,588	4,592,639	\$ 35,818
74215	WXTV-DT	20,538,272	20,130,459	\$ 156,997
12472	WXTX	699,095	694,837	\$ 5,419
11970	WXXA-TV	1,680,670	1,537,868	\$ 11,994
57274	WXXI-TV	1,184,860	1,168,696	\$ 9,115
53517	WXXV-TV	1,191,123	1,189,584	\$ 9,278

		Service Area	Terrain Limited	Terrain Limited
Facility Id.	Call Sign	Population	Population	Fee Amount
10267	WXYZ-TV	5,622,543	5,622,140	\$ 43,847
77515	WYCI	35,873	26,508	\$ 207
70149	WYCW	3,388,945	3,227,025	\$ 25,168
62219	WYDC	560,266	449,486	\$ 3,506
18783	WYDN	2,577,848	2,512,150	\$ 19,592
35582	WYDO	1,330,728	1,330,728	\$ 10,378
25090	WYES-TV	1,872,245	1,872,059	\$ 14,600
53905	WYFF	2,626,363	2,416,551	\$ 18,847
49803	WYIN	6,956,141	6,956,141	\$ 54,251
24915	WYMT-TV	1,180,276	863,881	\$ 6,737
17010	WYOU	2,879,196	2,226,883	\$ 17,367
77789	WYOW	91,839	91,311	\$ 712
13933	WYPX-TV	1,529,500	1,413,583	\$ 11,025
4693	WYTV	4,898,622	4,535,576	\$ 35,373
5875	WYZZ-TV	1,042,140	1,036,721	\$ 8,085
15507	WZBJ	1,626,017	1,435,762	\$ 11,198
28119	WZDX	1,596,771	1,514,654	\$ 11,813
70493	WZME	5,996,408	5,544,708	\$ 43,243
81448	WZMQ	73,423	72,945	\$ 569
71871	WZPX-TV	2,039,157	2,039,157	\$ 15,903
136750	WZRB	952,279	951,693	\$ 7,422
418	WZTV	2,312,658	2,301,187	\$ 17,947
83270	WZVI	76,992	75,863	\$ 592
19183	WZVN-TV	1,981,488	1,981,488	\$ 15,454
49713	WZZM	1,574,546	1,548,835	\$ 12,079

¹ Call signs WIPM and WIPR are stations in Puerto Rico that are linked together with a total fee of \$24,175.

² Call signs WNJX and WAPA are stations in Puerto Rico that are linked together with a total fee of \$24,175.

³ Call signs WKAQ and WORA are stations in Puerto Rico that are linked together with a total fee of \$24,175.

⁴ Call signs WOLE and WLII are stations in Puerto Rico that are linked together with a total fee of \$24,175.

⁵ Call signs WVEO and WTCV are stations in Puerto Rico that are linked together with a total fee of \$24,175.

⁶ Call signs WJPX and WJWN are stations in Puerto Rico that are linked together with a total fee of \$24,175.

⁷ Call signs WAPA and WTIN are stations in Puerto Rico that are linked together with a total fee of \$24,175.

⁸ Call signs WSUR and WLII are stations in Puerto Rico that are linked together with a total fee of \$24,175.

⁹ Call signs WVOZ and WTCV are stations in Puerto Rico that are linked together with a total fee of \$24,175.

¹⁰ Call signs WJPX and WKPV are stations in Puerto Rico that are linked together with a total fee of \$24,175.

¹¹ Call signs WMTJ and WQTO are stations in Puerto Rico that are linked together with a total fee of \$24,175.

¹² Call signs WIRS and WJPX are stations in Puerto Rico that are linked together with a total fee of \$24,175.

¹³ Call signs WRFB and WORA are stations in Puerto Rico that are linked together with a total fee of \$24,175.

APPENDIX H

FY 2022 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.

Fee Category	Annual Regulatory Fee (U.S. \$s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25
Microwave (per license) (47 CFR part 101)	25
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	40
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	10
Aviation (Ground) (per license) (47 CFR part 87)	20
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers)	.14
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 27)	590
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	590
AM Radio Construction Permits	655
FM Radio Construction Permits	1,145
AM and FM Broadcast Radio Station Fees	See Table Below
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	\$.008430 See Appendix G for fee amounts due, also available at https://www.fcc.gov/licensing-databases/fees/regulatory-fees
Digital TV Construction Permits	5,200

Fee Category	Annual Regulatory Fee (U.S. \$s)
Low Power TV, Class A TV, TV/FM Translators & FM Boosters (47 CFR part 74)	330
CARS (47 CFR part 78)	1,715
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS)	1.16
Interstate Telecommunication Service Providers (per revenue dollar)	.00452
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.12
Earth Stations (47 CFR part 25)	620
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	124,060
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	340,005
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	141,670
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215
International Bearer Circuits - Terrestrial/Satellites (per Gbps circuit)	\$39
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below

FY 2022 RADIO STATION REGULATORY FEES						
Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	\$1,050	\$755	\$655	\$720	\$1,145	\$1,310
25,001 – 75,000	\$1,575	\$1,135	\$985	\$1,080	\$1,720	\$1,965
75,001 – 150,000	\$2,365	\$1,700	\$1,475	\$1,620	\$2,575	\$2,950
150,001 – 500,000	\$3,550	\$2,550	\$2,215	\$2,435	\$3,870	\$4,430
500,001 – 1,200,000	\$5,315	\$3,820	\$3,315	\$3,645	\$5,795	\$6,630
1,200,001 – 3,000,000	\$7,980	\$5,740	\$4,980	\$5,470	\$8,700	\$9,955
3,000,001 – 6,000,000	\$11,960	\$8,600	\$7,460	\$8,200	\$13,040	\$14,920
>6,000,000	\$17,945	\$12,905	\$11,195	\$12,305	\$19,570	\$22,390

FY 2022 International Bearer Circuits - Submarine Cable Systems

Submarine Cable Systems (capacity as of December 31, 2021)	Fee Ratio	FY 2022 Regulatory Fees
Less than 50 Gbps	.0625 Units	\$8,610
50 Gbps or greater, but less than 250 Gbps	.125 Units	\$17,215
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	\$34,430
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	\$68,860
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	\$137,715
6,500 Gbps or greater	2.0 Units	\$275,430

APPENDIX I

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 included in the *Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Notice of Proposed Rulemaking (*FY 2023 NPRM*) released in June 2023.² The Commission sought written public comment on the proposals in the *FY 2023 NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. In the *Report and Order*, we adopt a regulatory fee schedule to collect \$390,192,000 in congressionally mandated regulatory fees for FY 2023. Under section 9 of the Communications Act of 1934, as amended, (Act or Communications Act),⁴ regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's oversight and regulatory activities in an amount that can be reasonably expected to equal the amount of the Commission's annual appropriation.⁵ The objective in adopting the regulatory fee schedule is to comply with the Congressional mandate to recover the total amount of the Commission's annual appropriation, from the various industries for which the Commission provides oversight and/or regulation, with a fair, administrable and sustainable fee framework based on the number of full-time equivalents (FTEs) involved in such oversight and regulation in the licensing bureaus.

3. In the *FY 2023 NPRM*,⁶ the Commission sought comment on the methodology for assessing regulatory fees and the FY 2023 regulatory fee schedule, as well as on other issues related to the collection of regulatory fees including: (i) the calculation of television and radio broadcaster regulatory fees, including the modification of the existing grid by adding a new tier for AM and FM radio stations; (ii) defining the category of operations for on-orbit servicing (OOS) and rendezvous and proximity operations (RPO) ("In-Space Servicing" Industries) for regulatory fee purposes, including whether a separate regulatory fee category is necessary and how to apply regulatory fees to OOS and RPO spacecraft specifically operating near the geostationary satellite orbit arc; (iii) evaluating how the Commission's proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility; (iv) considering whether to continue in FY 2023 several of the temporary measures the Commission implemented in FYs 2020 through 2022;⁷ and (v) whether to permit regulatory fee payors to prepay their regulatory fees in installments. For FY 2023, the Commission adopts, with modification, the regulatory fee schedule set forth in Appendices B and C to the *Report and Order*.

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. 847 (1996).

² *Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Notice of Proposed Rulemaking, (*FY 2023 NPRM*).

³ 5 U.S.C. § 604.

⁴ 47 U.S.C. § 159.

⁵ 47 U.S.C. § 159(a).

⁶ See *FY 2023 NPRM*, generally.

⁷ A National Emergency concerning COVID-19 was originally declared on March 13, 2020, by Presidential Proclamation No. 9994. 85 FR 15337 (2020). It has been extended on multiple occasions, most recently on February 10, 2023. 88 FR 9385 (2023). In the February 10, 2023 statement extending the national emergency, the President also "anticipated terminating the national emergency concerning the COVID-19 pandemic on May 11, 2023." *Id.*

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁸ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.¹¹ A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹²

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹³ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁴ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁵

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁶ The

⁸ *Id.* § 604 (a)(3).

⁹ *Id.* § 604(a)(4).

¹⁰ *Id.* § 601(6).

¹¹ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹² See 15 U.S.C. § 632.

¹³ See 5 U.S.C. § 601(3)-(6).

¹⁴ 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)

¹⁵ *Id.*

¹⁶ See 5 U.S.C. § 601(4).

Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁷ 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.¹⁸

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁹ U.S. Census Bureau data from the 2017 Census of Governments²⁰ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²¹ Of this number, there were 36,931 general purpose governments (county,²² municipal, and town or township²³) with populations of less than 50,000 and 12,040 special purpose governments—-independent school districts²⁴ with enrollment

¹⁷ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number 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.

¹⁸ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description 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.

¹⁹ See 5 U.S.C. § 601(5).

²⁰ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

²¹ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

²² See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²³ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

²⁴ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

populations of less than 50,000.²⁵ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²⁶

10. *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 Carriers²⁷ is the closest industry with an SBA small business size standard.²⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.³⁰ Of this number, 2,964 firms operated with fewer than 250 employees.³¹ 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.³² Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.³³ 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.

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.³⁴ 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.³⁵ By exception, establishments providing satellite television distribution services using facilities

²⁵ 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.

²⁶ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

²⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁹ *Id.*

³⁰ 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>.

³¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³² 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>.

³³ *Id.*

³⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁵ *Id.*

and infrastructure that they operate are included in this industry.³⁶ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁷

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁰ Additionally, based on Commission data in the 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.⁴¹ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.⁴² Consequently, using the SBA's small business size standard, most of these providers 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.⁴³ Wired Telecommunications Carriers⁴⁴ 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.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

³⁶ *Id.*

³⁷ 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.

³⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁴⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁴² *Id.*

⁴³ 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.

⁴⁴ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

250 employees.⁴⁷ 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.⁴⁸ Of these providers, the Commission estimates that 3,230 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.

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁰ is the closest industry with a 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 that operated in this industry for the entire year.⁵³ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 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.⁵⁵ 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. *Operator Service Providers ("OSPs")*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.⁵⁶ The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.⁵⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the

⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴⁹ *Id.*

⁵⁰ 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: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁵⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁶ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁷ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

entire year.⁵⁸ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services.⁶⁰ Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.⁶¹ Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

16. *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.⁶² 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.⁶³ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶⁴ Mobile virtual network operators (MVNOs) are included in this industry.⁶⁵ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁶ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁷ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁸ 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.⁶⁹ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁷⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

⁵⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁵⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁶¹ *Id.*

⁶² See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁶⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁷⁰ *Id.*

17. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁷¹ 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.⁷² Mobile virtual network operators (MVNOs) are included in this industry.⁷³ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷⁴ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷⁵ Of that number, 1,375 firms operated with fewer than 250 employees.⁷⁶ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.⁷⁷ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.⁷⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *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."⁷⁹ 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.⁸⁰ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.⁸¹ Of this number, 242 firms had revenue of less than \$25 million.⁸² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report,

⁷¹ See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

⁷⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁷⁸ *Id.*

⁷⁹ See U.S. Census Bureau, *2017 NAICS Definition*, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁸⁰ See 13 CFR § 121.201, NAICS Code 517410.

⁸¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVF, NAICS Code 517410, <https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVF&hidePreview=false>.

⁸² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that
(continued....)

as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.⁸³ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.⁸⁴ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

19. *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.⁸⁵ 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.⁸⁶ 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.⁸⁷ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁸⁸ 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 Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

20. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."⁹¹ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.⁹² These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.⁹³ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the

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.

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, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁸⁹ 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>.

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, "515120 Television Broadcasting," <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

⁹² *Id.*

⁹³ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

entire year.⁹⁴ Of that number, 657 firms had revenue of less than \$25,000,000.⁹⁵ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

21. As of March 31, 2023, there were 1,375 licensed commercial television stations.⁹⁶ 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.⁹⁷ 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.

22. *Radio Stations.* This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.”⁹⁸ Programming may originate in their own studio, from an affiliated network, or from external sources.⁹⁹ The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.¹⁰⁰ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.¹⁰¹ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.¹⁰² Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

⁹⁴ 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>.

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. 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.

⁹⁶ *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>.

⁹⁷ *Id.*

⁹⁸ See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

⁹⁹ *Id.*

¹⁰⁰ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

¹⁰¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

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 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.

23. 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.¹⁰³ 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.¹⁰⁴ 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.

24. We note, however, that in assessing whether a business concern qualifies as “small” under the above definition, business (control) affiliations¹⁰⁵ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of “small business” requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of “small business” is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

25. *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.¹⁰⁶ Based on industry data, there are about 420 cable companies in the U.S.¹⁰⁷ Of these, only seven have more than 400,000 subscribers.¹⁰⁸ In addition, under the Commission's rules, a “small system” is a cable system serving 15,000 or fewer subscribers.¹⁰⁹ Based on industry data, there are about 4,139 cable systems (headends) in

¹⁰³ *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>.

¹⁰⁴ *Id.*

¹⁰⁵ “[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).

¹⁰⁶ 47 CFR § 76.901(d).

¹⁰⁷ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹⁰⁸ 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).

¹⁰⁹ 47 CFR § 76.901(c).

the U.S.¹¹⁰ Of these, about 639 have more than 15,000 subscribers.¹¹¹ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

26. *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.”¹¹² 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.¹¹³ Based on industry data, only six cable system operators have more than 677,000 subscribers.¹¹⁴ 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.¹¹⁵ 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.

27. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.¹¹⁶ Transmission facilities may be based on a single technology or combination of technologies.¹¹⁷ 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

¹¹⁰ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

¹¹¹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

¹¹² 47 U.S.C. § 543(m)(2).

¹¹³ *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).

¹¹⁴ 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).

¹¹⁵ 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).

¹¹⁶ *See* U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹¹⁷ *Id.*

wired broadband Internet services.¹¹⁸ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹¹⁹

28. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹²⁰ U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.¹²¹ Of this number, 2,964 firms operated with fewer than 250 employees.¹²² Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.¹²³ DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

29. *RespOrgs*. Responsible Organizations, or RespOrgs (also referred to as Toll-Free Number (TFN) providers), are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber.¹²⁴ Based on information on the website of SOMOS, the entity that maintains a registry of Toll-Free Number providers (SMS/800 TFN Registry) for the more than 42 million Toll-Free numbers in North America, and the TSS Registry, a centralized registry for the use of Toll-Free Numbers in text messaging and multimedia services, there were approximately 446 registered RespOrgs/Toll-Free Number providers in July 2021.¹²⁵ RespOrgs are often wireline carriers, however they can include non-carrier entities. Accordingly, the description below for RespOrgs include both Carrier RespOrgs and Non-Carrier RespOrgs.

30. *Carrier RespOrgs*. Neither the Commission nor the SBA have developed a small business size standard for Carrier RespOrgs. *Wired Telecommunications Carriers*,¹²⁶ and *Wireless*

¹¹⁸ See *id.* Included in this industry are: broadband Internet service providers (e.g., cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

¹¹⁹ *Id.*

¹²⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹²¹ 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>.

¹²² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²³ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report*, Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

¹²⁴ See 47 CFR § 52.101(b).

¹²⁵ See www.somos.com, “Find a Toll-Free Service Provider,” <https://www.somos.com/find-toll-free-number?searchType=provider&alpha=true&certified=false&services=&serviceName=&keyword=&page=1>. SOMOS serves as the North American Numbering Plan Administrator (NANPA) for more than 800 million local and wireless telephone numbers and as the Reassigned Number Database Administrator. See also 2020 NANPA Annual Report at 97. https://nationalnanpa.com/reports/2020_NANPA_Annual_Report.pdf.

¹²⁶ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

*Telecommunications Carriers (except Satellite)*¹²⁷ are the closest industries with a SBA small business size applicable to Carrier RespOrgs.¹²⁸

31. *Wired Telecommunications Carriers* are 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.¹²⁹ 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. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.¹³⁰ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹³¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.¹³² Of this number, 2,964 firms operated with fewer than 250 employees.¹³³ Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

32. *Wireless Telecommunications Carriers (except Satellite)* engage in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.¹³⁴ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹³⁵ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.¹³⁶ Of this number, 2,837 firms employed fewer than 250 employees.¹³⁷ Based on this data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

¹²⁷ 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>.

¹²⁸ The industry descriptions selected for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs.

¹²⁹ See *supra* note 3.

¹³⁰ *Id.*

¹³¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹³² 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>.

¹³³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁴ See *supra* note 4.

¹³⁵ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³⁶ 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 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

¹³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

33. Non-Carrier RespOrgs. Neither the Commission, nor the SBA have developed a small business size standard Non-Carrier RespOrgs. *Other Services Related to Advertising*¹³⁸ and *Other Management Consulting Services*¹³⁹ are the closest industries with a SBA small business size applicable to Non-Carrier RespOrgs.¹⁴⁰

34. The *Other Services Related to Advertising* industry contains establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services).¹⁴¹ The SBA small business size standard for this industry classifies a business as small that has annual receipts of \$16.5 million or less.¹⁴² U.S. Census Bureau data for 2017 show that 5,650 firms operated in this industry for the entire year.¹⁴³ Of that number, 3,693 firms operated with revenue of less than \$10 million.¹⁴⁴ Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

35. The *Other Management Consulting Services* industry contains establishments primarily engaged in providing management consulting services (except administrative and general management consulting; human resources consulting; marketing consulting; or process, physical distribution, and logistics consulting).¹⁴⁵ Establishments providing telecommunications or utilities management consulting services are included in this industry.¹⁴⁶ The SBA small business size standard for this industry classifies a business as small if it has annual receipts of \$16.5 million or less.¹⁴⁷ U.S. Census Bureau data for 2017 show that 4,696 firms operated in this industry for the entire year.¹⁴⁸ Of that

¹³⁸ See U.S. Census Bureau, 2017 NAICS Definition, “541890 Other Services Related to Advertising,”

<https://www.census.gov/naics/?input=541890&year=2017&details=541890>.

¹³⁹ See U.S. Census Bureau, 2017 NAICS Definition, “541618 Other Management Consulting Services,”

<https://www.census.gov/naics/?input=541618&year=2017&details=541618>.

¹⁴⁰ The industry descriptions selected for Carrier and Non-Carrier RespOrgs were selected because as a group they refer generically and comprehensively to all RespOrgs.

¹⁴¹ See *supra* note 15.

¹⁴² See 13 CFR § 121.201, NAICS Code 541890.

¹⁴³ 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 541890, <https://data.census.gov/cedsci/table?y=2017&n=541890&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁴⁴ *Id.* The 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 further 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.

¹⁴⁵ See *supra* note 16.

¹⁴⁶ *Id.*

¹⁴⁷ See 13 CFR § 121.201, NAICS Code 541618.

¹⁴⁸ 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 541618, <https://data.census.gov/cedsci/table?y=2017&n=541618&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

number, 3,700 firms had revenue of less than \$10 million.¹⁴⁹ Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

D. E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

36. The *Report and Order* does not adopt any new reporting, recordkeeping, or other compliance requirements. Small and other regulated entities are required to pay regulatory fees on an annual basis. The cost of compliance with the annual regulatory fee assessment for small entities is the amount assessed for their the regulatory fee category and should not require small entities to hire professionals in order to comply. Small entities that qualify can take advantage of the exemption from payment of regulatory fees allowed under the de minimis threshold. Small entities may request a waiver, reduction, deferral and/or installment payment of their FY 2023 regulatory fees. The waiver process is an easier filing process for smaller entities that may not be familiar with our procedural filing rules.

E. F. Steps Taken to Minimize the 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.”¹⁵⁰

38. The *Report and Order* for FY 2023 maintains several approaches from the prior regulatory fee framework which will minimize the significant economic impact for some small entities. Specifically, the FY 2023 regulatory fee framework maintains: (1) the methodology adopted using the population-based calculations for TV broadcasters that was initially adopted because it is a more fair methodology for smaller broadcasters; (2) the flexibility for regulatory payees to request a waiver, reduction, deferral and/or installment payments of their regulatory fees; and (3) the application of the Commission’s de minimis threshold rule adopted pursuant to section 9(e)(2) of the Act,¹⁵¹ which exempts a regulatee from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is \$1,000 or less for the fiscal year. The de minimis threshold applies only to filers of annual regulatory fees and provides relief to small and other entities with lower annual regulatory fees.

39. The Commission received comments proposing alternatives to various elements of the methodology for assessing regulatory fees and the FY 2023 regulatory fee schedule that the Commission proposed in the *FY 2023 NPRM*, as well as other issues related to the collection of regulatory fees. Below we discuss a number of these proposals and why they were not adopted.

40. Methodology for Assessing Regulatory Fees and FTE Allocation. Satellite Operators suggested that instead of assessing regulatory fees on an annual basis, based on our annual appropriation, we should instead determine the allocation of regulatory fee costs associated with each non-application

¹⁴⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue for this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We further 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.

¹⁵⁰ 5 U.S.C. § 604(a)(6).

¹⁵¹ 47 U.S.C. § 159(e)(2). Section 9(e)(2) of the Act permits the Commission to exempt a party from paying regulatory fees if “in the judgment of the Commission, the cost of collecting a regulatory fee established under this section from a party would exceed the amount collected from such party.”

proceeding and identify its allocation in the document that initiates the proceeding.¹⁵² We rejected this proposal in the *Report and Order* because it is inconsistent with section 9 of the Act. We are required to conduct an annual regulatory fee proceeding each year, and to recover the annual appropriation. Further, this approach would fail to recover the Commission's entire appropriation on an annual basis, and would not be administratively feasible because we cannot assess the duration or impact of a proceeding in a manner that accurately correlates it to the burden of FTE time annually.

41. Non-High Cost Universal Service Fund FTEs. The National Association of Broadcasters (NAB) proposed that we reallocate the burden of FTE time dedicated to non-high cost universal service fund issues as direct to a core bureau or bureaus.¹⁵³ We declined to adopt NAB's suggested reallocation because it conflates the nature of the work of the Commission's FTEs with the identity of the entities that ultimately receive a subsidy from any particular program. The FTE time devoted to the non-high cost universal service programs is not in oversight and regulation of regulatory fee payors, but is oversight and management of the programs generally. The programs tie funding eligibility to the beneficiary, i.e., a school, a library, a low-income individual or family, or healthcare provider, and not to Commission regulatory fee payors.

42. Other FTE Allocations: Office of Engineering and Technology, Enforcement Bureau, and Consumer and Governmental Affairs Bureau. We rejected proposals that suggest that the burden of FTE time dedicated to equipment authorization should have its own fee category or be characterized as direct to any particular category of fee payor. OET FTEs benefit the work of the Commission as a whole and are not specific to any particular regulatory fee category. We also rejected Intelsat's contention that fraud investigations by the Enforcement Bureau benefit their related industries,¹⁵⁴ finding that the fraud investigations handled benefit consumers in general as well as other entities. Further, these investigations are primarily with respect to federally funded programs, and not specifically to benefit regulatory fee payors for any particular industry. We accepted NAB's proposal that for regulatory fee purposes, the burden of certain FTE time in the Media Bureau should be considered as indirect because it is devoted to enforcement responsibilities of the Commission's political programming rules, the cable and broadcast must carry rules, and the rules related to broadcast retransmission consent, among others.¹⁵⁵ We agree, and in order to be consistent with the manner that we treat other enforcement efforts in the Commission, this FTE time should be reallocated as indirect for regulatory fee purposes.

43. New Regulatory Fee Categories Discussed by Commenters. We do not have a sufficient basis, consistent with section 9 of the Act, for the adoption of new regulatory fee categories at this time, and therefore we rejected such proposals. There is no basis for the Commission to change its prior determinations on this issue that such fees would be unworkable and logistically infeasible to collect. Specifically, Satellite Operators proposed that we again seek comment on four fee categories: (i) broadband Internet access providers, (ii) database administrators that enable unlicensed operations, (iii) equipment manufacturers, and (iv) experimental licenses. The Commission previously sought comment on these specific issues and as no additional information has been provided in the record to support such proposals, we are not adopting such categories in the *Report and Order* or seeking further comment on them. Although the Commission has adopted new fee categories in the past, in those instances the Commission determined that significant FTE resources of a core bureau were being spent on oversight and regulatory activities with respect to a specific service necessitating a new regulatory fee category. Those circumstances are not present here.

¹⁵² Satellite Operators Comments at 10-11.

¹⁵³ NAB Comments at 10-16.

¹⁵⁴ Intelsat Comments at 5.

¹⁵⁵ NAB Comments at 9.

44. Similarly, we rejected Intelsat and Satellite Coalition’s proposal to adopt a regulatory fee for holders of experimental licenses.¹⁵⁶ These licenses are approved for a proposed experiment or range of experiments, and not for an actual operational service under established service rules. It is likely we would have to consider multiple regulatory fee categories and multiple ways of allocating proportional fees to such categories. Accordingly, based on the record, we did not adopting a new regulatory fee category for broadband Internet access providers, database administrators that enable unlicensed operations, equipment manufacturers, or experimental licenses.

45. Space Station Regulatory Fees. We did not adopt a number of proposals to alter the allocated 80% of space station regulatory fees to geostationary orbit space stations (GSO) and 20% of the space station regulatory fees to non-geostationary orbit satellite systems (NGSO). Satellite Operators contended that we should not attribute only 20% of the costs of regulating NGSO systems to “less complex” satellite systems (principally Earth Exploration Satellite Service (EESS) systems) and to maintain the dividing line of “20 or fewer U.S. authorized earth stations” between “less complex” NGSO systems and “other” NGSO systems.¹⁵⁷ Kinéis argued that defining only a single category of “less complex” systems, and defining them simply as systems designed to communicate with 20 or fewer U.S. authorized earth stations, is inadequate as the sole basis for distinguishing fee liability among myriad types of NGSO satellite systems.¹⁵⁸

46. We did not find any reason to deviate from our calculation of fees using the 20/80 allocation in our review of the FTE time for space stations and for FY 2023. We used the 20/80 allocation between “less complex” and “other” NGSO space station fees, respectively, within the NGSO fee category. These allocations continue to accurately reflect the amount of work involved in regulating NGSO systems and the number of reasonably related benefits provided to the payors of each fee category. We are not convinced by the Satellite Operators that the FTE time spent on less complex and other NGSO systems issues has changed sufficiently to warrant a revision in the 20/80 allocation. We also rejected the contention of Space X that we miscalculated the space station regulatory fees because we based our calculations on nine NGSO systems instead of ten.¹⁵⁹ We recognize that there are ten licensed systems; however one of the licensed systems is not yet operational, and hence should not be counted in the unit count.

47. Further, we rejected Spaceflight’s proposals for fee assessments for “In-Space Servicing” Industries.¹⁶⁰ Due to the somewhat nascent nature of “in-space servicing” industries, we currently do not have a regulatory fee category for such spacecraft. As noted in the *FY 23 NPRM*, there have been a limited number of such operations and we tentatively concluded that it was too early to identify exactly where operations, such as those in low-Earth orbit (LEO), might fit into the regulatory fee structure in the future. We accordingly deferred our determination of whether to create a new fee category for such services to a future fiscal year once the regulatory framework under which space stations performing in-space servicing operations, including OOS, RPO, space situational awareness (SSA), and space domain awareness (SDA) operations, and the scope of those operations, is better understood.

48. Kinéis proposed that the Commission adopt a multi-tiered approach to NGSO regulatory fees that would charge each provider an amount commensurate with its demands on Commission resources and the benefits it receives through regulation based on these enumerated factors, consistent

¹⁵⁶ Intelsat Comments at 5-6; Satellite Operators Comments at 10.

¹⁵⁷ Satellite Operators Comments at 12.

¹⁵⁸ Kinéis Comments at 3-4.

¹⁵⁹ Space X Comments at 1-3.

¹⁶⁰ Spaceflight Comments at 4-8

with the Act.¹⁶¹ While we find the proposal to be useful, it requires further comment and evaluation. There is not time to fully consider this proposal prior to the need to adopt regulatory fees before the end of the current fiscal year. It will be more efficient to seek comment on proposals like this together with other proposals that might arise as part of the anticipated reexamination of regulatory fees for space and earth stations in light of the creation of the Space Bureau.

49. International Bearer Circuit Regulatory Fees—Submarine Cable Systems. In the Report and Order the Commission rejected the Submarine Cable Coalition’s request to revise the Commission’s regulatory fee methodology for submarine cable operators,¹⁶² which is based upon the lit capacity of the fiber-optic submarine cable. We disagreed with the Submarine Cable Coalition’s contention that the Commission’s regulatory fee methodology is contrary to the Communications Act, and that the Commission has not developed regulatory fees that are reasonably related to the benefits provided.¹⁶³ Moreover, we did not find persuasive its arguments that the Commission’s assessment of these regulatory fees based on capacity is contrary to the Communications Act, and is not reasonably related to the benefits provided. The Commission has long held that capacity is a reasonable basis to assess regulatory costs among the submarine cable regulatory fee payors that benefit from the Commission’s work, and find it reasonable to continue to assess higher regulatory fees on licensees with larger facilities that benefit more from the Commission’s work and thus should pay a larger proportion of the Commission’s costs.

G. Report to Congress

50. 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.¹⁶⁴ 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*.¹⁶⁵

¹⁶¹ Kinéis Comments at 16.

¹⁶² Submarine Cable Coalition Comments at 3-4.

¹⁶³ *Id.*

¹⁶⁴ See 5 U.S.C. § 801(a)(1)(A).

¹⁶⁵ See 5 U.S.C. § 604(b).

APPENDIX J

Rule Changes

Part 1 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs 2,5,9,13; 28 U.S.C. 2461

1. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees for wireless radio services.

Exclusive use services (per license)	Fee Amount ¹
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90)	
a) New, Renew/Mod (FCC 601 & 159)	\$25.00
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$25.00
c) Renewal Only (FCC 601 & 159)	\$25.00
d) Renewal Only (Electronic Filing) (FCC 601 & 159)	\$25.00
220 MHz Nationwide	\$25.00
a) New, Renew/Mod (FCC 601 & 159)	
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$25.00

¹ Note that “small fees” are collected in advance for the entire license term. Therefore, the annual fee amount shown in this table that is a small fee (categories 1 through 5) must be multiplied by a 10-year license term, as appropriate, to arrive at the total amount of regulatory fees owed. Also, application fees may apply as detailed in § 1.1102 of this chapter.

c) Renewal Only (FCC 601 & 159)	\$25.00
d) Renewal Only (Electronic Filing) (FCC 601 & 159)	\$25.00
2. Microwave (47 CFR Pt. 101) (Private)	
a) New, Renew/Mod (FCC 601 & 159)	\$25.00
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$25.00
c) Renewal Only (FCC 601 & 159)	\$25.00
d) Renewal Only (Electronic Filing) (FCC 601 & 159)	\$25.00

3. Shared Use Services**Land Mobile (Frequencies
Below 470 MHz – except
220 MHz)**

a) New, Renew/Mod (FCC 601 & 159)	\$10.00
b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$10.00
c) Renewal Only (FCC 601 & 159)	\$10.00
d) Renewal Only (Electronic Filing) (FCC 601 & 159)	\$10.00

Rural Radio (Part 22)

a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$10.00
b) Renewal, Minor Renew/Mod (Electronic Filing) (FCC 601 & 159)	\$10.00

Marine Coast

a) New Renewal/Mod (FCC 601 & 159)	\$40.00
b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	\$40.00
c) Renewal Only (FCC 601 & 159)	\$40.00
d) Renewal Only (Electronic Filing) (FCC 601 & 159)	\$40.00

Aviation Ground

a) New, Renewal/Mod (FCC 601 & 159)	\$20.00
b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	\$20.00
c) Renewal Only (FCC 601 & 159)	\$20.00
d) Renewal Only (Electronic Only) (FCC 601 & 159)	\$20.00

Marine Ship

a) New, Renewal/Mod (FCC 605 & 159)	\$15.00
b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	\$15.00
c) Renewal Only (FCC 605 & 159)	\$15.00
d) Renewal Only (Electronic Filing) (FCC 605 & 159)	\$15.00

Aviation Aircraft

a) New, Renew/Mod (FCC 605 & 159)	\$10.00
b) New, Renew/Mod (Electronic Filing)	\$10.00

(FCC 605 & 159)	
c) Renewal Only (FCC 605 & 159)	\$10.00
d) Renewal Only (Electronic Filing) (FCC 605 & 159)	\$10.00
4. CMRS Cellular/Mobile Services (per unit) (FCC 159)	\$.16 ²
5. CMRS Messaging Services (per unit) (FCC 159)	\$.08 ³
6. Broadband Radio Service (formerly MMDS and MDS)	\$ 700
7. Local Multipoint Distribution Service	\$ 700

2. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

Radio [AM and FM] (47 CFR part 73)	Fee Amount
1. <u>AM Class A</u>	
<=10,000 population	\$595
<10,001-25,000 population	\$990
25,001-75,000 population	\$1,485
75,001-150,000 population	\$2,230
150,001-500,000 population	\$3,345
500,001-1,200,000 population	\$5,010
1,200,001-3,000,000 population	\$7,525
3,000,001-6,000,000 population	\$11,275
>6,000,000 population	\$16,920
2. <u>AM Class B</u>	
<=10,000 population	\$430
<10,001-25,000 population	\$715
25,001-75,000 population	\$1,075
75,001-150,000 population	\$1,610
150,001-500,000 population	\$2,415
500,001-1,200,000 population	\$3,620

² These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

³ These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

	1,200,001-3,000,000 population	\$5,435
	3,000,001-6,000,000 population	\$8,145
	>6,000,000 population	\$12,220
3.	<u>AM Class C</u>	
	<=10,000 population	\$370
	<10,001-25,000 population	\$620
	25,001-75,000 population	\$930
	75,001-150,000 population	\$1,395
	150,001-500,000 population	\$2,095
	500,001-1,200,000 population	\$3,135
	1,200,001-3,000,000 population	\$4,710
	3,000,001-6,000,000 population	\$7,060
	>6,000,000 population	\$10,595
4.	<u>AM Class D</u>	
	<=10,000 population	\$410
	<10,001-25,000 population	\$680
	25,001-75,000 population	\$1,020
	75,001-150,000 population	\$1,530
	150,001-500,000 population	\$2,300
	500,001-1,200,000 population	\$3,440
	1,200,001-3,000,000 population	\$5,170
	3,000,001-6,000,000 population	\$7,745
	>6,000,000 population	\$11,620
5.	AM Construction Permit	\$620
6.	<u>FM Classes A, B1 and C3</u>	
	<=10,000 population	\$650
	<10,001-25,000 population	\$1,085
	25,001-75,000 population	\$1,630
	75,001-150,000 population	\$2,440
	150,001-500,000 population	\$3,665
	500,001-1,200,000 population	\$5,490
	1,200,001-3,000,000 population	\$8,245
	3,000,001-6,000,000 population	\$12,360
	>6,000,000 population	\$18,545
7.	<u>FM Classes B, C, C0, C1 and C2</u>	
	<=10,000 population	\$745
	<10,001-25,000 population	\$1,240
	25,001-75,000 population	\$1,860
	75,001-150,000 population	\$2,790
	150,001-500,000 population	\$4,190
	500,001-1,200,000 population	\$6,275
	1,200,001-3,000,000 population	\$9,425
	3,000,001-6,000,000 population	\$14,125
	>6,000,000 population	\$21,190
8.	FM Construction Permits	\$1,085

TV (47 CFR, part 73)**Digital TV (UHF and VHF Commercial Stations)**

- | | | |
|----|---------------------------------|--------------------------------|
| 1. | Digital TV Construction Permits | \$5,100 |
| 2. | Television Fee Factor | \$.007799 per population count |

Low Power TV, Class A TV, TV/FM Translator, & FM Booster (47 CFR part 74)	\$ 260
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3. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges for common carrier services.

Radio Facilities	Fee Amount
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	\$25.00

Carriers

- | | | |
|----|--|----------------------------|
| 1. | Interstate Telephone Service Providers
(per interstate and international end-user
revenues (see FCC Form 499-A)) | \$.00540 |
| 2. | Toll Free Number Fee | \$.13 per Toll Free Number |

4. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees for cable television services.

	Fee Amount
1. Cable Television Relay Service	\$1,720
2. Cable TV System, Including IPTV and DBS (per subscriber)	\$ 1.23 per subscriber
3. Direct Broadcast Satellite (DBS)	\$1.23 per subscriber

5. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees for international services.

- a. The following schedule applies for the listed services:

Fee Category	Fee Amount
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Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	\$117,580
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	\$347,755
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	\$130,405
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	\$12,215
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	\$575

b. *International Terrestrial and Satellite.* Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier terrestrial and satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. “Active circuits” for these purposes include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

The fee amount, per active Gbps circuit will be determined for each fiscal year.

International Terrestrial and Satellite (capacity as of December 31, 2022)	Fee Amount
Terrestrial Common Carrier and Non Common Carrier Satellite Common Carrier and Non-Common Carrier	\$26 per Gbps circuit

c. *Submarine cable:* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year.

FY 2023 International Bearer Circuits - Submarine Cable Systems

Submarine Cable Systems (capacity as of December 31, 2022)	Fee Ratio	FY 2021 Regulatory Fees
Less than 50 Gbps	.0625 Units	\$7,680
50 Gbps or greater, but less than 250 Gbps	.125 Units	\$15,355
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	\$30,705
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	\$61,410

3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	\$122,815
6,500 Gbps or greater	2.0 Units	\$245,630

6. Section 1.1166 is revised to read as follows:

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

The fees established by §§ 1.1152 through 1.1156 and associated interest charges and penalties may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of such fees, interest charges and penalties would promote the public interest. Requests to pay fees established by §§ 1.1152 through 1.1156 and associated interest charges and penalties in installments may be granted in accordance with § 1.1914. Requests for waiver, reduction or deferral of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waiver, reduction or deferral of regulatory fees shall be filed electronically, by submission to the following email address: regfeerelief@fcc.gov. All requests for waiver, reduction and deferral shall be acted upon by the Managing Director with the concurrence of the General Counsel. All such requests made pursuant to § 1.1166 may be combined in a single pleading.

(b) Deferrals of fees, interest, or penalties if granted, will be for a designated period of time not to exceed six months.

(c) Petitions for waiver of a regulatory fee, interest, or penalties must be accompanied by the required fee, interest, or penalties and FCC Form 159. Submitted fees, interest, or penalties will be returned if a waiver is granted. Waiver requests that do not include the required fees, interest, or penalties or forms will be dismissed unless a request to defer payment due to financial hardship, supported by documentation of the financial hardship, is included in the filing.

(d) Petitions for reduction of a fee, interest, or penalty must be accompanied by the full fee, interest, or penalty payment and Form 159. Petitions for reduction that do not include the required fees, interest, or penalties or forms will be dismissed unless a request to defer payment due to financial hardship, supported by documentation of the financial hardship, is included in the filing.

(e) Petitions for waiver of a fee, interest, or penalty based on financial hardship, including bankruptcy, will not be granted, even if otherwise consistent with Commission policy, to the extent that the total regulatory and application fees, interest, or penalties for which waiver is sought exceeds \$500,000 in any fiscal year, including regulatory fees due in any fiscal year, but paid prior to the due date. In computing this amount, the amounts owed by an entity and its subsidiaries and other affiliated entities will be aggregated. In cases where the claim of financial hardship is not based on bankruptcy, waiver, partial waiver, or deferral of fees, interest, or penalties above the \$500,000 cap may be considered on a case-by-case basis.

7. Section 1.1914 is revised to read as follows:

§ 1.1914 Collection in installments.

(a) Subject to the Commission's rules pertaining to the installment loan program (see e.g., [47 CFR § 1.2110\(g\)](#)), subpart Q or other agreements among the parties, the terms of which will control, whenever feasible, the Commission shall collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments. Requests for installment payment of non-regulatory fee debt shall be filed electronically, by submission to the following email address: installmentplanrequest@fcc.gov. Requests for installment payment of regulatory fees may be combined with other requests for regulatory fee relief in accordance with § 1.1166(a) and shall be filed electronically by submission to regfeerelief@fcc.gov. The Commission will obtain financial statements from debtors who represent that they are unable to pay in one lump sum and which are able to verify independently such representations (see [31 CFR 902.2\(g\)](#)). The Commission will require and obtain a legally enforceable written agreement from the debtor that specifies all of the terms of the arrangement, including, as appropriate, sureties and other indicia of creditworthiness (see Federal Credit Reform Act of 1990, [2 U.S.C. 661, et seq.](#), OMB Circular A-129), and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(c) Security for deferred payments will be obtained in appropriate cases. The Commission may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the Commission's option.

(d) The Commission may deny the extension of credit to any debtor who fails to provide the records requested or fails to show an ability to pay the debt.

In the Matter of)
)
 Lifeline and Link Up Reform and Modernization) WC Docket No. 11-42
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Released: August 25, 2023

8232

than 2,200 buildings have been destroyed or damaged, and thousands of people have been displaced in the country's deadliest wildfire in modern times.⁸ This is impacting an area with the highest prevalence of food insecurity in the state.⁹ In response, the President has declared a state of emergency for Maui and Hawai'i Counties, allowing federal authorities to provide disaster relief.¹⁰

3. Measures that the FCC has already taken include deploying personnel to Hawai'i to determine the impact to public safety and emergency alerting communications capabilities, granting requests for special temporary authority ("STA"), waiving various rules and filing deadlines, and obtaining information for damage assessment and analysis.¹¹ In this Order, we waive certain Universal Service Fund (USF) Lifeline program rules to more effectively target support to the disaster area and to the people affected by the Hawai'i Wildfires.

4. *The Lifeline Program.* The Lifeline program currently offers qualifying low-income consumers discounts on fixed or mobile voice or broadband Internet access service, as well as on bundled service.¹² Qualifying low-income consumers can receive a \$9.25 monthly discount on Lifeline-supported broadband Internet access service or a \$5.25 monthly discount on Lifeline-supported voice service.¹³ Lifeline consumers residing on qualifying Tribal lands¹⁴ can receive up to a \$34.25 monthly discount on Lifeline-supported service.¹⁵ Consumers can confirm their eligibility for Lifeline through the National Lifeline Eligibility Verifier (National Verifier). Applicants may qualify for the Lifeline program by participating in a qualifying federal assistance program (Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income, Federal Public Housing Assistance, or Veterans and Survivors Pension Benefit) or by having an income at or below 135% of the Federal Poverty Guidelines.¹⁶ Consumers living on qualifying Tribal lands can also qualify for the Lifeline program by meeting the above criteria or by participating in a qualifying Tribal-specific federal assistance program.¹⁷ If an

(Continued from previous page)

⁷ Holly Yan et al., *'Like something out of a horror movie': At least 6 dead and communities decimated in Maui wildfires* (Aug. 10, 2023), <https://www.cnn.com/2023/08/09/weather/maui-county-wildfires-hurricane-dora/index.html>.

⁸ See Jorge Garcia and Sandra Stojanovic, Reuters, *Maui's displaced grow anxious as wildfire recovery drags on* (Aug. 16, 2023), <https://www.reuters.com/world/us/maui-officials-urge-patience-search-missing-inches-ahead-2023-08-15/>.

⁹ Ayurella Horn-Muller, Axios, *Hawai'i wildfires 'downward, spiral-like impacts' on food* (Aug. 21, 2023), <https://www.axios.com/2023/08/21/hawaii-wildfires-downward-spiral-like-impacts-on-food>.

¹⁰ See FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Hawaii (Aug. 10, 2023), <https://www.fema.gov/press-release/20230810/president-joseph-r-biden-jr-approves-major-disaster-declaration-hawaii> (last visited Aug. 24, 2023); The White House, President Joseph R. Biden, Jr. Approves Hawaii Disaster Declaration (Aug. 10, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/08/10/president-joseph-r-biden-jr-approves-hawaii-disaster-declaration-3/> (last visited Aug. 24, 2023). The Major Disaster Declaration authorized assistance for individuals affected by the wildfires in Maui County, and public assistance for emergency protective measures in Hawaii County. *Id.*

¹¹ Press Release, FCC, Chairwoman Commits FCC To Supporting Hawaii As They Recover From Wildfire Devastation (Aug. 18, 2023) <https://www.fcc.gov/document/chairwoman-commits-fcc-supporting-hawaii-wildfire-recovery>.

¹² 47 CFR § 54.401.

¹³ See 47 CFR § 54.403(a)(1)-(2).

¹⁴ See 47 CFR § 54.400(e) (defining Tribal lands for purposes of the Lifeline program, including "Hawaiian Home Lands—areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, *et. seq.*, as amended").

¹⁵ See 47 CFR § 54.403(a)(3).

¹⁶ See 47 CFR § 54.409.

applicant does not participate in one of the qualifying programs, they may submit documentation that establishes that they meet the Lifeline program's income-based eligibility criteria.¹⁸

5. If the National Verifier cannot automatically confirm a Lifeline applicant's eligibility, documentation provided by the applicant to demonstrate that they qualify under the program-based eligibility requirements is manually reviewed by the Universal Service Administrative Company (USAC).¹⁹ Acceptable documentation of program eligibility includes the current or prior year's statement of benefits from a qualifying assistance program, a notice or letter of participation in a qualifying Federal assistance program, program participation documents, or another official document demonstrating that the applicant, one or more of the applicant's dependents, or the applicant's household receives benefits from a qualifying assistance program.²⁰ If an applicant is trying to apply for Lifeline on the basis of their income, they can substantiate their eligibility by providing their prior year's state, federal, or Tribal tax return; a current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workers' Compensation statement of benefit; a federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information.²¹ If the applicant presents documentation of income that does not cover a full year, such as current pay stubs, the applicant must present the same type of documentation covering three consecutive months within the previous twelve months.²²

III. DISCUSSION

6. On our own motion, and consistent with the guidance detailed below, we temporarily waive the Lifeline eligibility requirements to permit households to enter the Lifeline program if they are receiving individual assistance from the Federal Emergency Management Agency's (FEMA) Individuals and Households Program (IHP)²³ as a result of the impacts of the Hawai'i Wildfires. Generally, the Commission's rules may be waived for good cause shown.²⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁶

(Continued from previous page)

¹⁷ See 47 CFR § 54.409(b) (listing the following qualifying Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance, Tribally-administered Temporary Assistance for Needy Families, Head Start (only those households meeting its income qualifying standard), and the Food Distribution Program on Indian Reservations).

¹⁸ See 47 CFR § 54.410(b)(i)(B).

¹⁹ See 47 CFR § 54.410.

²⁰ See, e.g., USAC, *Resolve Application Errors*, <https://www.usac.org/lifeline/national-verifier/how-to-use-nv/resolve-application-errors/> (last visited Aug. 24, 2023).

²¹ See *id.*

²² See *id.*

²³ Currently, Hawaii and Maui counties are covered within the Affected Disaster Areas designated by FEMA. However, only households in Maui county are eligible for individual assistance. See FEMA, *Hawaii Wildfires*, <https://www.fema.gov/disaster/4724/designated-areas> (last visited Aug. 24, 2023). We note that while the corresponding map includes Kalawao county, the text of the FEMA disaster declaration only includes Maui county as eligible for individual assistance.

²⁴ 47 CFR § 1.3.

²⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²⁶ *Northeast Cellular*, 897 F.2d at 1166.

7. We find that good cause exists to waive, for a period of six months from the date of release of this order, the Lifeline eligibility requirements in section 54.409(a)-(b) of the Commission's rules for households that are receiving individual assistance from FEMA's IHP as a result of the Hawai'i Wildfires.²⁷ To the extent necessary for this waiver to have its intended effect, we also waive definitional portions of our rules that reference these requirements at 54.409(a)-(b) and the de-enrollment requirements tied to the existing Lifeline eligibility standards for those households seeking to enter the program under this waiver.²⁸ The wildfires in Hawai'i present unique circumstances insofar as they appear to be the greatest natural disaster in recorded state history,²⁹ and the casualties and damage they caused have devastated families and communities.³⁰ Under the current disaster declaration, only households in Maui County may be eligible for individual assistance,³¹ but if the scope of households eligible for support through FEMA's IHP expands to cover other geographic areas in response to the Hawai'i Wildfires, households in those areas would also be able to demonstrate eligibility for Lifeline based on receiving support through FEMA's IHP. FEMA's IHP³² offers individual assistance and provides financial and direct services to eligible individuals and households affected by a disaster.³³ Households must apply for IHP support from FEMA, which verifies that a household's needs are directly caused by a declared disaster.³⁴ With this waiver, households benefiting from FEMA's IHP can use documentation confirming their participation in FEMA's IHP to participate in the Lifeline program. We note that while we are waiving the Lifeline program's eligibility requirements to temporarily allow FEMA's IHP as an eligible program, we are not waiving the program's requirement that limits participation in Lifeline to one benefit per household.³⁵ That limitation remains in effect for households seeking to enter the program by virtue of participation in FEMA's IHP. Individual economic households residing at the same address will still be able to participate in the Lifeline program by satisfying existing requirements documenting their independent economic status.³⁶

8. New enrollments into the Lifeline program that rely on this waiver are only permitted for six months from the date of release of this Order. We believe that this time frame will allow sufficient

²⁷ In the event that Hawaii implements a Disaster SNAP (D-SNAP) effort, individuals participating in D-SNAP can already qualify for the Lifeline program because SNAP is already one of the qualifying programs for Lifeline. Such an enrollment would operate the same way as any other Lifeline enrollment with SNAP as the qualifying program, and consumers receiving D-SNAP would not need special permission or waiver to demonstrate their eligibility using D-SNAP.

²⁸ See 47 CFR §§ 54.400(a),(j), 54.405(e)(1).

²⁹ See Sarah McCammon, Bill Dorman, National Public Radio, *Leaders in Hawaii call the wildfires the worst natural disaster in state history* (Aug. 11, 2023), <https://www.npr.org/2023/08/11/1193393681/leaders-in-hawaii-call-the-wildfires-the-worst-natural-disaster-in-state-history>.

³⁰ Martha Kelner, Sky News, *US war veteran says Hawaii wildfires are worse than Afghanistan* (Aug. 13, 2023), <https://news.sky.com/story/us-war-veteran-says-hawaii-wildfires-are-worse-than-afghanistan-12939128>.

³¹ See FEMA, *Hawaii Wildfires*, <https://www.fema.gov/disaster/4724/designated-areas> (last visited Aug. 24, 2023).

³² FEMA, *Individuals and Households Program*, <https://www.fema.gov/assistance/individual/program> (last visited Aug. 24, 2023).

³³ FEMA, *Individuals and Households Program*, <https://www.fema.gov/fact-sheet/individuals-and-households-program> (last visited Aug. 24, 2023).

³⁴ FEMA, *Individuals and Households Program*, <https://www.fema.gov/fact-sheet/individuals-and-households-program> (last visited Aug. 24, 2023).

³⁵ 47 CFR § 54.409(c). Consistent with this waiver action, the obligation to satisfy subsections (a) or (b) of 54.409, as referenced in 54.409(c), will be considered met by an individual's participation in FEMA's IHP.

³⁶ See USAC, *What is a Household?*, <https://www.lifelinesupport.org/what-is-a-household/> (last visited Aug. 24, 2023).

time for consumers to seek support from FEMA's IHP and be in a position to provide appropriate documentation to USAC to take advantage of this waiver. However, we delegate to the Wireline Competition Bureau the ability to extend this period of initial enrollment for additional time if there is evidence of a continuing need for FEMA IHP participants to be able to apply for the Lifeline benefit. If the Bureau deems such an extension appropriate, it shall release a Public Notice announcing the extension no later than one month before the end of the initial six month waiver period.

9. To implement this waiver, we direct USAC, the Lifeline program administrator, to put processes and procedures into effect that will allow consumers in the affected areas to enroll in the Lifeline program through their participation in FEMA's IHP. To this end, USAC shall ensure that its eligibility verification systems will allow it to receive documentation showing that a household is participating in FEMA's IHP as a result of the wildfires in Hawai'i. USAC shall also ensure that such documentation aligns with the Lifeline applicant's identity information, to ensure that individual households seeking to rely on this waiver to enter the program are actually participating in FEMA's IHP. Once enrolled in the program based on participation in FEMA's IHP, subscribers will be permitted to continue in the Lifeline program for a period of no longer than twelve months from the date of their enrollment, and USAC should conduct recertification activities consistent with existing requirements to recertify eligibility annually and de-enroll subscribers that are no longer eligible to participate in the Lifeline program accordingly.³⁷ Ongoing participation in FEMA's IHP alone will not allow a subscriber to continue to participate in the Lifeline program when they reach their recertification period, but if the household is otherwise eligible to participate in Lifeline they can continue in the program after confirming such eligibility through USAC's recertification processes. Finally, USAC shall prepare outreach materials and communications to publicize this effort through its regular communications channels. All of USAC's efforts directed in this Order shall be completed with as much speed as possible.

10. Pursuant to the statutory language of the Infrastructure Investment and Jobs Act (Infrastructure Act), consumers entering the Lifeline program under this waiver are not permitted to enter the Commission's Affordable Connectivity Program (ACP). The statute establishing the ACP specifically ties Lifeline enrollment into ACP to households that satisfy the requirements of 54.409(a) or (b).³⁸ Today's action waives those requirements for households participating in FEMA's IHP, but it does not modify the underlying rules. As such, we direct USAC to ensure that households entering the Lifeline program under this waiver cannot use their Lifeline enrollment to enroll in ACP. However, we note that the existing eligibility criteria for ACP are broader than the Lifeline program's criteria, and many households entering the Lifeline program under this waiver may already be able to apply for and receive the ACP benefit under existing ACP eligibility rules.

11. In adopting today's waiver of the Lifeline eligibility requirements for households receiving FEMA IHP support, we are not changing any other Lifeline program rules or requirements. That includes the Lifeline program's usage requirement, to the extent that it is not waived by Bureau action.³⁹ We also remind Eligible Telecommunications Carriers (ETCs) of their obligation to "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service."⁴⁰ The Commission expects that ETCs will publicize this opportunity to impacted households

³⁷ 47 CFR §§ 54.405(e)(4), 54.410(f).

³⁸ 47 U.S.C. § 1752(a)(6)(A). As noted above, applicants may qualify for Lifeline by virtue of participating in Disaster SNAP. Because Lifeline enrollments that relied on Disaster SNAP satisfy the requirements of 47 CFR § 54.409, those households may rely on their Lifeline enrollment to enroll in the ACP. *See supra* n.27.

³⁹ *See Affordable Connectivity Program et al.*, WC Docket No. 21-450, Order, DA 23-723 (WCB 2023) (waiving the Lifeline usage requirements in the Affected Disaster Areas through Oct. 31, 2023).

⁴⁰ 47 CFR § 54.405(b).

and modify their application systems to allow FEMA IHP participants to quickly apply and enroll for the Lifeline program under this waiver.

12. *Protecting Program Integrity.* We remain committed to protecting the integrity of the Lifeline program. Although we grant the waiver described herein, program participants and service providers remain otherwise subject to program integrity reviews, audits and investigations to determine compliance with FCC program rules and requirements. We require USAC to use its normal processes to recover funds that we discover were not used properly. Moreover, we emphasize that we retain the discretion to evaluate the uses of monies disbursed through the Lifeline program and to determine on a case-by-case basis if recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the Lifeline program under our own procedures and in cooperation with law enforcement agencies.

IV. PROCEDURAL MATTERS

13. This Order contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. Pursuant to 5 CFR § 1320.18(d), the Office of Management and Budget (OMB) has granted the Commission a temporary waiver of the PRA requirements specific to this waiver Order. Accordingly, we will not submit to OMB for review the information collection requirements that we describe in this Order.

V. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority in sections 1, 4(i), 4(j), 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C §§ 151, 154(i), 154(j), 254, and 403, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that sections 47 CFR §§ 54.400(a), (j), 54.405(e)(1), 54.409(a)-(b) of the Commission's rules are WAIVED to the extent provided herein.

15. IT IS FURTHER ORDERED, 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

Marlene H. Dortch
Secretary

In the Matter of)
)
Empowering Broadband Consumers) CG Docket No. 22-2
Through Transparency)

Released: August 29, 2023

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requirement to document each instance when a provider directs a consumer to a label at an alternative sales channel and to retain such documentation for two years. In addition, we make clear that wireless providers that opt to include government taxes in their base monthly price may note on the label that government taxes are included.

4. Our decisions here preserve consumer access to clear, easy-to-understand, and accurate information about the cost for broadband services and will empower consumers to choose services that best meet their needs and match their budgets and ensures that they are not surprised by unexpected charges or service quality that falls short of their expectations.

II. BACKGROUND

5. The Infrastructure Act, in relevant part, directs the Commission “[n]ot later than 1 year after the date of enactment of th[e] Act, to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.”⁴ Further, the Infrastructure Act requires that the label “include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period.”⁵

6. On January 27, 2022, we released a Notice of Proposed Rulemaking initiating a proceeding to implement section 60504 of the Infrastructure Act.⁶ Consistent with the Infrastructure Act’s mandate, we proposed a requirement that ISPs display broadband consumer labels that the Commission approved in 2016 as a safe harbor from enforcement of the broadband transparency requirements.⁷ The Commission also conducted three public hearings, which informed the record.⁸ Commenters and hearing participants agreed that labels are a simple and clear means to disclose information about broadband services but many urged us to modify the 2016 labels to better assist consumers in their purchasing decisions.⁹

7. On November 14, 2022, we adopted a new broadband label to help consumers comparison shop among broadband service plans.¹⁰ Specifically, we required ISPs to display, at the point of sale, a broadband consumer label containing critical information about the provider’s service offerings, including information about pricing, introductory rates, data allowances, performance metrics, and

⁴ Infrastructure Act § 60504(a). Before enactment of the Infrastructure Act, the President issued Executive Order 14036, which, in relevant part, encouraged the Commission to consider “initiating a rulemaking that requires broadband service providers to display a broadband consumer label, such as that described in the [2016 Public Notice] so as to give consumers clear, concise, and accurate information regarding provider prices and fees, performance, and network practices.” See Executive Order No. 14036, Promoting Competition in the American Economy, 86 FR 36987 (July 9, 2021).

⁵ Infrastructure Act § 60504(b)(1). The Infrastructure Act also directed the Commission to conduct a series of public hearings to assess: 1) how consumers evaluate broadband Internet access service plans; and 2) whether disclosures to consumers of information regarding broadband Internet access service plans, including the disclosures required under 47 CFR § 8.1, are available, effective, and sufficient. See *id.* § 60504(c). The Commission conducted three public hearings to solicit input from various stakeholders on the content, format, and location of the labels. See FCC, Broadband Consumer Labels, *Public Hearings on Broadband Labels* (Mar. 11, 2022, Apr. 7, 2022, and May 25, 2022), <https://www.fcc.gov/broadbandlabels>.

⁶ See *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Notice of Proposed Rulemaking, FCC 22-7 (rel. Jan. 27, 2022) (*Broadband Label NPRM*).

⁷ *Id.*, para. 14.

⁸ See *supra*, note 5.

⁹ *Broadband Label Order*, para. 11 & note 20.

¹⁰ *Id.*, para. 12.

whether the provider participates in the ACP.¹¹ We required that ISPs display the label for each stand-alone broadband Internet access service they currently offer for purchase, and that the label link to other important information such as network management practices, privacy policies, and other educational materials.¹²

8. In addition to label content, we adopted requirements for the label’s format and display location to ensure consumers can make side-by-side comparisons of various service offerings from an individual provider or from alternative providers—something essential for making informed decisions.¹³ In this way, the label resembles the well-known nutrition labels that consumers have come to rely on when shopping for food products.

9. Following the adoption of the *Broadband Label Order*, we received three petitions asking the Commission to clarify and/or reconsider certain label requirements. In the first petition, ACA Connects et al. ask the Commission to clarify or reconsider the requirements to: 1) itemize on the label all discretionary monthly fees that the provider passes through to the consumer; and 2) document consumer interactions regarding labels that occur through alternative sales channels (e.g., retail stores, kiosks, on the phone).¹⁴

10. In a second petition, a coalition of companies that provide customized broadband services to schools, libraries, and health care providers through the E-Rate and RHC Universal Fund Service (USF) programs requests that the Commission clarify that a broadband label is only required in E-Rate and RHC Program competitive bids for standard *mass-market* broadband internet services.¹⁵ They urge the Commission not to apply broadband labeling requirements to negotiated, non-mass-market services.¹⁶ The coalition specifically asks us to clarify that footnote 36 in the *Broadband Label Order* was meant to underscore that, regardless of the service provider’s “definition” or “name” for its offering, the enterprise/special access exemption applies when the service offering is customized for the beneficiary.

11. Finally, in the third petition, CTIA requests that the Commission clarify that the labels should accommodate the service options that wireless providers make available to consumers, even if they do not fit into the format of the label template. CTIA requests that providers be permitted to describe their offerings—specifically with regard to government taxes and data allowances—in alternative ways, as long as the disclosures are clear and accurate.¹⁷

¹¹ In the Infrastructure Act, Congress appropriated \$14.2 billion to transform the Emergency Broadband Benefit Program into the Affordable Connectivity Program (ACP), which provides eligible low-income households discounted Internet service and a one-time discount on a connected device from a participating provider with a co-pay. See *Affordable Connectivity Program, Emergency Broadband Benefit Program*, WC Docket Nos. 21-450 and 20-445, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (Jan. 21, 2022) (*ACP Order*). The ACP provides a monthly discount of up to \$30 for broadband service and up to \$75 a month for households on qualifying Tribal lands. See 47 CFR § 54.1803(a).

¹² As discussed in the *Broadband Label Order*, most providers will have six months from announcement of the Office of Management and Budget’s (OMB’s) approval of the rules to comply with the new label requirements, while smaller providers will have a year to come into compliance. See *Broadband Label Order*, section III.G. (Implementation Timelines).

¹³ *Broadband Label Order*, paras. 64-74, 88-99.

¹⁴ See ACA Connects Joint Petition at 1.

¹⁵ See Cincinnati Bell Joint Petition at 1.

¹⁶ See *id.*

¹⁷ See CTIA Petition at 2-3. On January 31, 2023, the Commission published notice of the petitions for reconsideration in the Federal Register. See Federal Communications Commission, Empowering Broadband Consumers Through Transparency, Petition for Reconsideration, 88 Fed. Reg. 6219 (Jan. 31, 2023) (setting February 15, 2023 as the due date for oppositions and February 27, 2023 for replies to oppositions).

III. ORDER ON RECONSIDERATION

12. On reconsideration of the *Broadband Label Order*, we affirm our determinations that providers must itemize monthly discretionary fees on the label and state how much data is provided with the service plan, as outlined by the label template. We also clarify that E-Rate and RHC service providers are not required to include a broadband label for enterprise and special access services provided through those programs. In addition, we revise the Commission's requirement to document each instance when a provider directs a consumer to a label at an alternative sales channel and to retain such documentation for two years. And we make clear that providers that opt to include government taxes in their monthly base price may state on the label that government taxes are included.

A. Identifying Additional Monthly Provider Fees on Labels

13. We affirm that providers must itemize the fees they add to base monthly prices, including fees related to government programs they choose to "pass through" to consumers, such as fees related to universal service or regulatory fees. We thus affirm that consumers should know both the total cost of service and what goes into that cost to both budget and comparison shop between plans and providers. Clear itemization of all fees – including those related to regulatory programs – is essential to our goal of empowering consumers to make good purchase decisions.¹⁸

14. We therefore reject ACA Connects et al.'s request that providers simply state on the label that additional fees may apply and that these fees may vary depending on location.¹⁹ We also reject their alternative proposal that providers identify "generally the maximum dollar figure that could be passed through to the consumer per month, rather than requiring providers to itemize each and every fee."²⁰ Neither would accomplish the Label goal of empowering good consumer decisions because they leave consumers unable to reliably predict the cost of particular plans for purposes of comparison shopping. Providing specific fee amounts also accords with the approach reflected in the *2016 Public Notice* that Congress directed the Commission to consider in adopting the Label, and we are not persuaded to depart from that approach in this regard.²¹

15. We also disagree that clear disclosure of these fees "has the potential to cause significant confusion for consumers and add unnecessary complexity for providers" due to the "huge variety and quantity of fees on broadband providers."²² Providers must itemize the fees on consumer bills, and we see no reason why consumers cannot assess the fees at the point-of-sale any less than they can when they receive a bill. Providers are free, of course, to not pass these fees through to consumers to differentiate their pricing and simplify their Label display if they believe it will make their service more attractive to consumers and ensure that consumers are not surprised by unexpected charges.

16. Further, we are not persuaded that it will be burdensome for ISPs to itemize on the label those fees they *opt* to pass along to consumers above the monthly price, particularly since providers acknowledge being able to describe such fees to a consumer over the phone and on a consumer's bill once

¹⁸ *Broadband Label Order*, paras. 24, 33. We are referring only to monthly discretionary fees that providers pass through to their customers as a result of certain regulatory or government programs. Consistent with petitioners' request, we are not reconsidering the requirement to list all "one-time" fees providers charge when a consumer first signs up for service.

¹⁹ ACA Connects Joint Petition at 6.

²⁰ *Id.* at 6.

²¹ See *Broadband Label NPRM*, Appendices B, C (providing the fixed and mobile broadband labels from the *2016 Public Notice*).

²² ACA Connects Joint Petition at 4.

the consumer subscribes to service.²³ We also find that any such burdens are far outweighed by the benefits to consumers when they are shopping for service. And, as emphasized below, ISPs could alternatively roll such discretionary fees into the base monthly price, thereby eliminating the need to itemize them on the label.²⁴

17. Moreover, we are not persuaded that a provider will be forced to list on the label “potentially hundreds of fees for all jurisdictions in its footprint,” when only a subset of fees listed would actually apply to an individual customer.²⁵ We do agree, however, that such a practice would “make the labels very lengthy and unwieldy, diminishing their utility to consumers and undermining their purpose.”²⁶ We, therefore, reiterate that labels must be accurate based on the consumer’s location. Identifying fees that do not apply to a consumer in a particular geographic location would effectively render comparison shopping impossible—a primary purpose of the label. And burying the fees that do apply on a lengthy list of those that do not risks displaying a label that is simply inaccurate. Thus, we find that listing fees on the label that are irrelevant to a particular consumer shopping for broadband service is inconsistent with the goals of the Infrastructure Act.

18. Finally, we disagree, for the reasons above, that identifying the maximum out-of-pocket fees a prospective customer may be responsible for if they subscribe to the service “gives the customer critical information about the service they are considering in a much more efficient and effective manner than attempting to itemize fees on a jurisdiction-specific basis.”²⁷ We believe that identifying a maximum dollar figure that a customer would pay in additional provider fees per month does not sufficiently disclose to consumers what they will be charged for and how those fees compare to another provider’s service offerings.

19. We also emphasize, however, that if the provider does not impose additional discretionary fees on top of the base monthly price, but instead incorporates them into the monthly price, the provider can state “None” on the label template.²⁸

B. Describing Data Allowances on Labels

20. We affirm that providers should keep their descriptions of any data allowances simple on the Label and should only describe data allowance details in their more complete service descriptions in their advertising materials and on websites. Our conclusion supports a main goal of the Label, to require providers to simply, clearly, and consistently describe their services to enable consumers to comparison shop.

21. We therefore deny CTIA’s request that wireless providers be able to use multiple lines of data allowance descriptions on the Label.²⁹ CTIA states that wireless providers offer consumers data allowance options that differ from those offered by wireline providers and that such data allowance

²³ See *id.* at 7; see also Letter from Jordan Goldstein, SVP Regulatory Affairs, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, at 2-4 (June 8, 2023) (Comcast *ex parte*) (supporting the petitioners’ request and arguing that itemizing discretionary fees would substantially increase the burden on providers to generate and maintain their labels).

²⁴ See *infra*, para. 19.

²⁵ See ACA Connects Joint Petition at 8.

²⁶ See *id.* at 8.

²⁷ See *id.* at 10.

²⁸ See *Broadband Label Order*, para. 24, n.49 (“A provider that opts to combine all of its monthly discretionary fees with its base monthly price may do so and list that total price. In that case, the provider need not separately itemize those fees in the label.”).

²⁹ CTIA Petition at 7.

options may vary between handsets and hotspots.³⁰ We agree that consumers may want to see these details before purchase, but believe consumers are best served by a high-level description of data allowances on the Label, and that allowing providers to clutter the Label with detail about those allowances would undermine its simplicity and utility.

22. Our conclusion is consistent with the *Broadband Label Order*, where we required providers to identify the amount of data included with the monthly price in the label template.³¹ We explained that providers must disclose any charges or reductions in service for any data used in excess of the amount included in the plan.³² We also concluded that providers must identify the increment of additional data, e.g., “each additional 50GB,” if applicable, and disclose any additional charges once the consumer exceeds the monthly data allowance.³³ We clarify here that the increment of additional data and the additional charges should be associated with the data tier of the data cap on the label. We further stated that limits on data usage are critical pieces of information for consumers, along with any additional charges the provider may assess once a consumer exceeds such a cap.³⁴ But we emphasized that it is important to keep the label information as simple as possible for consumers and to require providers to comply by including links to their websites for more detailed information about data allowances.³⁵

23. Finally, we disagree with commenters that suggest that wireless providers will have to modify or otherwise limit their competitive service offerings to fit the label framework.³⁶ Instead, we reiterate that, if providers wish to provide more detailed information about their data allowances, including different allowances for handsets and hotspots, they may do so through links to their websites.³⁷ We also conclude that the link must be included in the “Data Included with Monthly Price” section of the label such that “Data Included” would appear as a hyperlink to more information on the provider’s website regarding its data allowance options.

C. Labels for E-Rate and Rural Health Care (RHC) Programs

24. We grant the Cincinnati Bell Joint Petition and affirm our determination in the *Broadband Label Order* that “enterprise service offerings or special access services are not ‘mass-market retail services,’ and therefore, not covered by our label requirement.”³⁸ As explained in the order, the Infrastructure Act requires the display of labels for “broadband Internet access service plans.” Broadband Internet access service is currently defined in section 8.1(b) of our rules as “a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.”³⁹ We confirmed in the order that “mass-market retail services” do not include enterprise service offerings or special access services, which

³⁰ *Id.* at 2-3.

³¹ See *Broadband Label Order*, para. 15 (showing broadband label template).

³² *Id.*, para. 35.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ See Competitive Carriers Association Comment at 2.

³⁷ *Broadband Label Order*, para. 35. Providers may also include more detailed information on data allowances in their promotional and/or educational materials.

³⁸ *Id.*, para. 17. See also Cincinnati Bell Joint Petition at 1.

³⁹ 47 CFR § 8.1(b).

are typically offered to larger organizations through customized or individually negotiated arrangements, and that such services are not covered by the label disclosure requirements.⁴⁰

25. Based on the petition and commenters' filings, we recognize that footnote 36 of the order, which stated that "we require E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC competitive bidding processes, whether or not such provider defines their offered service as an 'enterprise' service," may have resulted in some confusion.⁴¹ We agree that, to the extent that broadband label requirements generally exclude enterprise/special access service offerings, it makes most sense in this context to take a uniform approach, including with respect to services in the E-Rate and RHC programs.⁴² Thus, we clarify that footnote 36 does not contradict our determination regarding enterprise service offerings or require broadband labels for *all* broadband services in the E-Rate and RHC programs. Rather, we emphasize that, regardless of how the provider names or defines its offering, the manner in which the service is offered is dispositive of whether the labeling requirements apply.⁴³ We therefore affirm here that the enterprise/special access "exemption" discussed in the *Broadband Label Order* typically applies when the service offering is customized for the beneficiary through individually negotiated agreements.⁴⁴

26. We also reiterate, however, that the label requirements continue to apply to mass-market broadband services offered in the E-Rate and RHC programs and agree with commenters that "such disclosures would especially benefit the smaller and more rural schools, libraries and rural health care

⁴⁰ *Broadband Label Order*, para. 17; see also *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5683-84, para. 189 (2015) (*2015 Open Internet Order*); *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 318-319, para. 21 n.58 (2017).

⁴¹ Petitioners also argue that footnote 215 of the *Broadband Label Order*, which states that, "[w]hether the service actually falls under the standards for enterprise services and special access services addressed in paragraph 17 above, and not the service provider's name for the service, will determine whether the labeling exemption for enterprise services and special access services applies" appears to contradict footnote 36. See Cincinnati Bell Joint Petition at 4.

⁴² As Petitioners point out, paragraph 18 of the *Broadband Label Order* stated that "[t]he Infrastructure Act expressly defines 'broadband Internet access service' by reference to the definition in section 8.1(b) of our rules, and the Commission previously had interpreted that rule to include E-Rate and RHC services." Cincinnati Bell Joint Petition at 3 n.6 (quoting *Broadband Label Order*, para. 18). We reconsider the implications of that language in this context, making clear the uniform treatment of enterprise/special access service offerings for purposes of our broadband label requirements.

⁴³ See Coalition of Concerned Carriers Comment at 3 (arguing that the language in footnote 36 was meant to address the same point raised in footnote 215—whether a service is a mass-market retail service or an enterprise service is determined by the manner in which the service is offered, and not by the service provider's name for the service); USTelecom Reply at 2 (supporting granting the petition and stating that reconciling footnotes 36 and 215 suggests that the Commission intended to make clear that, regardless of how the provider names or defines its offering, the manner in which it is offered is dispositive of whether the labeling requirements apply).

⁴⁴ See *Broadband Label Order*, para. 17. While we clarify that service offerings to large customers (or other entities) that are not mass-market retail services are not covered by the disclosure requirements here, we do not do so for all the reasons petitioners and commenters raise. For example, we are not persuaded that it would be overly burdensome for wholesalers and resellers to create labels for their larger customers or that the labels would be confusing for the customers themselves. See *id.*; see also Cincinnati Bell Joint Petition at 6; Schools, Health & Libraries Broadband Coalition Comment at 2 (arguing that a label would either be unnecessarily duplicative of what is contained in the contract or add confusion for schools, libraries, and healthcare providers that purchase custom-designed services); Education Networks of America, Inc, ENA Services, LLC, and Zayo Group, LLC Ex Parte at 1 (arguing that the provision of broadband labels for customized services will not help E-rate or rural health care entities make better informed service selections).

providers that often purchase standard ‘off-the-shelf’ Internet access service.”⁴⁵ We see no reason why the E-Rate and RHC bidding processes means that such consumers would not benefit from the label. The definition in section 8.1(b) of the Commission’s rules includes ISPs participating in the E-Rate and RHC programs and, thus, they must provide labels to prospective customers during the competitive bidding process, during which time customers define the services that they need and providers put forward bids.⁴⁶

D. Documenting Interactions with Consumers at Alternate Sales Channels

27. In response to the ACA Connects Joint Petition, we reconsider the requirement that a provider must document each instance when it directs a consumer to a label at an alternative sales channel (e.g., retail stores, kiosks, and over the phone) and retain such documentation for two years.⁴⁷ In doing so, we grant ACA Connects’ request and clarify in accordance with such request that the requirement will be deemed satisfied if: 1) the provider establishes the business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within 30 days.⁴⁸ No commenter opposed Petitioners’ request.

28. We agree with petitioners that this clarification will avoid unnecessary burdens and costs on providers that may risk diverting resources to otherwise assist consumers with making broadband purchases at alternative sales channels.⁴⁹ We share their concerns that creating an additional system by which customer-facing employees are required to record the details of when and how they share the label in every customer interaction may impose significant costs on providers. We are persuaded by petitioners that providers deal with millions of customers and prospective customers by phone, in retail locations, and at “pop-up” sales outlets such as fairs or exhibitions, and that it may be challenging for providers to capture and retain such documentation when consumers are provided with access to the labels at each and every point of sale.⁵⁰

29. We believe that permitting providers to alternatively establish business practices and training materials to ensure labels are distributed consistently and accurately in retail stores and other sales channels will sufficiently protect consumers.⁵¹ It is also consistent with our online point-of-sale requirements, whereby providers need not document each time a consumer views a label on their websites; they must instead archive all labels after they are removed from their websites and maintain such archive for at least two years after the service plan is no longer offered to new customers. As with archived labels, which must be provided to the Commission, upon request, within 30 days, we also find that, should the Commission request a provider’s training materials and business practice documentation for alternate sales channels, ISPs must provide such information within 30 days. As a result, we amend section 8.1(a)(2) of the Commission’s rules to clarify that the requirement to document interactions with consumers at alternate sales channels will be deemed satisfied if, instead, the provider: 1) establishes the

⁴⁵ See Schools, Health & Libraries Broadband Coalition Comment at 2. We note that petitioners support the adoption of broadband labeling requirements for mass-market retail services. See Cincinnati Bell Joint Petition at 1.

⁴⁶ *Broadband Label Order*, para. 96.

⁴⁷ See *id.*, para. 95.

⁴⁸ ACA Connects Joint Petition at 4-5, 11. Providers may also comply with the requirement as described in the *Broadband Label Order* instead (i.e., that they document each instance when a consumer is provided a label at an alternative sales channel and retain such documentation for a period of two years).

⁴⁹ ACA Connects Joint Petition at 5, 11; see also WISPA – Broadband Without Boundaries Comment at 3; CTIA Reply at 3 (each supporting the petition); Comcast *ex parte* at 4 (arguing that creating and maintaining “such an extremely large number of otherwise-unnecessary records imposes substantial additional burdens” on providers).

⁵⁰ ACA Connects Joint Petition at 11-12.

⁵¹ See Competitive Carriers Association Comment at 3 (supporting the petition and arguing that, in the absence of clear rule language on referring consumers to labels in alternative sales channels, there is an increased risk of inconsistent implementation).

business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within 30 days.

E. Identifying Government Taxes on Labels

30. We grant CTIA's request to clarify that wireless providers have the flexibility to state "taxes included" or add similar language to the label template when the provider has chosen to include taxes as part of its base price.⁵² CTIA contends that some wireless providers have chosen to build taxes into the monthly prices that they advertise. No party opposed this request.

31. We agree with CTIA that the labels should accommodate tax-included pricing in keeping with the fundamental purpose of providing consumers with clear and accurate information, and that this was the *Broadband Label Order's* intent.⁵³ We believe our clarification will benefit consumers by helping them understand the total price for a provider's service at the point of sale. And, unlike the discretionary provider fees we address above, providers must assess a specific amount of taxes on consumers; thus, consumers generally are not comparison shopping based on such taxes and how they are identified on the label. We therefore agree that providers may modify the label template to accommodate this practice. Specifically, they may include a statement on the label that government taxes are "included" in the monthly rate or some similar language in place of the statement that the amount of government taxes "varies by location."

32. We also agree with CTIA that "[s]tating that 'taxes will apply' or that they 'vary by location' where [taxes] have already been factored into the quoted prices would not be accurate and would confuse consumers, not help them, which is a result the Commission surely did not intend."⁵⁴ We therefore make clear that providers may only avail themselves of our clarification when they have included all taxes in their monthly base price and may not rely on general statements that taxes may apply if such taxes are not included in the base price.

F. Effective Date

33. We make the revisions to section 8.1(a)(1) and section 8.1(a)(2) of the codified rules effective upon publication in the Federal Register.⁵⁵ In addition, because these revisions are interrelated with revisions to section 8.1 adopted in the *Broadband Label Order*,⁵⁶ we set consistent compliance dates.

⁵² CTIA Petition at 6.

⁵³ *Id.* at 5.

⁵⁴ *Id.* at 6; *see also* Competitive Carriers Association Comment at 2 (agreeing with CTIA that wireless providers should not have to modify or otherwise limit their competitive service offerings to fit a labelling framework so long as their service offerings are depicted clearly, completely, and accurately).

⁵⁵ We find good cause to make these changes effective upon Federal Register publication under 5 U.S.C. § 553(d)(3). *See, e.g., Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (discussing the evaluation of good cause under 5 U.S.C. § 553(d)(3)). Because compliance with the label rule is not yet required, we do not find any unfairness to any party from making the rule change effective upon Federal Register publication at this point, since affected parties still will have a significant period of time—one year after the removal or amendment of 47 CFR § 8.1(a)(7) for providers with 100,000 or fewer subscriber lines and six months after the removal or amendment of 47 CFR § 8.1(a)(7) for all other providers—before compliance would be required. At the same time, taking this approach enables us to harmonize the timing of compliance with the various rules and requirements for broadband labels.

⁵⁶ In the *Broadband Label Order*, the Commission adopted a one-year implementation period following completion of OMB review for providers with 100,000 or fewer subscriber lines applicable to the section 8.1 revisions except, as to the revision to section 8.1(a)(2) to make labels accessible in online account portals and the revision to section 8.1(a)(3), it adopted a one-year implementation period for all providers. *Broadband Label Order*, para. 118. The Commission adopted a six-month implementation period following completion of OMB review for the revisions to 8.1 for all other providers, concluding that it was warranted to ensure that ISPs can implement the necessary changes (continued....)

Thus, consistent with the *Broadband Label Order*, the compliance dates for the amendments to section 8.1(a)(1) and section 8.1(a)(2) in this Order on Reconsideration will be one year following completion of the Office of Management and Budget (OMB) review and modification of section 8.1(a)(7) for providers with 100,000 or fewer subscribers and six months following completion of OMB review and modification of section 8.1(a)(7) for all other providers.⁵⁷ The forthcoming Public Notice by the Consumer and Governmental Affairs Bureau will announce the compliance dates for the rules adopted in the *Broadband Label Order* and in this Order on Reconsideration accordingly.

IV. PROCEDURAL MATTERS

34. *Paperwork Reduction Act of 1995 Analysis.* This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees, and we received no comment. In this present document, we have assessed the effects of permitting providers to establish the business practices and processes it will follow in distributing the label through alternative sales channels in lieu of documenting each instance they direct consumers to the label and to note on the label that government taxes are included in the monthly price, and find that there are no additional burdens for small businesses with fewer than 25 employees.

35. *Supplemental Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁵⁸ 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.”⁵⁹ This Order on Reconsideration discusses amendments to the rules adopted in the *Broadband Label Order*. Accordingly, the Commission prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) concerning the possible impact of the rule amendments on small entities. The Supplemental FRFA is set forth in Appendix B.

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

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

in a cost-effective way that makes sense for their individual business models and potential customers. *Id.*, para. 117. The Commission stated that the respective six-month and one-year implementation periods would commence following OMB review of those rules and modification of section 8.1(a)(7) of the rules. *Id.*, paras. 117, 164; 47 CFR § 8.1(a)(7).

⁵⁷ The Commission has sought Paperwork Reduction Act (PRA) review of the information collections in the *Broadband Label Order* and will do so for the information collections in this Order on Reconsideration in a separate submission to OMB.

⁵⁸ 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).

⁵⁹ 5 U.S.C. § 605(b).

38. *Availability of Documents.* The Order on Reconsideration will be available via ECFS. This document will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554.

39. *Additional Information.* For additional information on this proceeding, contact Erica H. McMahon, Erica.McMahon@fcc.gov or (202) 418-0346, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division.

V. ORDERING CLAUSES

40. **IT IS ORDERED**, pursuant to sections 4(i), 4(j), 13, 201(b), 254, 257, 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 163, 201(b), 254, 257, 301, 303, 316, 332, section 60504 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429 (2021), and section 904 of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), as amended, that this Order on Reconsideration **IS ADOPTED**, and that Part 8 of the Commission's rules, 47 CFR Part 8, is amended as set forth in Appendix A.

41. **IT IS FURTHER ORDERED** that this Order on Reconsideration **SHALL BE EFFECTIVE** upon publication in the Federal Register. Compliance with the amendments to section 8.1(a)(1) of the Commission's rules, 47 CFR § 8.1(a)(1), which may contain new or modified information collection requirements, will not be required until the later of: i) the compliance dates for the amendments to section 8.1(a)(1) effected in FCC 22-86, to be announced by the Consumer and Governmental Affairs Bureau, which will be one year after OMB completes its review of requirements the Consumer and Governmental Affairs Bureau has determined are subject to the Paperwork Reduction Act for providers with 100,000 or fewer subscribers and six months after OMB completes its review of the requirements the Consumer and Governmental Affairs Bureau has determined are subject to the Paperwork Reduction Act for all other providers; or ii) completion of OMB review of any information collection requirements in the amendments to section 8.1(a)(1) in this Order on Reconsideration that the Consumer and Governmental Affairs Bureau determines is required under the Paperwork Reduction Act. Compliance with the amendments to section 8.1(a)(2) of the Commission's rules, 47 CFR § 8.1(a)(2), which may contain new or modified information collection requirements, will not be required until the later of: i) the compliance dates for the amendments to section 8.1(a)(2) (other than the requirement to make labels accessible in online account portals) effected in FCC 22-86, to be announced by the Consumer and Governmental Affairs Bureau, which will be one year after OMB completes its review of the requirements the Consumer and Governmental Affairs Bureau has determined are subject to the Paperwork Reduction Act for providers with 100,000 or fewer subscribers and six months after OMB completes its review of the requirements the Consumer and Governmental Affairs Bureau has determined are subject to the Paperwork Reduction Act for all other providers; or ii) completion of OMB review of any information collection requirements in the amendments to section 8.1(a)(2) in this Order on Reconsideration that the Consumer and Governmental Affairs Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Consumer and Governmental Affairs Bureau to announce the compliance dates for section 8.1(a)(1) and section 8.1(a)(2) by subsequent Public Notice and to cause section 8.1(a)(1) and section 8.1(a)(2) to be revised accordingly.

42. **IT IS FURTHER ORDERED** that, pursuant to 47 CFR § 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of any aspect of this Order on Reconsideration will commence on the date that a summary of this Order on Reconsideration is published in the Federal Register.

43. **IT IS FURTHER ORDERED** that the Petitions for Reconsideration filed by ACA Connects et al., Cincinnati Bell et al., and CTIA in CG Docket No. 22-2 on January 17, 2023, **ARE GRANTED IN PART and otherwise DENIED**.

44. **IT IS FURTHER ORDERED** that the Commission's Office of the Managing Director, Reference Information Center, **SHALL SEND** a copy of this Order on Reconsideration, including the

Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

45. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance Evaluation and Records Management, **SHALL SEND** a copy of this Order on Reconsideration in a report to be sent to Congress and to the Governmental Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

The Federal Communications Commission amends Part 8 of Title 47 of the Code of Federal Regulations to read as follows:

PART 8 – INTERNET FREEDOM

1. The Authority citation for Part 8 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 201(b), 257, 303(r), and 1753.

2. Section 8.1(a) is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

(a) * * *

(1) Any person providing broadband internet access service shall create and display an accurate broadband consumer label for each stand-alone broadband internet access service it currently offers for purchase. The label must be prominently displayed, publicly available, and easily accessible to consumers, including consumers with disabilities, at the point of sale with the content and in the format prescribed by the Federal Communications Commission (Commission) in figure 1 to this paragraph (a)(1). [include updated label template in CFR]

(2) Broadband internet access service providers shall display the label required under section 8.1(a)(1) at each point of sale. “Point of sale” is defined to mean a provider’s website and any alternate sales channels through which the provider’s broadband internet access service is sold, including a provider-owned retail location, third-party retail location, and over the phone. For labels displayed on provider websites, the label must be displayed in close proximity to the associated advertised service plan. “Point of sale” also means the time a consumer begins investigating and comparing broadband service offerings available to them at their location. For alternate sales channels, providers must document each instance when it directs a consumer to a label and retain such documentation for two years. This requirement will be deemed satisfied if, instead, the provider: 1) establishes the business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within thirty days. “Point of sale” for purposes of the E-Rate and Rural Health Care programs is defined as the time a service provider submits its bid to a program participant. Providers participating in the E-Rate and Rural Health Care programs must provide their labels to program participants when they submit their bids to participants. Broadband internet access service providers that offer online account portals to their customers shall also make each customer’s label easily accessible to the customer in such portals.

(3) * * *

* * * * *

3. Section 8.1(b) is amended by revising paragraph (b) to read as follows:

(b) Broadband internet access service is a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also

encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part. For purposes of paragraphs (a)(1) through (6) of this section, “mass-market” services exclude service offerings customized for the customer through individually negotiated agreements even when the services are supported by federal universal service support.

* * * * *

APPENDIX B

Supplemental 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 *Broadband Label NPRM*.² The Commission sought written public comment on the proposals in the *Broadband Label NPRM*, including comment on the IRFA.³ The Commission subsequently incorporated a Final Regulatory Flexibility Analysis (FRFA) in the *Broadband Label Order*.⁴ This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) incorporates by reference the FRFA in the *Broadband Label Order* and reflects changes to the Commission's rules arising from actions taken in the Order on Reconsideration (*Order*) in response to three Petitions for Reconsideration of the *Broadband Label Order* filed by ACA Connects et al., Cincinnati Bell et al. and CTIA⁵ and conforms to the RFA.⁶

A. Need for, and Objectives of, the Order on Reconsideration

2. The *Order* addresses issues resulting from the Commission's efforts to implement the Infrastructure Investment and Jobs Act (Infrastructure Act) which directs the Commission "[n]ot later than 1 year after the date of enactment of th[e] Act, to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16-357), to disclose to consumers information regarding broadband internet access service plans."⁷ In response to the Infrastructure Act, the Commission adopted the *Broadband Label Order*, requiring broadband labels so that consumers have access to clear, easy-to-understand, and accurate information about broadband services that encourages competition, innovation, low prices, and high-quality services. The information broadband Internet service providers (ISPs) are required to include in the labels empowers consumers to choose services that best meet their needs and match their budgets and ensures that they are not surprised by unexpected charges or service quality that falls short of their expectations. The *Order* grants some of petitioners' requests and denies other requests to ensure that the labels the Commission adopted remain a simple and clear means to disclose information about broadband services and to ensure consumers have the information they need to make educated decisions about purchasing broadband Internet access service. The *Order* therefore affirms some of the Commission's determinations in the *Broadband Label Order* and reconsiders some others, so the labels do not

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² See *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Notice of Proposed Rulemaking, FCC 22-7 (rel. Jan. 27, 2022) (*Broadband Label NPRM*).

³ *Id.* at Appx. B.

⁴ See *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86 (2022) (*Broadband Label Order*).

⁵ See *ACA Connects—America's Communications Association, CTIA, NCTA—The Internet & Television Association, NTCA—The Rural Broadband Association, and USTelecom—the Broadband Association*, Joint Petition for Clarification or, in the Alternative, Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (ACA Connects Joint Petition); *Cincinnati Bell Telephone Company LLC d/b/a altafiber Network Solutions, Crown Castle, Metro FiberNet, LLC, and Uniti Fiber LLC*, Joint Petition for Clarification or Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (Cincinnati Bell Joint Petition); CTIA, Petition for Clarification or, in the Alternative, Reconsideration, CG Docket No. 22-2 (filed Jan. 17, 2023) (CTIA Petition).

⁶ 5 U.S.C § 604.

⁷ The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021) (Infrastructure Act) (citing *Consumer And Governmental Affairs, Wireline Competition, And Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels*, Public Notice, 31 FCC Rcd 3358 (2016)).

overwhelm consumers with too much information or overburden providers.

3. Specifically, the Commission grants the Cincinnati Bell Joint Petition and affirms the determination in the *Broadband Label Order* that “enterprise service offerings or special access services are not ‘mass-market retail services,’ and therefore, not covered by our label requirement.”⁸ The *Order* clarifies that footnote 36 of the *Broadband Label Order*, which stated that the Commission requires “E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC competitive bidding processes, whether or not such provider defines their offered service as an ‘enterprise’ service,” was not intended to contradict the Commission’s determination regarding enterprise service offerings or to require broadband labels for *all* broadband services in the E-Rate and RHC programs. Rather, the Commission emphasizes in the *Order* that regardless of how the provider names or defines its offering, the manner in which the service is offered is dispositive of whether the labeling requirements apply.

4. The Commission also reconsiders the requirement that a provider must document each instance when it directs a consumer to a label at an alternative sales channel (e.g., retail stores, kiosks, and over the phone) and retain such documentation for two years.⁹ In doing so, the Commission grants ACA Connect et al.’s request and clarifies that the requirement will be satisfied if the provider instead: 1) establishes the business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within thirty days. The Commission agrees with petitioners that this clarification will avoid unnecessary burdens and costs on providers that may risk diverting resources to otherwise assist consumers with making broadband purchases at alternative sales channels.

5. Additionally, in the *Order* the Commission clarifies that wireless providers have the flexibility to make clear on the labels whether government taxes will be added to the monthly base price by adding “taxes included” or similar language as appropriate to the label template. The Commission agrees that some providers include government taxes in their monthly base price and that doing so could benefit consumers in helping them understand the total price for a provider’s service at the point of sale. Therefore we determined that providers may modify the label template to accommodate this practice.

6. The *Order* declines, however, to reconsider the requirement that providers identify and list on the label any additional fees that they charge consumers each month on top of the monthly base price. As stated in the *Broadband Label Order*, the Commission believes requiring that the labels clearly itemize any additional discretionary fees and state that additional government taxes will apply to each plan will provide consumers with a more complete understanding of the total cost for broadband service. Further, the requirement will allow consumers to more meaningfully compare providers’ rates and service packages, and to make more informed decisions when purchasing broadband services. The Commission explains that providers must list fees such as monthly charges associated with regulatory programs and fees for the rental or leasing of modem and other network connection equipment.

7. The *Order* also denies CTIA’s request to clarify that wireless providers have the flexibility to describe their data allowances on the label in ways that may be inconsistent with the adopted label template. The Commission continues to believe that consumers will be best served by simple labels that are comparable across providers. Permitting wireless providers to independently describe data allowances in various ways may hinder comparison shopping and may lead to an unwieldy or complicated label.

⁸ *Broadband Label Order*, para. 17. See also Cincinnati Bell Joint Petition at 1.

⁹ *Broadband Label Order*, para. 95.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and FRFA

8. In the *Broadband Label Order*, the Commission solicited comments on how to minimize the economic impact of the new rules on small businesses.¹⁰ The FRFA addressed the concerns of commenters who argued that smaller entities would face challenges in complying with the proposed label requirements given their small staffs and limited resources.¹¹ The Cincinnati Bell Joint Petition, ACA Connects Joint Petition, and the CTIA Petition addressed in the *Order*, and associated comments, did not raise any concerns with the FRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

9. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.¹²

10. The Chief Counsel did not file any comments in response to the rules adopted in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

11. 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.¹³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”¹⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁵ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.¹⁶

12. As noted above, the Commission incorporated a FRFA into the *Broadband Label Order*. In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules.¹⁷ The *Order* amends the final rules adopted in the *Broadband Label Order* affecting broadband Internet access service providers. Accordingly, in this Supplemental FRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities that might be significantly affected by the *Order* from the Regulatory Flexibility Analysis in the *Broadband Label Order*.

¹⁰ *Broadband NPRM*, Appx. D.

¹¹ *Broadband Label Order*, Appx. B, paras. 7-9.

¹² 5 U.S.C. § 604(a)(3).

¹³ *Id.* § 604(a)(4).

¹⁴ *Id.* § 601(6).

¹⁵ *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.”

¹⁶ 15 U.S.C. § 632.

¹⁷ *Broadband Label Order*, Appx. B.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

13. In the *Order*, the Commission modifies rules adopted in the *Broadband Label Order* to reconsider the requirement that a provider must document each instance when it directs a consumer to a label at an alternative sales channel (e.g., retail stores, kiosks, and over the phone) and retain such documentation for two years.¹⁸ In doing so, the Commission clarifies that the requirement will be deemed satisfied if instead: 1) the provider establishes the business practices and processes it will follow in distributing the label through alternative sales channels; 2) retains training materials and related business practice documentation for two years; and 3) provides such information to the Commission upon request, within thirty days.

14. 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 to 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 should significantly reduce compliance requirements for small entities that may have smaller staff and fewer resources. As the Commission emphasizes in the *Order*, the clarification will avoid unnecessary burdens and costs on providers that may risk diverting resources to otherwise assist consumers with making broadband purchases at alternative sales channels.¹⁹ The Commission agrees that requiring providers to create an additional system by which customer-facing employees are required to record the details of when and how they share the label in every customer interaction may impose significant costs on providers.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”²⁰

16. The Commission considered feedback in response to the Cincinnati Bell Joint Petition, ACA Connects Joint Petition, and CTIA Petition and evaluated it with the goal of giving broadband providers some flexibility in how they document their employees’ interactions with consumers in alternate sales channels and how they ensure the broadband labels are displayed for consumers. Instead of documenting each instance when a consumer is provided a label at an alternative sales channel in the original rule, the Commission believes requiring providers to develop business practices and training materials for their employees and to retain and make those documents available to the Commission upon request within thirty days is an alternative that will minimize the impact on small entities and continue to protect the interests of consumers for whom the label provides critical information about broadband services. This should significantly minimize any compliance costs and burdens on small entities that are subject to the label requirements.

17. The Commission considered the Petitioners’ request but declined to reconsider the requirement that providers identify and list on the label any additional fees that they charge consumers each month on top of the monthly base price. The Commission was not persuaded that it will be burdensome for providers to itemize on the label those fees that they opt to pass along to consumers above the monthly price, particularly since providers acknowledge being able to describe such fees to a

¹⁸ *Id.*, para. 95.

¹⁹ *Order*, paras. 27-29 (citing ACA Connects Joint Petition at 5; WISPA – Broadband Without Boundaries Comment at 3; and CTIA Reply at 3).

²⁰ 5 U.S.C. § 604(a)(6).

consumer over the phone and on a consumer's bill once he/she subscribes to service. Further, the Commission found that any such burdens are far outweighed by the benefits to consumers.

G. Report to Congress

18. The Commission will send a copy of the *Order*, including this Supplemental FRFA, in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²¹ 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 a summary thereof) will also be published in the Federal Register.²²

²¹ 5 U.S.C. § 801(a)(1)(A).

²² *Id.* § 604(b).

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

In the Matter of)	
)	
Bicoastal Media Licenses IV, LLC	)	Facility ID No. 202510
Application for Construction Permit for	)	File No. BNPFT-20180430AAV
FM Translator Station K267CX, Centralia, WA)	

MEMORANDUM OPINION AND ORDER

Adopted: Augst 25, 2023**Released: August 25, 2023**

By the Commission:

I. INTRODUCTION

1. We have before us an Application for Review (AFR) filed by Northwest Rock N Roll Preservation Society (NWR) on April 4, 2022.¹ NWR challenges a Media Bureau (Bureau) decision² that denied its Petition for Reconsideration (Petition) and affirmed the Bureau's grant of the captioned application (Bicoastal Application) of Bicoastal Media Licenses IV, LLC (Bicoastal), for a construction permit for FM translator station K267CX, Centralia, Washington (Bicoastal Translator). For the reasons set forth below, we dismiss in part and otherwise deny the AFR.

II. BACKGROUND

2. In 2013, the Bureau granted NWR a license (2013 License) to operate an FM translator at 10 watts on Channel 266 at Olympia, Washington (NWR Translator).³ The 2013 License indicated that the NWR Translator would be rebroadcasting KGHO-LP, Hoquiam, Washington. The service contour for the facilities authorized in the 2013 License (2013 Contour) extended roughly the same distance in all directions from the NWR Translator's transmitter site.

3. On August 29, 2016, at NWR's request, the Bureau issued a construction permit authorizing NWR to increase the NWR Translator's ERP to 70 watts and change its primary station to KGTK(AM) (2016 Permit).⁴ In 2017, the Bureau granted NWR's next request to modify the 2016 Permit to specify an increased ERP of 250 watts (2017 Permit).⁵ The service contour of the facilities authorized in the 2017 Permit extended northeast of the NWR Translator's transmitter site and away from Centralia and the geographic area that Bicoastal would later propose to serve with the Bicoastal Translator.

¹ Northwest Rock N Roll Preservation Society, Application for Review, Application File No. BNPFT-20180430AAV (filed April 4, 2022) (AFR).

² *Bicoastal Media Licenses IV, LLC*, Application File No. BNPFT-20180430AAV, Letter Order (rel. March 4, 2022) (*Reconsideration Decision*).

³ See Application File No. BLFT-20130402ACL; *Broadcast Actions*, Public Notice, Report No. 47978, at 10 (MB April 30, 2013). The prior history of the NWR Translator, dating back to 2004, is irrelevant here.

⁴ See Application File No. BPFT-20160729AKW; *Broadcast Actions*, Public Notice, Report No. 48811, at 15 (MB Sept. 1, 2016).

⁵ See Application File No. BMPFT-20170925ADX; *Broadcast Actions*, Public Notice, Report No. 49090, at 20 (MB Oct. 13, 2017).

4. In 2018, during a filing window opened as part of the Commission's efforts to revitalize the AM radio service,⁶ Bicoastal filed the Bicoastal Application. NWR filed an Informal Objection (Objection) to the Bicoastal Application,⁷ which it supplemented on October 5, 2018 (2018 Supplement).⁸ NWR alleged that the Bicoastal Translator's proposed facilities were predicted to cause interference to listener reception of the NWR Translator in violation of section 74.1204(f) of the Commission's rules (Rules). NWR based its predicted interference claims on operation of the NWR Translator with the facilities specified in the 2013 License.⁹

5. At the time the Objection and the 2018 Supplement were filed, section 74.1204(f) provided that, even if an FM translator application complied with the Commission's contour overlap requirements, the Commission would not accept the application for filing if an objecting party provided "convincing evidence" that the predicted 60 dBμ contour of the proposed FM translator would "overlap a populated area already receiving a regularly-used, off-the-air signal of any authorized co-channel, first, second, or third adjacent channel broadcast station" and "grant of the [application would] result in interference to the reception of such signal."¹⁰ There was no signal strength contour limit for the station claiming interference, nor were there any requirements that a station claiming predicted interference submit more than one listener complaint, or state that it was operating within its licensed parameters.

6. In May 2019, the Commission revised its FM translator interference rules. Among other things, it adopted a 45 dBμ outer signal strength contour limit for interference claims,¹¹ and required a complaining station to submit a minimum number of listener complaints.¹² The Commission also required that a station claiming predicted interference submit a statement that the station is operating with its licensed parameters.¹³

7. Shortly thereafter, on June 18, 2019, NWR filed an application (2019 Modification Application) to modify the 2017 Permit.¹⁴ The facilities proposed in the 2019 Modification Application had a service contour which extended farther south from the NWR Translator's transmitter site toward the

⁶ *Filing Instructions for Second Cross-Service FM Translator Auction Filing Window for AM Broadcasters to Be Open January 25 – January 31, 2018*, Public Notice, 32 FCC Rcd 10173 (MB/WTB 2017).

⁷ Northwest Rock N Roll Preservation Society, Informal Objection, Application File No. BNPFT-20180430AAV (rec'd Oct. 3, 2018) (Objection).

⁸ Northwest Rock N Roll Preservation Society, Informal Objection, Application File No. BNPFT-20180430AAV (rec'd Oct. 5, 2018) (2018 Supplement).

⁹ At the time NWR submitted the Objection and the 2018 Supplement, the NWR Translator was operating with the facilities authorized in the 2013 License.

¹⁰ 47 CFR § 74.1204(f) (2018). *See also Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, 5 FCC Rcd 7212, 7230, para. 128 (1990), *modified*, 6 FCC Rcd 2334 (1991), *recon. den.*, 8 FCC Rcd 5093 (1993).

¹¹ Under the previous version of section 74.1204(f), the focus was on whether interference was predicted to occur inside the proposed FM translator's 60 dBμ contour. Under the revised rule, the focus is whether interference is predicted to occur inside the complaining station's 45 dBμ contour. *See Amendment of Part 74 of the Commission's Rules Regarding Translator Interference*, MB Docket No. 18-119 Report and Order, 34 FCC Rcd 3457, 3481, para. 48 (2019) (*FM Translator Interference Order*), *recon. denied*, 35 FCC Rcd 11561 (2020) (noting that the Commission was amending "section 74.1204(f) to allow a complaining station to submit valid listener complaints from anywhere within its predicted 45 dBu contour rather than, as under our current rules, only from within the relevant translator's "predicted 1 mV/v (60 dBu) contour").

¹² *See FM Translator Interference Order*, 34 FCC Rcd at 3463-66, paras. 12-15, 3475-78, paras. 36-40.

¹³ *Id.* at 3469-70, para. 24.

¹⁴ *See* Application File No. BMPFT-20190618ABI (2019 Modification Application).

proposed Bicoastal Translator and Centralia than the NWR Translator's licensed facilities from 2013 or those authorized in the 2017 Permit.

8. A few days after the new FM translator interference rules became effective,¹⁵ on August 16, 2019, NWR filed another supplement to the Objection (2019 Supplement).¹⁶ NWR stated: "Per recently amended FCC Rules, the metrics to prove interference have changed, and this Supplemental Information is submitted to again show the Commission that [the Bicoastal Application] should be modified to another channel or dismissed."¹⁷ Among other things, NWR submitted the same signal strength contour map that accompanied the 2018 Supplement, "with the addition of the 45 dBμ contour."¹⁸ This map was based on the 2013 Contour (*i.e.*, the signal strength contour of the NWR Translator's licensed facilities at the time).¹⁹ NWR included a statement that the NWR Translator was operating with its licensed parameters.²⁰ NWR submitted 47 new listener complaints, and resubmitted four listener complaints that had accompanied the 2018 Supplement.²¹

9. As the 2017 Permit's expiration date of August 29, 2019, approached, and the 2019 Modification Application remained pending, NWR applied for a license to cover the facilities authorized in the 2017 Permit.²²

10. The Bureau granted NWR a license to cover the facilities authorized in the 2017 Permit (2019 License) on December 4, 2019.²³ The Bureau then dismissed the Objection, and the 2018 and 2019 Supplements because they contained interference showings based on the NWR Translator's old service contour (*i.e.*, the 2013 Contour), not its new service contour (2019 Contour) as licensed under the 2019 License.²⁴ Having dismissed the Objection, and the 2018 and 2019 Supplements, the Bureau granted the Bicoastal Application.

11. In response, NWR filed the Petition,²⁵ which challenged the Bureau's dismissal of the Objection, and grant of the Bicoastal Application. The Petition included an interference showing based on the 2019 Contour. Bicoastal opposed the Petition.²⁶ NWR filed a Reply to Opposition to Petition for

¹⁵ See also *Media Bureau Announces August 13, 2019, Effective Date of Amended Rules for FM Translator Interference*, Public Notice, 34 FCC Rcd 7004 (MB 2019).

¹⁶ Northwest Rock N Roll Preservation Society, Supplemental Information to Informal Objection, Application File No. BNPFT-21080430AAV (rec'd Aug. 16, 2019) (2019 Supplement).

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 2.

¹⁹ *Id.*

²⁰ *Id.* at 6.

²¹ *Id.* at Listener Declarations Attach.

²² See Application File No. BLFT-20190904ABL.

²³ See *Broadcast Actions*, Public Notice, Report No. 49629, at 2 (MB Dec. 9, 2019).

²⁴ See *Broadcast Actions*, Public Notice, Report No. 49632, at 2 (MB Dec. 12, 2019).

²⁵ Northwest Rock N Roll Preservation Society, Petition for Reconsideration, Application File No. BNPFT-20180430AAV (filed Dec. 31, 2019) (Petition). NWR also filed a Petition to Deny the Bicoastal Application, which the Bureau dismissed on procedural grounds. Northwest Rock N Roll Preservation Society, Petition to Deny, Application File No. BNPFT-20180430AAV (filed Jan. 13, 2020); *Reconsideration Decision* at 3. NWR does not offer any argument challenging that dismissal.

²⁶ Bicoastal Media Licenses IV, LLC, Opposition to Petition for Reconsideration, Application File No. BNPFT-20180430AAV (filed Jan. 21, 2020).

Reconsideration (PFR Reply).²⁷ Like the Petition, the PFR Reply included an interference showing based on the 2019 Contour.

12. While the Petition was pending, NWR amended the 2019 Modification Application. Then, on February 25, 2020, the Bureau granted the 2019 Modification Application.²⁸ Because the Bureau had already issued a license to cover the construction permit that NWR sought to modify, the Bureau issued a new construction permit (2020 Permit) to NWR. NWR filed an application (2020 License Application) for a license to cover the facilities authorized in the 2020 Permit on June 8, 2020.²⁹ Bicoastal and another entity opposed the 2020 License Application. Then, NWR amended the 2020 License Application on June 3, 2021.³⁰ The 2020 License Application remains pending.³¹

13. The Bureau denied the Petition on March 4, 2022. Among other things, the Bureau found that “[b]ecause the NWR Translator was no longer operating with the field strength contour that NWR used in the predicted interference showings that accompanied the Objection and the 2018 and 2019 Supplements, and because an affected station’s field strength contour is key to a predicted interference showing, the interference claims made in the Informal Objection (and the 2018 and 2019 Supplements) became moot and were properly dismissed.”³² Additionally, the Bureau found the new interference claim package submitted with the Petition (and supplemented in the PFR Reply) to be incomplete because NWR did not—as required by section 74.1204(f)(3)—include a statement that the NWR Translator was operating with its licensed parameters.³³

14. NWR then filed the AFR, which argues that the Bureau “overlooked submitted facts,” made “incorrect assumptions,” and failed “to grant a modification to our construction permit in a timely manner.”³⁴ Bicoastal opposed the AFR,³⁵ and NWR replied.³⁶ We consider these pleadings below.

III. DISCUSSION

15. **Timing of Bureau Actions.** At the outset, we note that the AFR focuses in large part on the Bureau’s delay in processing the 2019 Modification Application, which was not granted until after the Bicoastal Application was granted.³⁷ However, the Bureau was not required to act on the 2019

²⁷ Northwest Rock N Roll Preservation Society, Reply to Opposition to Petition for Reconsideration, Application File No. BNPFT-20180430AAV (filed Feb. 5, 2020) (PFR Reply).

²⁸ See *Broadcast Actions*, Public Notice, Report No. 49684, at 1 (MB Feb. 28, 2020).

²⁹ See Application File No. 115909 (2020 License Application).

³⁰ See *Applications*, Public Notice, Report No. PN-1-210608-01, at 22 (MB June 8, 2021).

³¹ See Pleading File Nos. 116061, 116076.

³² *Reconsideration Decision* at 4.

³³ *Id.* at 5.

³⁴ AFR at 1.

³⁵ Bicoastal Media Licenses IV, LLC, Opposition to Application for Review, Application File No. BNPFT-20180430AAV (filed April 19, 2022).

³⁶ Northwest Rock N Roll Preservation Society, Reply to Opposition, Application File No. BNPFT-20180430AAV (filed May 4, 2022).

³⁷ AFR at 2, 4, 5. The order in which the Bureau took these actions determined which NWR Translator facilities were entitled to protection from predicted interference under section 74.1204(f). Section 74.1204(f) provides that an FM translator application will not be accepted for filing “if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including *previously authorized secondary service stations* within the 45 dBu field strength contour of the desired station.” 47 CFR § 74.1204(f) (emphasis added). Had the Bureau acted on the 2019 Modification Application prior to acting on the Bicoastal Application, the facilities specified in the 2019

(continued....)

Modification Application and the Bicoastal Application in a particular order.³⁸ Nothing prohibited NWR from filing an application to modify the service contour of the NWR Translator such that the facilities proposed in the Bicoastal Application would be predicted to cause interference to listener reception of the NWR Translator within its 45 dBμ field strength contour. But NWR had no procedural right to have its application acted upon prior to the Bicoastal Application. For this reason, we will not, as NWR suggests, wait to revisit the Bureau's decision until after the Bureau acts on the 2020 License Application.³⁹

16. Next, we dismiss as procedurally defective NWR's argument—made for the first time in the AFR⁴⁰—that the Bureau failed to act upon the 2019 Modification Application in a timely manner.⁴¹ On alternative and independent grounds, we reject this argument on its merits. First, while the Administrative Procedure Act requires administrative agencies to conclude matters presented to them “within a reasonable time,”⁴² “[t]here is no per se rule as to how long is too long to wait for agency action.”⁴³ Eight months was not an unreasonably long processing period,⁴⁴ especially given that NWR filed five applications between June and September 2019,⁴⁵ and NWR did not submit any written request that we expedite our processing of the 2019 Modification Application. Second, NWR's argument is speculative. It assumes that, if the Bureau had granted the 2019 Modification Application before August 29, 2019 (that is, before the expiration date of the 2017 Permit), NWR would have constructed the facilities specified in the 2019 Modification Application prior to that expiration date, and filed an application for a license to cover those facilities. Not only is it unclear that NWR would have been able to do so,⁴⁶ but there would have been no requirement that the Bureau act on that license application in the same time frame as it acted on the application for a license to cover the facilities authorized in the 2017

(Continued from previous page)

Modification Application would have been previously authorized in relation to the Bicoastal Translator. Because it did not, the facilities specified in the 2019 Modification Application were not previously authorized in relation to the Bicoastal Translator.

³⁸ The Bicoastal Application and the 2019 Modification Application were not mutually exclusive. Accordingly, section 74.1233(d)(1)—which requires processing of conflicting minor modification applications on a “first come/first served” basis—did not apply. 47 CFR § 74.1233(d)(1). Further, it is worth noting that the applications were processed in the order in which they were filed. The Bicoastal Application was filed on April 30, 2018, while the 2019 Modification Application was filed on June 18, 2019, more than a year later.

³⁹ AFR at 4.

⁴⁰ NWR raises the “eight months delay” in processing of the 2019 Modification Application for the first time in the AFR. *Id.* at 2. NWR did not even mention the 2019 Modification Application in the Petition. In addition, while it is mentioned in the PFR Reply, that pleading contains no discussion of any Bureau delay in acting on the 2019 Modification Application. PFR Reply at 3.

⁴¹ 47 U.S.C. § 155(c)(5); 47 CFR § 1.115(c) (both prohibiting grant of an application for review if it relies on questions of fact or law upon which the Bureau has been afforded no opportunity to pass).

⁴² 5 U.S.C. § 555(b).

⁴³ *In re American Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004).

⁴⁴ A reasonable time for agency action is usually “counted in weeks or months, not years.” *Id.*

⁴⁵ See Application File No. BMLFT-20190613AAH (seeking to modify 2013 License); 2019 Modification Application (seeking to modify 2017 Permit); BLFT-20190829ABF (seeking license to cover 2016 Permit); Application File No. BPFT-20190903AAC (seeking to revert to facilities specified in 2013 License); Application File No. BLFT-20190904ABL (seeking license to cover 2017 Permit).

⁴⁶ See *Northwest Rock N Roll Preservation Society*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-763, at n. 34 (Aud. Div. Aug. 25, 2023) (“It appears NWR never operated the NWR Translator with the facilities authorized in the 2019 License. Instead, it continued operating the NWR Translator with the facilities authorized in the 2013 License until it was ready to begin operating the NWR Translator with the facilities authorized in the 2020 Permit pursuant to program test authority.”).

Permit (*i.e.*, prior to acting on the Bicoastal Application). As explained in the preceding paragraph, the Bureau would not have been required to process the applications in that order. Third, contrary to NWR's assertion,⁴⁷ it was not prejudiced by the Bureau's failure to grant the 2019 Modification Application prior to acting on the Bicoastal Application. Even if the Bureau had licensed the facilities proposed in the 2019 Modification Application prior to acting on the Bicoastal Application, the Bureau still would have properly dismissed the Objection, and the 2018 and 2019 Supplements, as moot.⁴⁸

17. **Dismissal of Objection.** We reject NWR's argument that the Bureau erred in dismissing the Objection, and the 2018 and 2019 Supplements. As the Bureau explained, the interference claim packages that accompanied these pleadings were based on operation of the NWR Translator with the facilities specified in the 2013 License. On December 4, 2019, however, at NWR's request, the Bureau licensed the NWR Translator to operate with the facilities specified in the 2017 Permit, which have a vastly different service contour.⁴⁹ This meant that the NWR Translator was no longer licensed to operate with the 2013 Contour that NWR had used in the predicted interference showings that accompanied the Objection, and the 2018 and 2019 Supplements.⁵⁰ This, in turn, meant that the interference claims made in the Objection (and the 2018 and 2019 Supplements) became moot as of December 4, 2019, when the Bureau granted the 2019 License.⁵¹ Accordingly, we find that the Bureau properly dismissed the Objection and the 2018 and 2019 Supplements on December 12, 2019.

18. **Additional Interference Showings.** To the extent that NWR suggests that the Bureau should have treated the interference showings that accompanied the Petition and the PFR Reply as

⁴⁷ AFR at 2, 3. NWR argues that, "[i]f the modification had been granted in a timely manner," the license granted in December 2019 would have covered the facilities proposed in the 2019 Modification Application instead of the facilities authorized in the 2017 Permit. *Id.*

⁴⁸ Had the Bureau licensed the facilities proposed in the 2019 Modification Application, the NWR Translator's licensed contour would still have been different from the 2013 Contour. NWR's predicted interference showing would have been evaluated against that contour, rather than the 2013 Contour, which was the contour NWR used for the interference showings made in the Informal Objection, and the 2018 and 2019 Supplements.

⁴⁹ We note that, had NWR chosen to allow the 2017 Permit to expire, the NWR Translator would have continued to be licensed to operate with the 2013 Contour, and the interference showings in the Objection, and the 2018 and 2019 Supplements (which referenced the NWR Translator as licensed under the 2013 License) would not have been rendered inaccurate.

⁵⁰ See Objection at Exh. A (referencing facilities licensed in 2013); 2018 Supplement at Exh. A (same); 2019 Supplement at Station Operation Decl. (indicating NWR Translator was operating within its licensed parameters). We reject NWR's claim that its currently licensed field strength contour from the 2019 License and its formerly licensed 2013 Contour were "materially similar enough" that the interference showings made in the Objection, and the 2018 and 2019 Supplements should not have been dismissed. AFR at 2-3. The two field strength contours differ substantially from one another. See AFR at 2 ("There are some differences in service areas (45 dBμ contour) between our former 10 watts [2013 License], our licensed 250 watts [2019 License], and our pending (and current operating) 250 watts [2020 Permit and 2020 License Application] in the direction of K267CX."); Petition at 2 (acknowledging that the NWR Translator's engineering parameters "changed" when the 2019 License was issued). Furthermore, we reject NWR's assertion that, "if the [2019 Modification Application] had been approved in a timely manner, the License to Cover contour would have been the same as originally submitted." AFR at 3. In fact, the NWR Translator's formerly licensed field strength contour from 2013 and the field strength contour of the facilities proposed in the 2019 Modification Application (and authorized in the 2020 Permit) are not identical. The 2013 Contour extended roughly the same distance in all directions from the NWR Translator's transmitter site, while the contour of the facilities proposed in the 2019 Modification Application extends farther than the 2013 Contour in virtually all directions, and extends farther toward the southeast in the direction of Centralia than the 2013 Contour.

⁵¹ An affected station's field strength contour is key to a predicted interference showing. See 47 CFR § 74.1204(f) ("An application for an FM translator station will not be accepted for filing . . . if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including previously authorized secondary service stations, within the 45 dBμ field strength contour of the desired station. . . .").

supplements rather than as a new interference claim package,⁵² we reject this assertion. Had these interference showings been submitted prior to the Bureau's dismissal of the Objection and grant of the Bicoastal Application, it would have been appropriate for the Bureau to treat them as supplements to the interference claim package that accompanied the Objection.⁵³ However, these showings were submitted after those Bureau actions. For this reason, we find it was appropriate for the Bureau to treat them as comprising a new interference claim package.

19. In any event, regardless of whether the showings are viewed as supplements to the original interference claim package or a new interference claim package, the Bureau correctly determined the showings were not rule-compliant. Where a complaining station modifies its service contour such that it serves a significantly different geographic area, it must evaluate whether the materials submitted as part of its interference claim package require updating. This is because the Commission requires that a predicted interference claim package include (1) "[a] map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBμ contour," (2) "U/D data demonstrating that at each listener location the ratio of undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third adjacent channel situations,"⁵⁴ (3) a statement that the complaining station is operating within its licensed parameters, and (4) a statement that it has "used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution."⁵⁵ If a complaining station submits a predicted interference claim package, and then makes significant changes to its service contour, those changes may make some or all of the information in the interference claim package inaccurate or outdated. It is a complaining station's responsibility to update any information required by section 74.1204(f) of the Rules that is rendered inaccurate or outdated by changes to its service contour.

20. Turning to the interference showings that accompanied the Petition and the PFR Reply, we affirm the Bureau's finding that they were not rule-compliant. Section 74.1204(f)(3) of the Rules requires that a predicted interference claim package include, among other things, a statement that the complaining station is operating within its licensed parameters.⁵⁶ As the Bureau noted,⁵⁷ NWR did not include such a statement in either of these interference showings despite the fact that the NWR Translator's licensed parameters had changed and its previous statement (in the 2019 Supplement) that it was operating within its previously licensed parameters had been rendered inaccurate and outdated. Finally, we note that, while NWR indicates it could not certify that the NWR Translator was operating

⁵² AFR at 3.

⁵³ This is, in fact, how the Bureau treated the two interference showings submitted after the Objection but prior to the Bureau's dismissal of the Objection and grant of the Bicoastal Application.

⁵⁴ U/D or undesired/desired data is calculated using the signal strengths of the undesired/interfering and desired/complaining stations. When one of the stations modifies its signal strength contour, prior U/D calculations become inaccurate.

⁵⁵ 47 CFR § 74.1204(f)(2)-(5). We acknowledge that, in some instances, a modification to a complaining station's service contour might not change the U/D data or the area of predicted interference. In those cases, we believe it would be acceptable for a complaining station to rely on previously submitted U/D data, and its statement regarding its prior efforts to inform the relevant translator licensee of the claimed interference and attempt private resolution. We note, however, that, even in these types of situations, a complaining station would need to submit a new map plotting the specific location of the alleged interference in relation to the complaining station's modified 45 dBμ contour, and a new statement that it is operating within its licensed parameters. In contrast, if a modification to a complaining station's licensed facilities would not affect the station's service contour, we would anticipate that the station would only need to update its statement that it is operating within its licensed parameters.

⁵⁶ 47 CFR § 74.1204(f)(3).

⁵⁷ *Reconsideration Decision* at 5.

within its new licensed parameters when it submitted the Petition,⁵⁸ that does not excuse its failure to submit the required statement. In fact, that emphasizes why it is so important that the required statement be submitted. The NWR Translator is entitled to interference protection only within its actual 45 dBμ service contour.⁵⁹ The required statement ensures that the Commission is informed if a complaining station is operating outside its licensed parameters, so that it is not able to claim different or greater interference protections than authorized by the Rules.

21. **Protections from Actual Interference.** We note that the pleadings submitted to date pertain only to predicted interference. We remind the parties that should the Bicoastal Translator commence operation and cause actual interference to reception of the NWR Translator, such interference would be addressed under section 74.1203(a)(3).⁶⁰ That section prohibits an authorized FM translator station from “continu[ing] to operate” if it causes any actual interference to “[t]he direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station.”⁶¹

IV. CONCLUSION

22. Accordingly, for these reasons, **IT IS ORDERED**, that the Application for Review filed by Northwest Rock N Roll Preservation Society on April 4, 2022, **IS DISMISSED IN PART AND OTHERWISE DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁸ AFR at 3 (stating that, at the time the Petition was filed, “NWR was working on resolving engineering problems at the transmitter site, and unable to state that [the NWR Translator] was operating at full licensed power”).

⁵⁹ *FM Translator Interference Order*, 34 FCC Rcd at 3470, para. 24

⁶⁰ 47 CFR § 74.1203(a).

⁶¹ *Id.* We note that NWR argues that “section 74.1203(a) protection of [the NWR Translator] from interference from [the Bicoastal Translator] includes protection of listeners inside the 45 dBμ contour defined by [the 2019 Permit] and [the 2020 License Application].” AFR at 5. Because NWR makes this argument for the first time in the AFR, we dismiss it as procedurally defective. See 47 U.S.C. § 155(c)(5); 47 CFR 1.115(c).